

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.

Action taken: Amendment of sections 408.6 and 452.9 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 459-a

Subject: Increase in the maximum length of stay in residential domestic violence programs.

Purpose: To implement changes to section 459-a of the Social Services Law increasing maximum length of stay in domestic violence programs.

Text or summary was published in the April 26, 2017 issue of the Register, I.D. No. CFS-17-17-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Leslie Robinson, New York State Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 486-9563, email: regcomments@ocfs.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Department of Agriculture and Markets

NOTICE OF EXPIRATION

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

National Institute of Standards and Technology (“NIST”) Handbook 44; Receipts Issued by Taxicab Operators, Digital Scales

I.D. No.	Proposed	Expiration Date
AAM-23-16-00005-P	June 8, 2016	June 8, 2017

Office of Children and Family Services

NOTICE OF ADOPTION

Increase in the Maximum Length of Stay in Residential Domestic Violence Programs

I.D. No. CFS-17-17-00010-A

Filing No. 411

Filing Date: 2017-06-13

Effective Date: 2017-06-28

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

Education Department

EMERGENCY RULE MAKING

Dispensing of Post-Exposure Prophylaxis Drugs to Prevent HIV in Persons Who May Have Been Recently Exposed

I.D. No. EDU-13-17-00012-E

Filing No. 403

Filing Date: 2017-06-09

Effective Date: 2017-06-11

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

Action taken: Addition of sections 60.12, 63.13 and 64.5(h) to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6527(7-a), 6801(5), 6902(3) and 6909(8); and L. 2016, ch. 502

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Chapter 502 of the Laws of 2016, which became effective on November 28, 2016, the date it was enacted. The amendment to the Education Law made by Chapter 502 of the Laws of 2016 allows licensed pharmacists to execute non-patient specific orders to dispense HIV post-exposure prophylaxis drugs prescribed by a licensed physician or a certified nurse practitioner for the purpose of preventing HIV infection.

The proposed amendment was adopted as an emergency action at the March 13, 2017 Regents meeting, effective March 14, 2017. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on March 29, 2017. Because the Board of Regents meets at

fixed intervals, the earliest the proposed amendment can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the June 12-13, 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the June meeting, would be June 28, 2017, the date a Notice of Adoption would be published in the State Register. However, the March emergency rule will expire on June 10, 2017.

If this rule were to lapse, licensed pharmacists would be unable to continue to execute non-patient specific orders to dispense HIV post-exposure prophylaxis drugs prescribed by a licensed physician or a certified nurse practitioner for the purpose of preventing HIV infection which could have an adverse impact on persons who have potentially been exposed to HIV. Emergency action is therefore necessary for the preservation of the public health and general welfare to ensure that the proposed rule adopted by emergency action at the March 2017 Regents meeting remains continuously in effect until the proposed amendment can be presented for adoption and take effect as a permanent rule.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the June 12-13, 2017 meeting of the Board of Regents, which is the first meeting scheduled after expiration of the 45-day public comment period required by the State Administrative Procedure Act. If adopted at the June 2017 meeting, the proposed amendment will become effective as a permanent rule on June 28, 2017.

Subject: Dispensing of post-exposure prophylaxis drugs to prevent HIV in persons who may have been recently exposed.

Purpose: To allow execution by licensed pharmacists of non-patient specific orders to dispense HIV post-exposure prophylaxis drugs.

Text of emergency rule: 1. Section 60.12 of the Regulations of the Commissioner of Education is added, to read as follows:

60.12 Orders to dispense drugs to prevent human immunodeficiency virus (HIV) infection.

(1) As used in this section, HIV post-exposure prophylaxis drugs means drugs approved by the Federal Food and Drug Administration to prevent and/or treat HIV infection.

(2) A licensed physician may issue a written non-patient specific order and protocol for a licensed pharmacist to dispense up to a seven day supply of HIV post-exposure prophylaxis drugs to prevent HIV infection in persons who have potentially been exposed to HIV, provided that the requirements of this section are met.

(3) Order and protocol.

(i) The non-patient specific order shall include, at a minimum, the following:

(a) the name, license number and signature of the licensed physician who issues the non-patient specific order and protocol;

(b) the name and dose of the specific drug(s) to be dispensed;

(c) a protocol for dispensing the drug(s) or a specific reference to a separate written protocol for dispensing the drug(s), which shall meet the requirements of subparagraph (ii) of this paragraph;

(d) the period of time that the order is effective, including the beginning and ending dates;

(e) a description of the group(s) of persons who may receive the dispensed drugs, provided that the group(s) of persons are located in New York State; and

(f) the name and license number of each licensed pharmacist authorized to execute the non-patient specific order and protocol or the name and address of the New York State licensed pharmacy that employs or contracts with the licensed pharmacist(s) to execute the non-patient specific order and protocol.

(ii) The written protocol, incorporated into the order prescribed in subparagraph (i) of this paragraph, shall, at a minimum, require the licensed pharmacist to:

(a) screen each potential recipient, pursuant to criteria in the protocol, for conditions that would qualify or preclude the potential recipient from receiving the dispensed drugs;

(b) offer counseling regarding the need for follow-up care pursuant to criteria in the protocol and provide the counseling if the recipient consents;

(c) offer or provide in writing, the names and addresses of hospitals or other health providers that offer follow-up care, which shall be identified in the protocol; and

(d) document the pharmacy services provided, including the offer or provision of counseling and referral information described in this subparagraph, and maintain the documentation in accordance with section 29.2(a)(3), section 63.6(b)(7) and section 63.6(b)(8) of this Title.

(4) A licensed physician may issue a written patient specific order or prescription to a licensed pharmacist to dispense HIV post-exposure prophylaxis drugs pursuant to applicable law.

2. Section 63.13 of the Regulations of the Commissioner of Education is added, to read as follows:

63.13 Non-patient specific orders and protocols.

Orders to dispense drugs to prevent human immunodeficiency virus (HIV) infection. A licensed pharmacist may, pursuant to a non-patient specific order and protocol issued by a licensed physician in accordance with section 60.12 of this Title or by a certified nurse practitioner in accordance with subdivision (h) of section 64.5 of this Title, dispense up to a seven day supply of HIV post-exposure prophylaxis drugs for the purpose of preventing HIV infection in persons who have potentially been exposed to HIV.

3. Subdivision (h) of section 64.5 of the Regulations of the Commissioner of Education is added, to read as follows:

(h) Orders to dispense drugs to prevent human immunodeficiency virus (HIV) infection.

(1) As used in this subdivision, HIV post-exposure prophylaxis drugs means drugs approved by the Federal Food and Drug Administration to prevent and/or treat HIV infection.

(2) A certified nurse practitioner may issue a written non-patient specific order and protocol for a licensed pharmacist to dispense up to a seven day supply of HIV post-exposure prophylaxis drugs to prevent HIV infection in persons who have potentially been exposed to HIV, provided that the requirements of this subdivision are met.

(3) Order and protocol.

(i) The non-patient specific order shall include, at a minimum, the following:

(a) the name, license number and signature of the certified nurse practitioner who issues the non-patient specific order and protocol;

(b) the name and dose of the specific drug(s) to be dispensed;

(c) a protocol for dispensing the drug(s) or a specific reference to a separate written protocol for dispensing the drug(s), which shall meet the requirements of subparagraph (ii) of this paragraph;

(d) the period of time that the order is effective, including the beginning and ending dates;

(e) a description of the group(s) of persons who may receive the dispensed drugs, provided that the group(s) of persons are located in New York State; and

(f) the name and license number of each licensed pharmacist authorized to execute the non-patient specific order and protocol or the name and address of the New York State licensed pharmacy that employs or contracts with the licensed pharmacist(s) to execute the non-patient specific order and protocol.

(ii) The written protocol, incorporated into the order prescribed in subparagraph (i) of this paragraph, shall, at a minimum, require the licensed pharmacist to:

(a) screen each potential recipient, pursuant to criteria in the protocol, for conditions that would qualify or preclude the potential recipient from receiving the dispensed drugs;

(b) offer counseling regarding the need for follow-up care pursuant to criteria in the protocol and provide the counseling if the recipient consents;

(c) offer or provide in writing, the names and addresses of hospitals or other health providers that offer follow-up care, which shall be identified in the protocol; and

(d) document the pharmacy services provided, including the offer or provision of counseling and referral information described in this subparagraph, and maintain the documentation in accordance with section 29.2(a)(3), section 63.6(b)(7) and section 63.6(b)(8) of this Title.

(4) A certified nurse practitioner may issue a written patient specific order or prescription to a licensed pharmacist to dispense HIV post-exposure prophylaxis drugs pursuant to applicable law.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-13-17-00012-EP, Issue of March 29, 2017. The emergency rule will expire August 7, 2017.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and the practice of the professions.

Subdivision (7-a) of section 6527 of the Education Law, as added by Chapter 502 of the Laws of 2016, authorizes a licensed physician to prescribe and order a patient specific order or a non-patient specific order to a licensed pharmacist to dispense up to a seven day supply of HIV post-exposure prophylaxis to prevent HIV infection following a potential HIV exposure.

Subdivision (5) of section 6801 of the Education Law, as added by Chapter 502 of the Laws of 2016, authorizes a licensed pharmacist to dispense up to a seven day supply of HIV post-exposure prophylaxis medications for the purpose of preventing HIV infection following a potential HIV exposure, pursuant to a non-patient specific order and protocol prescribed by a licensed physician or a certified nurse practitioner.

Subdivision (3) of section 6902 of the Education law defines the practice of the profession of registered professional nursing by a certified nurse practitioner.

Subdivision (8) of section 6909 of the Education Law, as added by Chapter 502 of the Laws of 2016, authorizes a certified nurse practitioner to prescribe a patient specific order or a non-patient specific order to a licensed pharmacist to dispense up to a seven day supply of HIV post-exposure prophylaxis to prevent HIV infection following a potential HIV exposure.

2. LEGISLATIVE OBJECTIVES:

The proposed rule carries out the intent of the aforementioned statutes that the Department shall supervise the regulation of the practice of the professions for the benefit of the public. The proposed rule will conform the Regulations of the Commissioner to Chapter 502 of the Laws of 2016. Subdivision (7-a) of section 6527, subdivision (5) of section 6801, and subdivision (8) of section 6909 of the Education Law, as added by Chapter 502 of the Laws of 2016, are intended to prevent new HIV infections by making HIV post-exposure prophylaxis drugs more readily available to persons who may have been recently exposed to HIV. According to the United States Centers for Disease Control (CDC), HIV infection remains a major public health problem throughout the United States. The CDC currently recommends that HIV post-exposure prophylaxis drugs be used after a high risk event and must be started as soon as possible to be effective, always within 72 hours after a possible HIV exposure. In the United States, persons are most commonly exposed to HIV through sexual contact or sharing of needles.

3. NEEDS AND BENEFITS:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 502 of the Laws of 2016. The purpose of the proposed rule is to establish criteria for licensed pharmacists to follow when dispensing up to a seven day supply of drugs to prevent HIV infection in a person who may have been exposed to HIV, pursuant to non-patient specific orders and protocols prescribed by a licensed physician or certified nurse practitioner. Specifically, the proposed rule establishes requirements for the type of information that must be included in the non-patient specific order and protocol for a licensed pharmacist to follow when dispensing HIV prophylaxis drugs to persons who may have recently been exposed to HIV.

4. COSTS:

(a) Costs to State government: There are no additional costs to state government.

(b) Costs to local government: There are no additional costs to local government.

(c) Cost to private regulated parties: There are no mandatory costs to private regulated parties.

(d) Cost to the regulatory agency: There are no additional costs to the Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule does not impose any program service, duty, responsibility, or other mandate on local governments.

6. PAPERWORK:

The proposed rule does not impose any paperwork mandates because it does not require any licensed physician or certified nurse practitioner to prescribe any non-patient specific orders and protocols and does not require licensed pharmacists to execute any non-patient specific orders and protocols. The proposed rule does not impose any reporting, record-keeping or other requirements on licensed physicians and certified nurse practitioners unless they choose to prescribe non-patient specific orders and protocols to permit licensed pharmacists to dispense up to a seven day supply of drugs to prevent HIV infection in persons who may have been exposed to HIV. If the licensed physicians and certified nurse practitioners choose to prescribe such non-patient specific orders and protocols, the proposed rule requires them to, inter alia, issue these orders and protocols in writing. In addition, licensed pharmacists must document the pharmacy services provided, including the offer or provision of counseling and referral information.

7. DUPLICATION:

There is no other state or federal requirements on the subject matter of

the proposed rule. Therefore, the amendment does not duplicate other existing state or federal requirements, and is necessary to implement Chapter 502 of the Laws of 2016.

8. ALTERNATIVES:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 502 of the Laws of 2016. There are no significant alternatives to the proposed rule and none were considered.

9. FEDERAL STANDARDS:

Since there are no applicable federal standards for authorizing licensed pharmacists to dispense up to a seven day supply of drugs to prevent HIV infection in persons who may have been exposed to HIV, pursuant to a non-patient specific order prescribed by a licensed physician or certified nurse practitioner, the proposed rule does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 502 of the Laws of 2016. The proposed rule does not impose any compliance schedules on regulated parties or local governments.

Regulatory Flexibility Analysis

The purpose of the proposed rule is to conform the Commissioner's Regulations to Chapter 502 of the Laws of 2016, which authorizes licensed pharmacists to execute non-patient specific orders prescribed by a licensed physician or certified nurse practitioner to dispense drugs to prevent HIV infection in persons who may have recently been exposed to HIV. The proposed rule establishes the types of information that must be set forth in written non-patient specific orders and protocols for the licensed pharmacist to follow when dispensing drugs to prevent HIV infection in a person who may have recently been exposed to HIV. The proposed rule neither requires licensed physicians or certified nurse practitioners to issue non-patient specific orders to authorize licensed pharmacists to dispense drugs to prevent HIV infection in persons who may have recently been exposed to HIV, nor does it require licensed pharmacists to dispense such drugs.

The proposed rule will not impose any new reporting, recordkeeping, or other compliance requirements or costs, or have any adverse economic impact on small businesses or local governments. Because it is evident from the nature of the proposed rule that it will not adversely affect small businesses or local governments, no 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

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to all New York State licensed pharmacists who dispense drugs, pursuant to non-patient specific orders issued by licensed physicians or certified nurse practitioners, to prevent HIV infection in persons who may have been exposed to HIV, including those who are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the approximately 24,160 licensed pharmacists who are registered to practice in New York State, approximately 2,970 reported that their permanent address of record is in a rural county of New York State. Likewise, of the 5,410 registered pharmacies in New York State, approximately 780 are in rural counties.

The proposed rule applies to all New York State certified nurse practitioners who issue non-patient specific orders and protocols to authorize licensed pharmacists to dispense drugs to prevent HIV infection in persons who may have been exposed to HIV, including certified nurse practitioners who are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the approximately 22,000 certified nurse practitioners who are registered to practice in New York State, approximately 2,800 reported that their permanent address of record is in a rural county of New York State.

Additionally, the proposed rule applies to all New York State licensed physicians who issue non-patient specific orders and protocols to authorize licensed pharmacists to dispense drugs to prevent HIV infection in persons who may have been exposed to HIV, including licensed physicians who are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the approximately 94,000 licensed physicians who are registered to practice in New York State, approximately 2,600 reported that their permanent address of record is in a rural county of New York State.

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

The proposed rule adds sections 60.12 and 63.13 and subdivision (h) of section 64.5 to the Regulations of the Commissioner of Education to implement Chapter 502 of the Laws of 2016, which became effective on

November 28, 2016. Chapter 502 of the Laws of 2016 authorizes licensed pharmacists to dispense drugs, pursuant to a non-patient specific order and protocol prescribed by a licensed physician or certified nurse practitioner, to prevent HIV infection in persons who may have been exposed to HIV.

The proposed rule authorizes, but does not require, any certified nurse practitioner or licensed physician to prescribe patient specific and non-patient specific orders and protocols. In addition, it authorizes, but does not require, licensed pharmacists to execute non-patient specific orders to dispense drugs to prevent HIV infection in persons who may have been exposed to HIV. The proposed rule does not impose any reporting, recordkeeping, other compliance requirements, or professional services requirements on health care providers in rural areas unless a licensed physician or certified nurse practitioner issues a non-patient specific order and protocol for licensed pharmacists to dispense drugs to prevent HIV infection in persons who may have been exposed to HIV. In such cases, the proposed rule requires the licensed physician or certified nurse practitioner to issue the non-patient specific orders and protocols in writing. In addition, licensed pharmacists must document the pharmacy services provided, including the offer or provision of counseling and referral information.

3. COSTS:

The proposed rule will not impose any additional costs on any licensed physician, certified nurse practitioner, licensed pharmacist or other party. Neither subdivision (7-a) of section 6527, subdivision (5) of section 6801, nor subdivision (8) of section 6909 of the Education Law impose any obligations on licensed physicians or certified nurse practitioners to issue any patient specific or non-patient specific orders and protocols. Likewise, Chapter 502 of the Laws of 2016 authorizes, but does not require, licensed pharmacists to dispense drugs to prevent HIV infection in persons who may have been exposed to HIV, pursuant to non-patient specific orders and protocols.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to conform the Commissioner's Regulations with Education Law sections 6527, 6801 and 6909 as amended by Chapter 502 of the Laws of 2016 relating to the execution by licensed pharmacists of non-patient specific orders to dispense drugs to prevent HIV infection in a person who may have been exposed to HIV. Chapter 502 of the Laws of 2016 does not make exceptions for individuals who live or work in rural areas. Thus, the Department has determined that the proposed rule's requirements shall apply to all licensed physicians, certified nurse practitioners and licensed pharmacists in New York State. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from statewide organizations representing all parties having an interest in the practice of licensed physicians, certified nurse practitioners, and licensed pharmacists and pharmacies. These organizations included the New York State Department of Health and professional associations representing the pharmacy, nursing and medical professions. These groups have members who live or work in rural areas.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1) (b), the Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement the statutory provisions of Chapter 502 of the Laws of 2016 and, therefore, the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16 of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed rule conforms the Commissioner's Regulations to Chapter 502 of the Laws of 2016, which authorizes licensed pharmacists to execute non-patient specific orders to dispense up to a seven day supply of drugs to prevent HIV infection in persons who may have been exposed to HIV. The proposed rule establishes criteria for licensed pharmacists to follow when dispensing up to a seven day supply of drugs to prevent HIV infection in a person who may have been exposed to HIV, pursuant to non-patient specific orders and protocols prescribed by a licensed physician or certified nurse practitioner.

The proposed rule implements specific statutory provisions. The proposed rule will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rule, which implements specific statutory provisions, that it will not affect job and employment opportunities or only have a positive

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

EMERGENCY RULE MAKING

Screening of Individuals at Increased Risk of Syphilis, Gonorrhea and Chlamydia (Sexually Transmitted Infections or STIs)

I.D. No. EDU-13-17-00013-E

Filing No. 404

Filing Date: 2017-06-09

Effective Date: 2017-06-11

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

Action taken: Amendment of section 64.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6527(6)(g), 6902(1) and 6909(4)(g); and L. 2016, ch. 502

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Chapter 502 of the Laws of 2016, which became effective on November 28, 2016, the date it was enacted. The amendment to the Education Law made by Chapter 502 of the Laws of 2016 allows registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections pursuant to non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner.

The proposed amendment was adopted as an emergency action at the March 13, 2017 Regents meeting, effective March 14, 2017. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on March 29, 2017. Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the June 12-13, 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the June meeting, would be June 28, 2017, the date a Notice of Adoption would be published in the State Register. However, the March emergency rule will expire on June 10, 2017.

If the rule were to lapse, registered professional nurses would be unable to continue to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections pursuant to non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner which could delay treatment and potentially have the adverse impact of causing infected individuals to suffer potential complications, including but not limited to, possible infertility and/or unknowingly spreading these infections to other persons. Emergency action is therefore necessary for the preservation of the public health and general welfare to ensure that the proposed rule adopted by emergency action at the March 2017 Regents meeting remains continuously in effect until the proposed rule can be presented for adoption and take effect as a permanent rule.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the June 12-13, 2017 meeting of the Board of Regents, which is the first meeting scheduled after expiration of the 45-day public comment period required by the State Administrative Procedure Act. If adopted at the June 2017 meeting, the proposed amendment will become effective as a permanent rule on June 28, 2017.

Subject: Screening of individuals at increased risk of syphilis, gonorrhea and chlamydia (sexually transmitted infections or STIs).

Purpose: To allow execution by registered professional nurses of non-patient specific orders to screen persons at increased risk of STIs.

Text of emergency rule: Section 64.7 of the Regulations of the Commissioner of Education is amended, as follows:

64.7 Administration of immunizations, emergency treatment of anaphylaxis, tuberculosis tests, human immunodeficiency virus (HIV) tests, opioid related overdose treatments, [and] hepatitis C tests and screening for syphilis, gonorrhea and/or chlamydia infections pursuant to non-patient specific orders and protocols.

- (a) ...
- (b) ...
- (c) ...
- (d) ...

(e) . . .

(f) . . .

(g) *Screening for syphilis, gonorrhea and/or chlamydia infections.*

(1) *As used in this subdivision, screening means an assessment of an individual to ascertain his or her risk of having a syphilis, gonorrhea and/or chlamydia infection and may include the administration of one or more laboratory or point of care tests approved by the Federal Food and Drug Administration to detect or screen for syphilis, gonorrhea and/or chlamydia infections.*

(2) *A registered professional nurse may screen persons at increased risk for syphilis, gonorrhea and/or chlamydia pursuant to a written non-patient specific order and protocol prescribed or ordered by a licensed physician or a certified nurse practitioner, provided that the requirements of this subdivision are met.*

(3) *Order and protocol.*

(i) *The non-patient specific order shall include, at a minimum, the following:*

(a) *the name, license number and signature of the licensed physician or certified nurse practitioner who orders or prescribes the non-patient specific order and protocol;*

(b) *the name of the specific laboratory or point of care test(s) or assessment procedures to be administered;*

(c) *a protocol for administering the ordered screening for syphilis, gonorrhea and/or chlamydia infections or a specific reference to a separate written protocol for administering the ordered screening for syphilis, gonorrhea and/or chlamydia, which shall meet the requirements of subparagraph (ii) of this paragraph;*

(d) *the period of time that the order is effective, including the beginning and ending dates;*

(e) *a description of the group(s) of persons to be screened; and*

(f) *the name and license number of the registered professional nurse(s) authorized to execute the non-patient specific order and protocol to screen for syphilis, gonorrhea and/or chlamydia infections; or the name of the entity that employs or contracts with registered professional nurses to execute the non-patient specific order and protocol, provided that the registered professional nurses execute the non-patient specific order and protocol only in the course of such employment or pursuant to such contract and provided further that the entity is legally authorized to employ or contract with registered professional nurses to provide nursing services.*

(ii) *The written protocol, incorporated into the order prescribed in subparagraph (i) of this paragraph, shall, at a minimum, include instructions for screening for syphilis, gonorrhea and/or chlamydia infections and require the registered professional nurse(s) to ensure that:*

(a) *each potential recipient is assessed, pursuant to criteria in the protocol, for conditions that would qualify or preclude him or her from receiving the ordered screening tests for syphilis, gonorrhea and/or chlamydia infections;*

(b) *informed consent for administering the ordered screening for syphilis, gonorrhea and/or chlamydia has been obtained from the recipient pursuant to the criteria in the protocol, or when the recipient lacks capacity to consent, from a person authorized pursuant to law to consent to health care for the recipient;*

(c) *positive test results for syphilis, gonorrhea and/or chlamydia infections are not disclosed to the test recipient or the recipient's authorized representative by the registered professional nurse without a patient specific order from a licensed physician, licensed physician assistant or certified nurse practitioner; and*

(d) *the administration of the ordered screening for syphilis, gonorrhea and/or chlamydia is documented in the recipient's medical record in accordance with criteria in the protocol and that documentation relating to the screening for syphilis, gonorrhea and/or chlamydia is maintained in accordance with section 29.2(a)(3) of this Title.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-13-17-00013-EP, Issue of March 29, 2017. The emergency rule will expire August 7, 2017.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and the practice of the professions.

Paragraph (g) of subdivision (6) of section 6527 of the Education law, as added by Chapter 502 of the Laws of 2016, authorizes registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections pursuant to a non-patient specific order and protocol prescribed by a licensed physician in accordance with the Regulations of the Commissioner of Education.

Subdivision (1) of section 6902 of the Education Law defines the practice of the profession of nursing for registered professional nurses.

Paragraph (g) of subdivision (4) of section 6909 of the Education Law, as added by Chapter 502 of the Laws of 2016, authorizes registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections pursuant to a non-patient specific order and protocol prescribed by a certified nurse practitioner in accordance with the Regulations of the Commissioner of Education.

2. LEGISLATIVE OBJECTIVES:

The proposed rule carries out the intent of the aforementioned statutes that the Department shall supervise the regulation of the practice of the professions for the benefit of the public. The proposed rule will conform the Regulations of the Commissioner to Chapter 502 of the Laws of 2016. Paragraph (g) of subdivision (6) of section 6527 of the Education Law and paragraph (g) of subdivision (4) of section 6909 of the Education law, as added by Chapter 502 of the Laws of 2016, were enacted to protect the public health of New York State by facilitating much needed screening of individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. According to the United States Centers for Disease Control (CDC), sexually transmitted infections (STIs) such as syphilis, gonorrhea and/or chlamydia are a major public health problem throughout the United States. Because syphilis, gonorrhea and/or chlamydia infections are frequently asymptomatic, persons are often unaware that they are infected and require medical treatment. Earlier treatment prevents complications from these infections, including, but not limited to, infertility and prevents further spread of these infections. The CDC recommends screening individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections to identify and treat infected persons before they develop complications and to identify test and treat their sex partners to prevent transmission and reinfections.

3. NEEDS AND BENEFITS:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 502 of the Laws of 2016. The purpose of the proposed rule is to establish uniform requirements for registered professional nurses to meet when executing non-patient specific orders to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. Specifically, the proposed rule establishes the requirements for the type of information that must be included in the non-patient specific orders and protocols for a registered professional nurse to follow when screening individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. The proposed rule is needed to implement paragraph (g) of subdivision (6) of section 6527 of the Education Law and paragraph (g) of subdivision (4) of section 6909 of the Education Law, as added by Chapter 502 of the Laws of 2016.

4. COSTS:

(a) *Costs to State government:* There are no additional costs to state government.

(b) *Costs to local government:* There are no additional costs to local government.

(c) *Cost to private regulated parties:* There are no mandatory costs to private regulated parties.

(d) *Cost to the regulatory agency:* There are no additional costs to the Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule does not impose any program service, duty, responsibility, or other mandate on local governments.

6. PAPERWORK:

The proposed rule does not impose any paperwork mandates because it does not require any licensed physician or certified nurse practitioner to prescribe any non-patient specific orders and protocols and does not require registered professional nurses to execute any non-patient specific orders and protocols. The proposed rule does not impose any reporting, record keeping or other requirements on licensed physicians and certified nurse practitioners unless they choose to prescribe non-patient specific orders and protocols to permit registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. If the licensed physicians and/or certified nurse practitioners choose to prescribe such non-patient specific orders and protocols, the proposed rule requires them to, inter alia, issue these orders and protocols in writing. In addition, registered professional nurses must document the screening services provided to each patient in the patient's medical records.

7. DUPLICATION:

There are no other state or federal requirements on the subject matter of the proposed rule. Therefore, the amendment does not duplicate other existing state or federal requirements, and is necessary to implement Chapter 502 of the Laws of 2016.

8. ALTERNATIVES:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 502 of the Laws of 2016. There are no significant alternatives to the proposed rule and none were considered.

9. FEDERAL STANDARDS:

Since, there are no applicable federal standards for authorizing registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections pursuant to a non-patient specific order prescribed by a licensed physician or a certified nurse practitioner, the proposed rule does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 502 of the Laws of 2016. Consistent with the statute, licensed physicians or certified nurse practitioners may, but are not required to, prescribe non-patient specific orders and protocols. Likewise, the rule authorizes, but does not require, registered professional nurses to execute non-patient specific orders and protocols. It is anticipated that the regulated parties, licensed physicians and certified nurse practitioners, who choose to issue these non-patient specific orders and the registered nurses, who choose to execute such orders, will be able to comply with the proposed amendments by the effective.

Regulatory Flexibility Analysis

The purpose of the proposed rule is to conform the Commissioner's Regulations to Chapter 502 of the Laws of 2016, which authorizes registered professional nurses to execute non-patient specific orders prescribed by a licensed physician or certified nurse practitioner to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. The proposed rule establishes requirements for the non-patient specific orders and the types of information that must be set forth in the written protocols for the registered professional nurse to follow when screening individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. The proposed rule neither requires licensed physicians or certified nurse practitioners to issue non-patient specific orders to authorize registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections nor does it require registered professional nurses to perform such screening pursuant to such orders.

The proposed rule will not impose any new reporting, recordkeeping, or other compliance requirements or costs, or have any adverse economic impact on small businesses or local governments. Because it is evident from the nature of the proposed rule that it will not adversely affect small businesses or local governments, no 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**1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:**

The proposed rule applies to all New York State registered professional nurses who screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections pursuant to non-patient specific orders issued by licensed physicians or certified nurse practitioners, including those who are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the approximately 290,000 registered professional nurses who are registered to practice in New York State, approximately 31,000 reported that their permanent address of record is in a rural county of New York State.

The proposed rule applies to all New York State certified nurse practitioners who issue non-patient specific orders and protocols to authorize registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections, including nurse practitioners who are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the approximately 22,000 certified nurse practitioners who are registered to practice in New York State, approximately 2,800 reported that their permanent address of record is in a rural county of New York State.

Additionally, the proposed rule applies to all New York State licensed physicians who issue non-patient specific orders and protocols to authorize registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections, including physicians who are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per

square mile or less. Of the approximately 94,000 licensed physicians who are registered to practice in New York State, approximately 2,600 reported that their permanent address of record is in a rural county of New York State.

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

The proposed rule adds subdivision (g) to section 64.7 of the Regulations of the Commissioner of Education, which implements Chapter 502 of the Laws of 2016. This law became effective on November 28, 2016. It authorizes registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea or chlamydia infections pursuant to a non-patient specific order and protocol prescribed by a licensed physician or certified nurse practitioner.

The proposed rule authorizes, but does not require, any certified nurse practitioner or licensed physician to prescribe non-patient specific orders and protocols. In addition, the rule authorizes, but does not require, registered professional nurses to execute non-patient specific orders to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. The proposed rule does not impose any reporting, record keeping, other compliance requirements, or professional services requirements on health care providers in rural areas unless a licensed physician or certified nurse practitioner issues a non-patient specific order and protocol for registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. In such cases, the proposed rule requires the licensed physician or certified nurse practitioner to issue the non-patient specific orders and protocols in writing. In addition, registered professional nurses must document in the patient's medical records that they performed the ordered screening services.

3. COSTS:

The proposed rule will not impose any additional costs on any licensed physician, certified nurse practitioner, registered professional nurse or other party. Neither paragraph (g) of subdivision (4) of section 6909 nor paragraph (g) of subdivision (6) of section 6527 of the Education Law impose any obligations on licensed physicians or certified nurse practitioners to issue non-patient specific orders and protocols to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to conform the Commissioner's Regulations with Education Law sections 6527 and 6909 as amended by Chapter 502 of the Laws of 2016 relating to the execution by registered professional nurses of non-patient specific orders to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. These statutory provisions do not make exceptions for individuals who live or work in rural areas. Thus, the Department has determined that the proposed rule's requirements shall apply to all physicians, certified nurse practitioners and registered professional nurses in New York State. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from statewide organizations representing all parties having an interest in the practice of licensed physicians, certified nurse practitioners, and registered professional nurses. These organizations included the New York State Department of Health, the State Board for Nursing and professional associations representing the nursing and medical professions. These groups have members who live or work in rural areas.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement the statutory provisions of Chapter 502 of the Laws of 2016 and, therefore, the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16 of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed rule conforms the Commissioner's Regulations to Chapter 502 of the Laws of 2016, which authorizes registered professional nurses to execute non-patient specific orders to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. The proposed rule establishes criteria for registered professional nurses to follow when screening individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections pursuant to non-patient specific orders and protocols prescribed by a licensed physician or certified nurse practitioner.

The proposed rule implements specific statutory provisions. The

proposed rule neither requires licensed physicians or certified nurse practitioners to issue non-patient specific orders to authorize registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections nor does it require registered professional nurses to perform such screening pursuant to such orders. The proposed rule will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rule, which implements specific statutory provisions, that it will not affect job and employment opportunities or only have a positive impact, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

**NOTICE OF EMERGENCY
ADOPTION
AND REVISED RULE MAKING
NO HEARING(S) SCHEDULED**

Continuing Education Requirements for Veterinarians and Veterinary Technicians

I.D. No. EDU-04-17-00005-ERP

Filing No. 412

Filing Date: 2017-06-13

Effective Date: 2017-06-13

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

Action Taken: Amendment of section 62.8 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6704-a; and L. 2016, ch. 398

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

Specific reasons underlying the finding of necessity: The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement Chapter 398 of the Laws of 2016, which amends subdivision (2) of section 6704-a of the Education Law, and took effect on February 2, 2017. Currently, during each three-year registration period, an applicant for registration as a veterinarian must complete at least 45 hours of continuing education, acceptable to the Department, a maximum of 22½ hours of which may be self-instructional coursework. Self-instructional coursework is presently defined as structured study, provided by a Department approved sponsor, that is based on audio, audio-visual, written, on-line, and/or other media, and does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students. Chapter 398 amends subdivision (2) of section 6704-a of the Education Law, by revising the above-referenced self-instructional coursework definition to include free spaying and neutering and other veterinary services in conjunction with a municipality, duly incorporated not-for-profit society for the prevention of cruelty to animals, duly incorporated humane society, or duly incorporated animal protection association or persons who would otherwise be eligible under paragraph (a) of subdivision three of section one hundred seventeen-a of the Agriculture and Markets Law, provided that such services be administered at practices, facilities and properties that are appropriately equipped and staffed to provide such services.

Chapter 398 further amends subdivision (2) of section 6704-a of the Education Law by permitting the Department to offset up to three hours of the requisite number of hours of continuing education by the number of free spaying and neutering services rendered by an applicant, at a rate of one-half of one hour of continuing education for each hour of free spaying and neutering services, provided that a veterinarian shall be required to provide follow-up service for any post-operative complications related to the surgery that arise within twenty-four hours of performing the surgery, and shall also be required to complete the core triennial continuing education requirements established by the Department.

Chapter 398 encourages continuing education that also benefits the communities the veterinarians serve by allowing veterinarians to use the triennial registration period to perform community services that would reduce the animal shelter overcrowding that leads to euthanasia, as well as the economic burden for municipalities experiencing growing budget shortfalls.

The proposed amendment was adopted as an emergency action at the January 9-10, 2017 Regents meeting and became effective on February 2, 2017. However, since the publication of a Notice of Proposed Rule Mak-

ing in the State Register on January 25, 2017 and a Notice of Emergency Adoption on February 15, 2017, the Department received multiple comments from one commenter and it subsequently determined that it needed additional time to review this public comment to determine whether additional amendments were needed before the final adoption of a permanent rule. Therefore, at the April 3-4, 2017 Regents meeting, a second emergency action was adopted to ensure that the emergency rule adopted at the January 2017 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule. However, since the publication in the State Register of the second Notice of Emergency Adoption on May 17, 2017, the proposed rule was revised in response to public comment and to clarify certain requirements. Because the Board of Regents meets at fixed intervals, the earliest the revised proposed amendment can be presented for adoption, after expiration of the required 30-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(4-a), would be the September 11-12, 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the revised proposed amendment, if adopted at the September meeting would be September 27, 2017, the date a Notice of Adoption would be published in the State Register. However, the provisions of Chapter 398 became effective on February 2, 2017.

Therefore, a third emergency action is necessary at the June 2017 Regents meeting for the preservation of the public health and general welfare in order to enable the State Education Department to immediately establish the requirements to implement Chapter 398 of the Laws of 2016, so that applicants for registration as veterinarians have the ability satisfy up to three hours of their required triennial 45 hours of continuing education, as long as it meets specified statutory requirements, by providing free spaying and neutering services and other veterinary services, which will encourage such applicants to consider participating in continuing education that also benefits the communities the veterinarians serve by allowing veterinarians to use the triennial registration period to perform community services that would reduce the animal shelter overcrowding that leads to euthanasia, as well as the economic burden for municipalities experiencing growing budget shortfalls.

It is anticipated that the revised proposed rule will be presented for adoption as a permanent rule at the September 11-12, 2017 meeting of the Board of Regents, which is the first scheduled meeting after publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register and expiration of the 30-day public comment period as required by State Administrative Procedure Act section 202(4-a).

Subject: Continuing education requirements for veterinarians and veterinary technicians.

Purpose: Provides that veterinarians may provide free spaying and neutering services as part of their continuing education requirements.

Text of emergency/revised rule: 1. The emergency action taken at the April 3-4, 2017 meeting of the Board of Regents, which amended paragraph (3) of subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education, paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education, and subdivision (g) of section 62.8 of the Regulations of the Commissioner of Education and added paragraph (4) of subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education is repealed, effective June 13, 2017.

2. Paragraph (3) of subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education is amended, as follows:

(3) Self-instructional coursework means structured study, provided by a sponsor approved pursuant to subdivision (i) of this section, that is based on audio, audio-visual, written, on-line, and/or other media, and does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students and may include free spaying and neutering and other veterinary services in conjunction with a municipality, duly incorporated not-for-profit society for the prevention of cruelty to animals, duly incorporated humane society, or duly incorporated animal protection association or persons who would otherwise be eligible under paragraph (a) of subdivision three of section one hundred seventeen-a of the agriculture and markets law, provided that such services be administered at practices, facilities and properties that are appropriately equipped and staffed to provide such services.

3. Paragraph (4) of subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education is added, as follows:

(4) Other veterinary services means follow-up service(s) for any post-operative complications related to any free spaying or neutering surgery, as defined in paragraph (3) of this subdivision, that arise within twenty-four hours of performing any such surgery.

4. Paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education is amended, as follows:

(1) General Requirement.

(i) During each three-year registration period, meaning a registration period of a three years' duration, an applicant for registration as a veterinarian shall complete at least 45 hours of continuing education, acceptable to the department, as defined in paragraph (2) of this subdivision, a maximum of 22 1/2 hours of which may be self-instructional coursework acceptable by the department.

(a) For an applicant for registration as a veterinarian, the department may offset up to three hours of the requisite number of hours of continuing education required, pursuant to subdivision (2) of section 6704-a of the education law, by the number of free spaying and neutering services rendered by such an applicant, at a rate of one-half of one hour of continuing education for each hour of free spaying and neutering services, provided that such services satisfy the requirements of subparagraph (i) of paragraph (a) of subdivision (2) of section 6704-a of the Education Law, that the veterinarian shall be required to provide follow-up service for any post-operative complications related to the surgery that arise within twenty-four hours of performing the surgery, and shall also be required to complete the core requirements established by the department. Although any such hours shall be considered part of the maximum of 22 1/2 hours of self-instructional coursework, which an applicant may complete, per each three-year registration period, to satisfy the 45 hours of continuing education requirement, they shall be exempt from the requirements of subdivision (4) of section 6704-a of the education law and paragraph (2) of this subdivision. Such veterinarians are otherwise required to complete the core requirements for veterinary continuing education established by the department as described in subparagraph (i) of paragraph (1) of this subdivision.

(ii) During each three-year registration period, meaning a registration period of three years' duration, an applicant for registration as a veterinary technician shall complete 24 hours of continuing education, acceptable to the department, as defined in paragraph (2) of this subdivision, a maximum of 12 hours of which may be self-instructional coursework acceptable to the department. [Any licensed veterinarian or veterinary technician whose first registration date following January 1, 2011 occurs less than three years from that date, but on or after January 1, 2012, shall complete continuing education hours on a prorated basis at the rate of 1 1/4 hours per month, in the case of a veterinarian, and 40 minutes per month, in the case of a veterinary technician, for the period beginning January 1, 2012 up to the first registration date thereafter. Such continuing education shall be completed during the period beginning January 1, 2010 and ending before the first day of the new registration period.]

[(ii)](iii) During each triennial registration period, at least two hours of the required continuing education credits shall focus on the use, misuse, documentation, safeguarding and prescribing of controlled substances.

[(iii)](iv) Proration. Unless otherwise prescribed in this section, during each registration period of less than three years' duration, an applicant for registration shall complete acceptable continuing education, as defined in paragraph (2) of this subdivision and within the limits prescribed in such paragraph, on a prorated basis at a rate of 1 1/4 hours in the case of a veterinarian and 40 minutes per month in the case of a veterinary technician.

5. Subdivision (g) of section 62.8 of the Regulations of the Commissioner of Education is amended, as follows:

(g) Licensee records.

(1) Each licensee subject to the requirements of this section shall maintain, or ensure access by the department to, a record of completed continuing education, which includes: the title of the course if a course, the type of educational activity if other than a course of learning, the subject of the continuing education course or activity, the number of hours of continuing education completed, the sponsor's name and any identifying number (if applicable), attendance verification if a course, verification of participation if another educational activity, and the date and location of the continuing education. Such records shall be retained for at least six years from the date of completion of the continuing education and shall be made available for review by the department in the administration of the requirements of this section. A sponsor's failure to satisfy its obligations under subdivision (i) of this section shall not relieve a licensee of his or her obligation to provide evidence of participation in a continuing education activity for which credit is claimed.

(2) Each applicant for registration as a veterinarian seeking to offset up to three hours of the required number of hours of continuing education, pursuant to subdivision (2) of section 6704-a of the education law, by the number of free spaying and neutering services rendered by such an applicant, shall maintain, on a form prescribed by the department, and ensure access by the department to, a record of all the free spaying and neutering services provided by the applicant, as well as any follow-up services for any post-operative complications related to any free spaying or neutering surgery, as defined in paragraph (3) of subdivision (a) of this section, that arise within twenty-four hours of performing any such

surgery. Such records shall be retained for at least six years from the date of completion of the continuing education and shall be made available for review by the department in the administration of the requirements of this section.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on January 25, 2017, I.D. No. EDU-04-17-00005-P. The emergency rule will expire August 11, 2017.

Emergency rule compared with proposed rule: Substantial revisions were made in section 62.8(c)(1).

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Data, views or arguments may be submitted to: Office of the Professions, Office of the Deputy Commissioner, State Education Department, State Education Building 2M, 89 Washington Ave., Albany, NY 12234, (518) 486-1765, email: opdepcom@nysed.gov

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

Since the publication of a Notice of Proposed Rulemaking in the *State Register* on January 25, 2017, a Notice of Emergency Adoption in the *State Register* on February 15, 2017 and a second Notice of Emergency Adoption on May 17, 2017, the proposed rule has been revised as follows:

Section 62.8(c)(1)(i) has been revised to add a new (a) which includes clarification that, although the provision of free spaying and/or neutering services and other related follow-up services by veterinarians shall be considered part of the maximum of 22 1/2 hours of self-instructional coursework, which an applicant may complete, per each three-year registration period, to satisfy the 45 hours of continuing education requirement, as long as they satisfy other specified requirements, they shall be exempt from the continuing education requirements of subdivision (4) of section 6704-a of the Education Law and paragraph (2) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education. This change was made, after clarifying the legislative intent of Chapter 398 of the Laws of 2016, in response to public comment regarding the applicability of these continuing education requirements to the provision of the aforementioned services.

The above changes do not require any changes to the previously published Regulatory Impact Statement.

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

Since the publication of a Notice of Proposed Rulemaking in the *State Register* on January 25, 2017, a Notice of Emergency Adoption in the *State Register* on February 15, 2017 and a second Notice of Emergency Adoption on May 17, 2017, the proposed rule has been revised as set forth in the Statement Concerning the Regulatory Impact Statement.

The aforementioned revisions do not require any changes to the previously published Statement in Lieu of Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

Since the publication of a Notice of Proposed Rule Making in the *State Register* on January 25, 2017, a Notice of Emergency Adoption on February 15, 2017, and a second Notice of Emergency Adoption on May 17, 2017, the State Education Department received the following comments:

1. COMMENT:

An association of veterinarians expressed that, as it previously noted in its opposition memo to the legislation, the Department has defined continuing education as "continued competency," while spaying and neutering animals is considered a basic service which a licensed veterinarian may provide, and one in which they are trained during veterinary school. The association of veterinarians states that, "[o]n its face, these regulations, and the legislation upon which they are modeled, fail the core definition of continuing education."

DEPARTMENT RESPONSE:

The Department notes the association of veterinarians' opposition to the legislation which necessitates the promulgation of the proposed regulation. However, the proposed amendment is both consistent with the statute and necessary to conform 8 NYCRR § 62.8 to the changes made to the Education Law by Chapter 398 of the Laws of 2016.

2. COMMENT:

An association of veterinarians comments on the proposed amendment of 8 NYCRR § 62.8(a)(3), which contains the definition of "self-instructional coursework" that is used throughout the proposed amendment by stating that "[w]hile the language inserted does closely match that which was put forth in legislation, there is inherent confusion in this section by including the language surrounding offering spaying and neutering

services, which are medical procedures, in the defined section dealing with coursework.” The association of veterinarians further asserts that “[t]he conventional understanding and definition of ‘coursework’ does not include medical procedures, but instead, as the remainder of the section notes, ‘coursework’ is meant to include ‘structured study’ only.”

DEPARTMENT RESPONSE:

Effective February 2, 2017, Chapter 398 of the Laws of 2016 amended Education Law 6704-a(2)(a)(i) to state that self-instructional coursework may include free spaying and neutering and other veterinary services in conjunction with a municipality, duly incorporated not-for-profit society for the prevention of cruelty to animals, duly incorporated humane society, or duly incorporated animal protection association or persons who would otherwise be eligible under Agriculture and Markets Law § 117-a(3)(a), provided that such services be administered at practices, facilities and properties that are appropriately equipped and staffed to provide such services. The self-instructional coursework definition contained in both the proposed amendment of 8 NYCRR § 62.8(a)(3) and the proposed amendment to other parts of 8 NYCRR § 62.8 are consistent with the statute. Thus, no changes to the proposed amendment are necessary.

3. COMMENT:

An association of veterinarians states that, although the proposed addition of 8 NYCRR § 62.8(a)(4) provides some welcome additional guidance regarding the “other veterinary services” mentioned in the proposed amendment of the self-instructional coursework definition in 8 NYCRR § 62.8(a)(3), the association feels that this language “does not entirely cure the ambiguity of the phrase.” The association of veterinarians suggests that, in order to ensure that veterinarians are obtaining continuing education credits only for services associated with spay and neutering procedures, it might be helpful to enumerate which types of services might qualify.

DEPARTMENT RESPONSE:

The Department will take the association of veterinarians’ suggestion, regarding possibly enumerating which “types of services” would constitute “other veterinary services” for continuing education purposes, under consideration and it may issue guidance regarding these types of services should clarification be necessary in the future.

4. COMMENT:

An association of veterinarians states that 8 NYCRR § 62.8(1)(c) establishes the general requirement for continuing education based on Education Law § 6704-a and that Education Law § 6704-a(2) establishes the parameters of the continuing education requirement by mandating that an applicant for registration shall complete a minimum of 45 hours of acceptable formal continuing education. However, the association of veterinarians asserts that the definition of “acceptable formal continuing education” in Education Law § 6704-a(4) is understood to mean only formal programs of learning which are offered by sponsors of veterinary continuing education approved by the Department. The association of veterinarians maintains that it is not apparent from the language of the proposed regulation that the provision of free spay and neutering services would qualify as a formal program of learning. The association of veterinarians further asserts that, while the proposed regulation explicitly notes that spaying and neutering services are to be provided in conjunction with a municipality, duly incorporated not-for-profit society for the prevention of cruelty to animals, duly incorporated humane society, or duly incorporated animal protection association, it does not appear that any of those entities would qualify as “sponsors of veterinary continuing education as approved by the [D]epartment”.

DEPARTMENT RESPONSE:

After reviewing the association of veterinarians’ above-referenced comment and confirming the legislative intent of Chapter 398 of the Laws of 2016, the proposed rule was revised in response to the comment and to clarify certain requirements, as follows:

- Section 62.8(c)(1)(i) has been revised to add a new clause (a) which includes clarification that, although the provision of free spaying and/or neutering services and other related follow-up services by veterinarians shall be considered part of the maximum of 22 1/2 hours of self-instructional coursework, which an applicant may complete, per each three-year registration period, to satisfy the 45 hours of continuing education requirement, as long as they satisfy other specified requirements, they shall be exempt from the continuing education requirements of subdivision (4) of section 6704-a of the Education Law and paragraph (2) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education.

5. COMMENT:

An association of veterinarians notes that the proposed amendment of 8 NYCRR § 62.8(g) requires that records of any free spay and neutering services provided by licensed veterinarians for continuing education purposes must be maintained on a “form prescribed by the [D]epartment.” The association of veterinarians then suggests that it may be helpful to the veterinary community to see stated in regulations what information will be

required to be recorded on the form, so that veterinarians might ensure that their current medical records also meet those reporting requirements.

DEPARTMENT RESPONSE:

The Department has developed and posted on its Veterinary Medicine webpage, an Attestation of Veterinarian’s Provision of Free Spaying and/or Neutering Services for Continuing Education Credit form for these purposes, which can be found at: <http://www.op.nysed.gov/prof/vetmed/vetcosn.pdf>. This form, as well as other guidance on the Veterinary Medicine webpage, advises licensed veterinarians what information is required to be recorded on this form for continuing education purposes. Therefore, no changes in these proposed regulatory provisions are necessary at this time.

NOTICE OF ADOPTION

Eligibility for Participation in Interscholastic Sports and Duration of Competition

I.D. No. EDU-45-16-00006-A

Filing No. 410

Filing Date: 2017-06-13

Effective Date: 2017-07-01

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

Action taken: Amendment of section 135.4(c)(7) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), 803(not subdivided), 3204(2) and (3)

Subject: Eligibility for Participation in Interscholastic Sports and Duration of Competition.

Purpose: Eligibility for Participation in Interscholastic Sports and Duration of Competition.

Text or summary was published in the November 9, 2016 issue of the Register, I.D. No. EDU-45-16-00006-P.

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

Revised rule making(s) were previously published in the State Register on March 29, 2017.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, New York State Education Department, 89 Washington Avenue, Room 138, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Since publication of a Notice of Revised Rule Making in the State Register on March 29, 2017, the State Education Department received the following comments:

1. COMMENT:

Commenters continue to believe the proposed changes will result in confusion, establish a precedent which would be extremely challenging to maintain, and could subject school districts and Section Athletic Councils to increased litigation. Commenters expressed support for the existing regulatory language and do not recommend any changes at this time.

DEPARTMENT RESPONSE:

See Responses to Comments #18 and 21 in the Assessment of Public Comment (APC) published on March 29, 2017. Commissioner’s regulation § 135.4(c)(7)(ii) establishes the parameters for participation in interscholastic athletic competition for students in grades 7 through 12. The underlying spirit of these regulations is to provide for the safety and equal opportunity for participation for public school students. After further review of the proposed regulation and in an effort to address the feedback received during the initial public comment period, the Department proposed additional revisions. The Department does not believe additional revisions are necessary at this time. However, the Department anticipates issuing guidance to assist with the continued implementation of the Commissioner’s regulations governing interscholastic athletics.

2. COMMENT:

Several commenters opposed the further clarification of the circumstances under which a student could seek an extension of eligibility to include documented social/emotional condition or documented social/emotional circumstances beyond the control of the student. Commenters specifically maintain that because current regulation allows for an eligibility extension when the failure to enter competition was the result of illness, which could include mental illness, no amendments are needed.

Commenters seek additional explanation and examples of what might constitute a “documented emotional/ social condition” sufficient to grant an eligibility extension.

DEPARTMENT RESPONSE:

The proposed amendments to Commissioner’s regulation § 135.4(c)(7)(ii)(b) initially expanded the circumstances under which a student could seek an extension of athletic eligibility to include “other circumstances beyond the control of the pupil.” The Department received several comments which directly sought clarification on what other categories of circumstances this might encompass (See Response to Comment #22 in the APC published on March 29, 2017). As a result, the Department revised the proposed amendment to further clarify that such exemption would be permissible when “the pupil’s failure to enter competition during one or more seasons of a sport was caused by illness, accident, documented social/emotional condition or documented social/emotional circumstances beyond the control of the pupil; (b) as a direct result of such circumstances the pupil is required to attend school for one or more additional semesters in order to graduate; and (c) such participation would not have a significant adverse effect upon the opportunity of other pupils to participate successfully in interschool competition in the sport.” This clarification recognizes that there may be certain circumstances which, when properly documented, may warrant an extension of eligibility. However, the Department anticipates updating existing guidance to assist with the continued implementation of the Commissioner’s regulations governing interscholastic athletics.

3. COMMENT:

Several commenters again expressed concern that the amendments might create inequities with respect to the students who are deemed eligible and those who are not granted an extension of eligibility. The proposed changes seem to allow a student who is not a talented player an extension of eligibility, however would not permit a student an extension of eligibility who is bigger and more skilled the same opportunity, as a result of having a “significant adverse effect.”

DEPARTMENT RESPONSE:

See Responses to Comments #18 and 19 in the APC published on March 29, 2017. Specifically, those determinations are presently made in the context of male and female pupils in interscholastic athletic teams that balance the need for safety and opportunity for completion for all student athletes. Additionally, in response to feedback received during the initial public comment period, the Department revised the amendment to further guide the circumstances under which an eligibility extension may be granted.

4. COMMENT:

Commenters contend that the proposed amendments would place an undue burden on superintendents. Commenters expressed that the adverse effect standard required within the context of mixed competition has been problematic for schools for many years. NYSPHSAA receives numerous requests for clarification as to what constitutes a significant adverse effect. The SED Guidelines to the Mixed Competition Rule do not set forth any guidance with respect to what actually constitutes the definition or parameters of what would rise to the level of a “significant adverse effect.”

DEPARTMENT RESPONSE:

See Response to Comment #18 in the APC published on March 29, 2017. The Department notes that the Commissioner has also provided guidance on the interpretation of the term “significant adverse effect” in the mixed-competition context through several decisions issued pursuant to Education Law § 310 (see e.g., Appeal of Berheide, 34 Ed Dept Rep 332, Decision No. 13,330; Appeal of Heinz, 31 id. 326, Decision No. 12,655; Appeal of Wilson, 30 id. 60, Decision No. 12,392; Appeal of DePold, 26 id. 460, Decision No. 11,821).

5. COMMENT:

Commenters again expressed concern with permitting K-8 school districts to employ the Athletic Placement Process (APP) and believe the amendments may jeopardize the safety of students and equal opportunity of participation.

DEPARTMENT RESPONSE:

See Response to Comment #8 in the Assessment of Public Comment published on March 29, 2017.

6. COMMENT:

The school district medical director plays an important role within the implementation of the APP. There are many unanswered questions pertaining to the implementation of this proposed regulation. For example: Which school district medical director would be responsible for providing approval for the student to go through the APP? Which school district’s administration will provide approval for the student to go through the APP? Which school district is responsible for the Physical Fitness Test portion of the APP and the evaluation of the student?

DEPARTMENT RESPONSE:

See Responses to Comments #5 and 11 in the APC published on March 29, 2017. The Department believes that these concerns can, and should, be

addressed through collaboration among partner districts, and policies enacted by the respective boards of education to ensure compliance with the regulations. However, the Department understands that additional revisions to the comprehensive APP protocol guidance will be necessary to provide these few K-8 school districts and the districts with which they contract for the education of their high school students with the necessary guidance to safely and appropriately implement the APP.

7. COMMENT:

Commenters again raised the concern that if K-8 students are granted the ability to go through the APP to participate at a school in which they are not a bona fide student, this will ultimately lead to other students (non-public, etc.) requesting similar privileges.

DEPARTMENT RESPONSE:

See Responses to Comments #9, 13 and 15 in the APC published on March 29, 2017. Again, because these student athletes are bona fide students of the public K-8 school district, the Department does not share this concern and no revisions are necessary.

8. COMMENT:

Commenters repeated their concern that other students might now request similar athletic participation privileges if their school district does not offer opportunities they wish to receive (i.e. swimming program for a lack of a natatorium, football team for a lack of interest, baseball for a lack of field, etc.).

DEPARTMENT RESPONSE:

See Response to Comment #15 in the APC published on March 29, 2017. The proposed amendment is expressly limited to the APP as presently permitted by Commissioner’s regulation § 135.4(c)(7)(ii)(a)(4). Therefore, the Department does not share this concern and no revisions are necessary.

9. COMMENT:

Several commenters again expressed concern that the proposed amendments would jeopardize student safety and equal opportunity for participation.

DEPARTMENT RESPONSE:

See Response to Comment #8 in the APC published on March 29, 2017.

10. COMMENT:

Several commenters again expressed concern with the proposed amendments stating that being a member of the “school district” in which the student wishes to participate is an integral and critical aspect of the APP.

DEPARTMENT RESPONSE:

See Response to Comment #9 in the APC published on March 29, 2017.

11. COMMENT:

Commenter raised a concern that the adverse effect determination may actually result in fewer students receiving an extension of eligibility. For example, a student recently did not participate in a sport for season due to chemotherapy and as a result had to repeat a year. Under the current regulation the student met the criteria for an eligibility extension and is now participating in an additional season. However, the student is an excellent athlete who is committed to play at the collegiate level and thus, under the new adverse impact standard, might not have been ruled eligible. Commenter additionally contends that the proposed amendments will overrule the longstanding legal precedent set forth in a long line of Commissioner’s decisions, arguing that the Commissioner has consistently held that a student who is physically able to participate but does not participate is not entitled to an additional year. Appeal of Duane, 35 Ed. Dept. 277, Decision No. 13,540; Appeal of Bethe, 34 Ed. Rep. Dept. 526, Decision No. 13,402; Appeal of Braemer, 43 Ed. Dept. Rep. 432, Decision No. 15,043; Appeal of Barth, 35 Ed. Dept. Rep. Decision No. 13,558; Matter of Clowe, 21 Ed. Dept. Rep. 192.

DEPARTMENT RESPONSE:

The Department recognizes that the amendments will require an additional component of review when a student athlete seeks and extension of eligibility. However, such review is not inconsistent with the underlying spirit of Commissioner’s regulation § 135.4(c)(7)(ii) which establishes the parameters for participation in interscholastic athletic competition for students in grades 7 through 12 to provide for the safety and equal opportunity for participation for public school students. Additionally, the Commissioner’s decisions cited by the commenter appropriately applied the criteria included in the regulation as written at the time of such appeals. As with the previous categories which may warrant an extension of eligibility, the regulation requires, among other things, that such social/emotional condition or circumstance prohibited the student from participating in interscholastic athletics during the particular season. Therefore, the Department does not believe any additional amendments are necessary at this time.

12. COMMENT:

Commenter expressed that each of the eleven sections seriously review each and every application for eligibility extensions and make determinations within the parameters of the regulation. Commenter expressed the opinion that the current regulation has helped make the determinations of

the sections consistent throughout the state and that the changes would severely hamper the actions of districts and sections due their subjective nature. Commenter believes that the proposed changes are based on specific requests on behalf of students the Commissioner believed should be eligible to participate. We believe that the decision to waive the regulation with respect to these specific circumstances should remain with the province of the Commissioner as was done this last year. Thus, requests for waivers based on emotional/social conditions or circumstances could be made directly to the Commissioner. Commenter asks that the current language remain as it is currently written and continue the practice of allowing the Commissioner to waive the duration of competition rule on a case-by-case basis.

DEPARTMENT RESPONSE:

In response to public comment received after the initial proposed rulemaking, the Department revised the amendment to clarify and further define the circumstances under which extended eligibility may be granted for the purpose of promoting consistency of application. The Department anticipates issuing guidance relating to the implementation of the proposed amendments. (see, Response to Comment #22 in the APC published on March 29, 2017).

Furthermore, Education Law § 310 provides the Commissioner with the authority to hear an appeal from parties who may consider themselves aggrieved by an action taken at a school district meeting or by school authorities for a review of such action. Therefore, because the Commissioner continues to have the authority to determine that a decision challenged pursuant to Education Law § 310 was not reasonable and to substitute his/her judgment, the Department does not believe any further revisions are necessary at this time (see e.g., Appeal of the Board of Education of the Byron-Bergen Central School District, 25 Ed Dept Rep 404, Decision No. 11,628 (1986); Appeal of Kraft, 24 id. 243, Decision No. 11,566 (1986)).

NOTICE OF ADOPTION

Dispensing of Post-Exposure Prophylaxis Drugs to Prevent HIV in Persons Who May Have Been Recently Exposed

I.D. No. EDU-13-17-00012-A

Filing No. 407

Filing Date: 2017-06-13

Effective Date: 2017-06-28

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

Action taken: Amendment of sections 60.12, 63.13 and 64.5(h) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6527(7-a), 6801(5), 6902(3), 6909(8); and L. 2016, ch. 502

Subject: Dispensing of post-exposure prophylaxis drugs to prevent HIV in persons who may have been recently exposed.

Purpose: To allow execution by licensed pharmacists of non-patient specific orders to dispense HIV post-exposure prophylaxis drugs.

Text or summary was published in the March 29, 2017 issue of the Register, I.D. No. EDU-13-17-00012-EP.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Screening of Individuals at Increased Risk of Syphilis, Gonorrhea and Chlamydia (Sexually Transmitted Infections or STIs)

I.D. No. EDU-13-17-00013-A

Filing No. 408

Filing Date: 2017-06-13

Effective Date: 2017-06-28

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

Action taken: Amendment of section 64.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6527(6)(g), 6902(1), 6909(4)(g); and L. 2016, ch. 502

Subject: Screening of individuals at increased risk of syphilis, gonorrhea and chlamydia (sexually transmitted infections or STIs).

Purpose: To allow execution by registered professional nurses of non-patient specific orders to screen persons at increased risk of STIs.

Text or summary was published in the March 29, 2017 issue of the Register, I.D. No. EDU-13-17-00013-EP.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel,

State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the March 29, 2017 State Register, the State Education Department received the following comments:

1. COMMENT:

One commenter indicated that recent increases in cases of syphilis, gonorrhea and chlamydia infections are a major public health problem in the United States and New York City. The commenter stated that syphilis, gonorrhea and chlamydia infections may be asymptomatic and if untreated, could lead to various health complications. The commenter also stated that NYSED's proposed regulations are critical to statewide efforts to curb the incidence and prevalence of sexually transmitted infections (STIs). However, he recommends the elimination of 8 NYCRR § 64.7(g)(3)(ii)(c)'s requirement that registered professional nurses (RNs) not disclose positive test results for syphilis, gonorrhea and/or chlamydia infections to the test recipient or the recipient's authorized representative without a patient specific order from a licensed physician, licensed physician assistant or certified nurse practitioner. The commenter states that he is recommending the elimination of this requirement to ensure that all New Yorkers have access to prompt STI diagnoses, which can facilitate and expedite a patient's ability to seek treatment and prevent further transmission of infection to sexual partners. The commenter further expressed concern that this requirement may delay notification of a positive result to a patient, if a licensed physician, physician assistant or certified nurse practitioner is not immediately available to issue a patient specific order. The commenter maintains that this could impede prompt treatment counseling and prolong timely initiation of treatment.

The commenter further states that if the Department does not agree with his recommendation to eliminate this requirement, perhaps it would consider revising proposed 8 NYCRR § 64.7(g)(3)(ii)(c) as follows: "positive confirmatory test results for syphilis, gonorrhea and/or chlamydia infections are not disclosed to the test recipient or the test recipient's authorized representative by the professional registered nurse without a patient specific order from a licensed physician, licensed physician assistant or certified nurse practitioner. However, preliminary positive test results can be disclosed by the registered professional nurse to the test recipient or the recipient's authorized representative without a patient specific order from a licensed physician, licensed physician assistant or certified nurse practitioner." The commenter asserts that this revision would allow RNs to provide preliminary positive results and begin treatment and counseling.

DEPARTMENT RESPONSE:

The Department agrees that the increased incidence of STIs pose a major public health challenge for New York State. The Department believes that Chapter 502 of the Laws of 2016, which the proposed amendment implements, will help to curb the incidence and prevalence of gonorrhea, syphilis and/or chlamydia infections in this State. However, the Department disagrees that the commenter's recommended changes to the proposed regulations would ensure that patients have access to prompt and appropriate diagnoses and treatments for STIs. Chapter 502 of the Laws of 2016 and the proposed amendment permit RNs to execute non-patient specific order issued by a licensed physician (physician) or a certified nurse practitioner (nurse practitioner) to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. These screenings typically include laboratory and point of care testing to screen for or aid in the diagnosis of these diseases. This law and the proposed amendment do not authorize RNs to determine medical diagnoses or determine presumed medical diagnoses. Moreover, New York Law does not authorize RNs to "dispense" or otherwise supply prescription drugs to a patient that has not been ordered or prescribed for the patient by a physician or other authorized prescriber. A physician, nurse practitioner, physician assistant or midwife must determine a medical diagnosis for each patient and prescribe antibiotics or other treatments for him or her. For this reason and others, the proposed amendment requires RNs to disclose to the patient his or her positive test results pursuant a patient specific order from a health care professional that is authorized to diagnose and treat sexually transmitted infections. The Department does not believe this is an unduly burdensome requirement. RNs who provide these STIs screening services should at a minimum, work in collaboration with health care professionals authorized to diagnose and treat sexually transmitted infections. These health professionals must be available to provide timely, appropriate care to patients in need of a medical diagnosis. Patients suffering from these diseases deserve the same quality of medical care that is available to patients diagnosed and treated in clinics, private practices or local health departments for other common communicable diseases, such as genital herpes, UTIs, chancroid, pubic lice, yeast infections and scabies.

The Department further notes that point of care tests currently used to detect gonorrhea, syphilis and/or chlamydia are not "preliminary" tests that would lead to earlier communications with a patient regarding test results. For example, many health care providers use nucleic acid amplification tests (NAATs), which detect chlamydia DNA or gonorrhea DNA. Many health care providers use two tests in rapid succession; a Non-Treponema Serologic Test, which, if positive, may be followed immediately with a Treponemal Serologic Test to detect syphilis infection.

The proposed amendment is consistent with New York Law and for this reason, as well as all the aforementioned reasons, the Department respectfully declines to eliminate 8 NYCRR § 64.7(g)(3)(ii)(c)'s patient specific order requirement for RNs to disclose positive results to test recipients or their authorized representatives. For the same reasons, the Department also declines to revise 8 NYCRR § 64.7(g)(3)(ii)(c) to permit RNs to disclose "preliminary" positive test results to patients, who they have screened for syphilis, gonorrhea and/or chlamydia infections pursuant non-patient specific orders.

2. COMMENT:

One commenter stated that she did not see the rationale for needing a patient specific order for an RN to disclose positive test results for syphilis, gonorrhea or chlamydia infections to a patient. The commenter stated that these are all curable bacterial STDs and in public health STD clinics, RNs are trained to give these test results on a daily basis. Further, the commenter noted that many times, in public clinics and clinician offices, RNs provide positive test results over the phone. The commenter also stated that waiting for a clinician to write a patient-specific order to give a positive test result can result in delays in getting curative treatment, which can lengthen the time a patient is communicable and, further, that delays in treatment are not desirable from a public health standpoint and contribute to increases in rates of syphilis, gonorrhea and chlamydia; all of which are increasing dramatically in the State. The commenter asks that this stipulation be removed from the proposed regulation.

DEPARTMENT RESPONSE:

In most cases, New York State Law requires an RN to execute medical regimens that are ordered for a specific patient by a physician, nurse practitioner or other qualified health care practitioner who has examined the patient. In addition, an RN cannot execute medical protocols that allow the RN to make medical diagnoses or perform medical services that are outside the scope of practice of the RN.

The commenter appears to describe situations in which a physician, nurse practitioner, physician assistant or midwife has medically evaluated a patient, provided medical counseling regarding the patient's health status and laboratory tests (and presumably reviewed test results) before they are disclosed to a patient.

In contrast, Chapter 502 of the Laws of 2016, which allows RNs to exe-

cute non-patient specific orders (issued by a physician or nurse practitioner) to medically screen those at-risk for syphilis, chlamydia and/or gonorrhea infections, does not require any physician or other medical provider to examine or have a treatment relationship with the recipient of the ordered screenings. This law and the proposed amendment do not authorize RNs to determine medical diagnoses or determine presumed medical diagnoses. A physician, nurse practitioner, physician assistant or midwife must determine a medical diagnosis for each patient and prescribe antibiotics or other treatments for him or her. The proposed amendment is consistent with New York Law and for this reason, as well as the reasons mentioned above, the proposed amendment requires RNs to disclose to patients positive test results pursuant a patient specific order from a health care professional who is authorized to diagnose and treat sexually transmitted infections. The Department does not believe this is an unduly burdensome requirement. RNs who provide these STI screening services should at a minimum, work in collaboration with health care professionals authorized to diagnose and treat sexually transmitted infections. These health professionals must be available to provide timely, appropriate care to patients in need of a medical diagnosis. Patients suffering from these diseases deserve the same quality of medical care that is available to patients diagnosed and treated in clinics, private practices or local health departments for other common communicable diseases, such as genital herpes, UTIs, chancroid, pubic lice, yeast infections and scabies.

NOTICE OF ADOPTION

Criteria for Approval of Pathway Assessments in Languages Other Than English (LOTE)

I.D. No. EDU-13-17-00015-A

Filing No. 409

Filing Date: 2017-06-13

Effective Date: 2017-06-28

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

Action taken: Amendment of sections 100.2 and 100.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1), 309(not subdivided) and 3204

Subject: Criteria for Approval of Pathway Assessments in Languages other than English (LOTE).

Purpose: To provide for approval of pathway examinations in Languages other than English (LOTE) to meet diploma requirements.

Text or summary was published in the March 29, 2017 issue of the Register, I.D. No. EDU-13-17-00015-EP.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, New York State Education Department, 89 Washington Avenue, Room 138, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services

NOTICE OF ADOPTION

Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure

I.D. No. DFS-06-17-00015-A

Filing No. 389

Filing Date: 2017-06-05

Effective Date: 60 days after publication in the State Register.

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

Action taken: Addition of sections 52.17(a)(36), (37) and 52.18(a)(11), (12) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 3216(i)(17), (33), 3217, 3221(l)(8), (16), (19), 4303(j), (cc) and (qq)

Subject: Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure.

Purpose: To allow coverage for the dispensing of contraceptives and codify additional guidelines.

Text of final rule: Section 52.17(a)(36) and (37) are added as follows:

(36) *For coverage of contraceptive items or services provided pursuant to Insurance Law section 3216(i)(17), 4303(j) or 4303(cc), an insurer shall allow coverage for the dispensing of an initial three-month supply of a contraceptive to an insured. For subsequent dispensing of the same contraceptive covered under the same policy or renewal thereof, an insurer shall allow coverage for the dispensing of the entire prescribed supply, up to 12 months, of the contraceptive to the insured at the same time.*

(37) *For coverage of in-network contraceptive items or services provided pursuant to Insurance Law section 3216(i)(17) or 4303(j), an insurer shall cover at least one form of contraception within each of the methods of contraception that the federal food and drug administration has identified for women without annual deductibles or coinsurance, including co-payments. Additionally, where a form of contraception is covered pursuant to this paragraph without annual deductibles or coinsurance, including co-payments, an insurer shall cover services for insertion or implantation and services related to follow-up and management of side effects, counseling for continued adherence, and device removal, without annual deductibles or coinsurance, including co-payments. If a woman's attending health care provider recommends a particular contraceptive item or service approved by the federal food and drug administration, based on a determination of medical necessity, that is subject to cost-sharing, then the insurer shall cover that item or service without annual deductibles or coinsurance, including co-payments. The insurer shall defer to the attending health care provider's determination of medical necessity.*

Section 52.18(a)(11) and (12) are added as follows:

(11) *For coverage of contraceptive items or services provided pursuant to Insurance Law section 3221(l)(8), 3221(l)(16), 4303(j) or 4303(cc), an insurer shall allow coverage for the dispensing of an initial three-month supply of a contraceptive to an insured. For subsequent dispensing of the same contraceptive covered under the same policy or renewal thereof, an insurer shall allow coverage for the dispensing of the entire prescribed supply, up to 12 months, of the contraceptive to the insured at the same time.*

(12) *For coverage of in-network contraceptive items or services provided pursuant to Insurance Law section 3221(l)(8) or 4303(j), an insurer shall cover at least one form of contraception within each of the methods of contraception that the federal food and drug administration has identified for women without annual deductibles or coinsurance, including co-payments. Additionally, where a form of contraception is covered pursuant to this paragraph without annual deductibles or coinsurance, including co-payments, an insurer shall cover services for insertion or implantation and services related to follow-up and management of side effects, counseling for continued adherence, and device removal, without annual deductibles or coinsurance, including co-payments. If a woman's attending health care provider recommends a particular contraceptive item or service approved by the federal food and drug administration, based on a determination of medical necessity, that is subject to cost-sharing, then the insurer shall cover that item or service without annual deductibles or coinsurance, including co-payments. The*

insurer shall defer to the attending health care provider's determination of medical necessity.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 52.17(a) and 52.18(a).

Text of rule and any required statements and analyses may be obtained from: Nathaniel Dorfman, NYS Department of Financial Services, One State Street, New York, NY 10004, (212) 709-5538, email: Nathaniel.Dorfman@dfs.ny.gov

Revised Regulatory Impact Statement

1. Statutory authority: Financial Services Law ("FSL") sections 202 and 302 and Insurance Law ("IL") sections 301, 3216(i)(17) and (33), 3217, 3221(l), (8), (16), and (19), and 4303(j), (cc), and (qq).

FSL section 202 establishes the office of the Superintendent of Financial Services ("Superintendent"). FSL section 302 and IL section 301, in pertinent part, authorize the Superintendent to prescribe regulations interpreting the IL and to effectuate any power granted to the Superintendent in the IL, FSL, or any other law.

IL sections 3216(i)(17), 3221(l)(8), and 4303(j) require every policy or contract delivered or issued for delivery in New York that provides hospital, surgical, or medical care coverage, except for a grandfathered health plan, to provide coverage for certain preventive care and screenings, including contraceptives at no cost-sharing.

IL Section 3217 authorizes the Superintendent to issue regulations to establish minimum standards, including standards for full and fair disclosure, for the form, content and sale of accident and health insurance policies and subscriber contracts of corporations organized under IL Article 32 and Article 43, and Public Health Law Article 44.

IL sections 3221(l)(16) and 4303(cc) require policies and contracts delivered or issued for delivery in New York that provide prescription drug coverage to provide coverage for all contraceptive drugs and devices approved by the Food and Drug Administration ("FDA") or generic equivalents when prescribed by a health care provider legally authorized to prescribe under Education Law Title VIII.

IL sections 3216(i)(33), 3221(l)(19), and 4303(qq) provide that whenever in those sections an insurer or corporation must provide benefits with no coinsurance or deductible, the requirement only applies with respect to participating providers in the insurer's or corporation's network, or with respect to non-participating providers, if the insurer or corporation does not have a participating provider in the in-network benefits portion of its network with the appropriate training and experience to meet the particular health care needs of the covered person pursuant to IL section 3217-d(d) or 4306-c(d), or as applicable, pursuant to Public Health Law section 4403(6)(a).

2. Legislative objectives: Insurance Law sections 3221(l)(16) and 4303(cc) require policies and contracts that provide prescription drug coverage to provide coverage for all contraceptive drugs and devices approved by the FDA or generic equivalents when prescribed by a health care provider legally authorized to prescribe under Education Law Title VIII. Insurance Law sections 3216(i)(17), 3221(l)(8), and 4303(j) require all policies and contracts, except for grandfathered health plans as defined therein, to include coverage for certain preventive care and screenings, including contraceptives, at no cost-sharing.

This proposed amendment to 11 NYCRR 52 (Insurance Regulation 62) accords with the public policy objectives that the Legislature sought to advance in IL sections 3216(i)(17) and (33), 3217, 3221(l)(8), (16), and (19), and 4303(j), (cc), and (qq) by requiring an insurer to allow coverage for the dispensing of an initial three-month supply of a contraceptive to an insured. For subsequent dispensing of the same contraceptive covered under the same policy or contract or renewal thereof, an insurer must allow coverage for the dispensing of the entire prescribed supply, up to 12 months, of the contraceptive to the insured at the same time. In addition, for coverage of in-network contraceptive items or services, an insurer must cover at least one form of contraception within each of the methods of contraception that the FDA has identified for women without annual deductibles or coinsurance, including co-payments. If a woman's attending health care provider recommends a particular contraceptive item or service approved by the FDA, based on a determination of medical necessity, that is subject to cost-sharing, then the insurer must cover that item or service without annual deductibles or coinsurance, including co-payments. The insurer must defer to the attending health care provider's determination of medical necessity.

3. Needs and benefits: While the IL requires an insurer to provide coverage for contraceptives, whether an insurer will provide coverage for the dispensing of more than a one-month supply of contraceptives at one time varies by insurer. According to the Henry J. Kaiser Family Foundation (the "Foundation"), there is evidence that a greater supply of contraceptives dispensed at one time may lead to more consistent contraceptive use, and women who receive a 12-month supply have been found to be 30% less likely to have an unintended pregnancy compared to women receiving

a one to three-month supply. A study cited by the Foundation indicates that there is evidence that a greater supply of contraceptives dispensed at one time is associated with fewer pregnancy tests, fewer pregnancies, and less cost per insured.

Accordingly, this amendment requires an insurer to allow, where the prescription so provides, for the dispensing of an initial three-month supply of a contraceptive to an insured, and up to a 12-month prescribed supply for any subsequent dispensing of the same contraceptive covered under the same policy or contract or renewal thereof.

4. Costs: Insurers may incur costs to file new policy and contract forms to provide coverage for a 12-month supply of contraceptives. However, any additional costs should be minimal and should be offset by potential administrative cost savings to insurers because contraceptives will be dispensed less frequently.

This amendment may impose compliance costs on the Department of Financial Services ("Department") because the Department will need to review amended policy and contract forms. However, any additional costs incurred by the Department should be limited because the need to refile forms will be a one-time only circumstance. As such, the costs to the Department should be minimal and the Department expects to absorb the costs in its ordinary budget. The Department does not anticipate any need to have revised rate filings since the coverage is not changing; only the timing of the dispensing of the prescriptions.

This amendment will not impose compliance costs on state or local governments.

5. Local government mandates: This amendment does not impose a new mandate on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: As noted, insurers may need to file new policy and contract forms with the Superintendent in order to provide coverage for a 12-month supply of contraceptives.

7. Duplication: This amendment, in part, duplicates current federal guidance but does not conflict with any existing state or federal rules or other legal requirements.

8. Alternatives: The Department considered requiring an insurer to allow coverage for the initial dispensing of up to a 12-month prescribed supply of contraceptives. However, the Department decided to require an insurer to allow coverage for an initial three-month supply and up to a 12-month prescribed supply subsequently because the Department was concerned that an initial dispensing of up to a 12-month prescribed supply could result in lost or wasted contraceptives.

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

10. Compliance schedule: The amendment will take effect 60 days after publication of the Notice of Adoption in the State Register.

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

The changes made to the regulation did not impact the Regulatory Flexibility Analysis for Small Businesses and Local Governments, Rural Area Flexibility Analysis and Job Impact Statement previously filed with the Notice of Proposed Rule Making.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Department of Financial Services ("Department") received comments from seventy three interested persons in response to its proposed amendment to Insurance Regulation 62 regarding coverage for contraceptive drugs and devices, some of which were incorporated into the final rulemaking, discussed below.

Comment:

The vast majority of commenters requested that the Department broaden the required coverage to include all Food and Drug Administration ("FDA") approved methods and types of contraception. Over seventy commenters called for this expanded coverage. A large number of commenters also suggest that coverage be expanded to include male contraception.

Response:

The Department recognizes the importance of ensuring access to contraceptive drugs and devices. By providing women the tools and agency to determine whether and when to have children, contraception has been a catalyst for women's equal participation in our political and educational institutions and the workforce. Indeed, the broad and positive impact of contraception was recognized by the Centers for Disease Control and Prevention as one of the ten great public health achievements of the 20th century. Also importantly, contraception provides essential health benefits that are both related and unrelated to managing fertility. Studies have demonstrated repeatedly that access to contraception leads to

improved birth outcomes and child health, reductions in morbidity and mortality rates, and decreases in the risk of developing reproductive cancers.

As such the Department's proposed amendment requires, in line with existing federal requirements, and consistent with the public policy adopted by the Legislature in passing the Women's Health and Wellness Act ("WHWA") in 2002, that every insurer provide coverage for at least one form of contraception within each of the methods that the FDA has identified for women without any cost sharing. Additionally, the proposed amendment requires that a method that would be subject to cost sharing be available without such cost sharing if the woman's doctor determines the method is medically necessary.

The Department has similarly considered the addition of coverage for male contraception, but has not added such contraception to the regulation. In accordance with regulations issued pursuant to the Affordable Care Act ("ACA"), a male contraceptive coverage requirement would constitute a new mandate for which the State would be required to defray the cost in full for small group and individual plans. Additionally, unlike in the field of female contraception, where the Department's amendment is consistent with public policy adopted by the Legislature in the WHWA and the existing Federal government's rules under the ACA, there is no similar state or federal pronouncement of public policy for the coverage of male contraception. The Department's decision with regard to this regulation is not intended to impact future decisions with regard to these matters.

Comment:

About seventy commenters called for the Department to eliminate the pre-requisites to obtaining a twelve month supply of contraception. Other commenters suggested that the term "same prescriber" needed further clarification to prevent confusion and the claimed unequal application of the regulation.

Response:

The Department has determined that the appropriate balance between access to contraception and protecting against unnecessary prescribing requires that the initial three month supply requirement be retained. The Department, however, agrees that the requirement that subsequent prescriptions be written by the same prescriber is not necessary, and has adopted commenters' suggestion to remove that requirement. The Department is cognizant that many women are unable to have a consistent relationship with one medical provider, and that, for example, it is common for women to see providers within the same practice without seeing the same provider on each visit. Additionally, providers may move practices, practices' contractual arrangements with insurers may change, and patients may relocate, none of which events should prevent a woman from receiving a twelve month supply of contraception for which an initial three month supply was already obtained. The Department has determined that the same provider requirement would unnecessarily place a barrier to receiving a twelve month supply of contraception, directly contrary to the purpose of the amendment. The elimination of the requirement should also satisfy the need to provide further clarity as to the term "same prescriber" raised by other commenters.

Comment:

Insurer commenters suggest that a twelve month supply would lead to waste and abuse, which in turn would lead to increased costs and increased premiums. Particular concern was called to the potential need to change method or drug during the course of treatment, for example in response to side effects.

Response:

As discussed above, the Department appreciates the concern over unnecessary prescriptions and the potential effect of such practices on premium rates for health insurance in New York. The Department also believes that providing annual supplies ensures necessary access to contraceptives for women who need them for medical as well as fertility reasons. The Department has struck the correct balance between providing adequate access to contraceptives and the requirements to obtain a larger supply of contraceptives, such as the requirement that an initial three months' supply be obtained before any greater supply is covered. The Department has determined that these requirements adequately protect the insurance markets against potential waste.

Comment:

Four commenters indicated opposition to the requirement that the insurer defer to the attending healthcare provider's determination of medical necessity, saying it amounted to a "provider prevail" provision. Objections to this part of the proposed amendment ranged from the potential for waste and abuse to religious objection to covering all contraceptive methods.

Response:

The Department has rejected any suggested change to the requirement that insurers defer to the attending healthcare provider's determination of medical necessity. The proposed amendment's requirement applies the exact standard already required under federal law. As the relevant federal

regulators have consistently explained in the context of providing no cost sharing coverage for contraceptives, “[t]he plan or issuer must defer to the determination of the attending provider.” See i.e., Dept. of Labor, et al., **FAQS ABOUT AFFORDABLE CARE ACT IMPLEMENTATION (PART XXVI)**, May 11, 2016. Moreover, the amendment is entirely consistent with New York’s public policy of ensuring access to contraceptives including as enacted in the WHWA, the Department has determined that no changes to the proposed amendment are warranted.

Comment:

One commenter suggested that there is an insufficient exemption provided for religious employers. The commenter suggests that the regulation must be changed to provide for the religious employer exemption contained in the WHWA.

Response:

The religious employer exemption contained in the WHWA is the law of this state. Nothing in the proposed amendment changes that exemption or the process by which the exemption is obtained. The Legislature has spoken on the appropriateness of the WHWA exemption, and the Court of Appeals has upheld the Legislature’s decision. Therefore, the Department has determined that no change to the proposed amendment is needed to address these concerns.

Comment:

One commenter requested clarification as to whether the initial three month supply was to be followed by a nine month supply or a twelve month supply.

Response:

At the discretion of the prescriber, a twelve month supply (or any shorter supply) could follow the initial three month supply. The Department has determined that no change to the proposed amendment is necessary to address this issue.

Comment:

One commenter requested clarification as to whether the phrase “same contraceptive” meant the same drug, same strength, and same manufacturer.

Response:

The Department intends by the use of the phrase “same contraceptive” to mean the same drug, at the same strength, made by the same manufacturer. The Department has balanced the interest in providing access to contraception with the need to prevent waste. As with the initial three month supply, the requirement that the twelve month supply be of the same contraceptive provides an important countervailing consideration to commenters who suggest that changes during the course of treatment, due, for instance, to side effects, will produce waste when a twelve month supply goes unused.

Comment:

One commenter suggested that the proposed amendment violates the anti-discrimination provisions in the insurance law and regulations. Treating contraceptive drugs differently than other types of drugs, the commenter reasons, would be in violation of the “spirit and intent” of state law, as there is “no rational basis to afford special treatment for women utilizing contraceptives.” The commenter, a law firm that is retained to lobby on behalf of insurers, suggests that the proposed amendment “suggests that women are unable to responsibly take charge of their reproductive health.”

Response:

The Department flatly rejects the positions taken by this commenter. To begin with, the Court of Appeals recognized over a decade ago that the state has a “substantial interest in fostering equality between the sexes, and in providing women with better health care.” In *Catholic Charities v. Serio*, 7 N.Y.3d 510, the Court recognized that in enacting the WHWA, “[t]he Legislature had extensive evidence before it that the absence of contraceptive coverage for many women was seriously interfering with both of these important goals.” Moreover, in line with the federal contraceptive mandate, while the subject of extensive litigation, has never been found to be in violation of any prohibition on discrimination.

Accordingly, the Department has proposed an amendment to its regulations to ensure coverage that the New York State Legislature, the U.S. Congress, federal regulators, doctors, and scholars have all uniformly agreed is beneficial not only for women individually but for society generally. Irrespective of whether any changes are made to the contraception coverage mandates in federal law, New York will continue to ensure that women will continue to be protected in their rights to health care access including by the existing prescription contraception coverage with no cost-sharing required by this amendment. The Department made no changes in response to this comment.

Comment:

One commenter suggested that the presence of legislation pending in the Legislature that is directed at coverage for contraceptive drugs should preclude the Department from taking action in that sphere, until the Legislature has acted. The commenter suggested that the proposed amendment is an attempt to preempt the role of the Legislature.

Response:

The Department’s authority to promulgate regulations is not impaired by the presence of a legislative proposal. The role of the Department is to regulate based on the law as it exists, and not what may, in the future, become law. The proposed amendment is entirely consistent with the policy adopted in the WHWA, the directly on point state statute, and other New York law, as well as existing federal law.

Comment:

The Department also received comments suggesting that the proposed amendment lacked clarity surrounding services related to coverage of contraception.

Response:

State and federal guidance on the matter is clear that services related to a covered contraceptive method are also to be covered at no cost sharing. To address the perceived lack of guidance, the Department has determined to incorporate the relevant existing rules into the proposed amendment. As such the Department has directly incorporated the relevant guidance into the final rulemaking.

Comment:

An insurer commenter requested that the Department delay the publication of the final regulation until November to align the effective date with the beginning of the calendar year. The commenter suggested this would allow plans time to operationalize the regulation’s requirements.

Response:

In response to this comment and consistent with the intent of the Department in proposing this amendment, the Department has provided clarifying language in the final amendment which further explains that the amendment does not impair contracts in force and applies to policies and contracts issued, renewed, modified or amended after the effective date of the amendment.

Department of Motor Vehicles

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Insurance Requirements for TNC Vehicles

I.D. No. MTV-26-17-00003-EP

Filing No. 406

Filing Date: 2017-06-12

Effective Date: 2017-06-12

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

Proposed Action: Amendment of section 80.4 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 1693

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

Specific reasons underlying the finding of necessity: It is necessary to adopt this amendment on an emergency basis, to protect the safety and general welfare of the citizens of New York State.

Part AAA of Chapter 59 of the Laws of 2017, creating New York State Vehicle and Traffic Law Article 44-B, establishes Transportation Network Companies (TNCs) in New York State, outside of New York City. This emergency regulation makes a technical amendment to emergency regulations filed on June 8, 2017, regarding insurance requirements for TNC vehicles. This regulation makes clear that although a TNC group policy may be issued by an excess line carrier, an individual driver policy must be issued by an authorized insurer. It is critical that insurance companies and TNCs understand the distinction between the two types of policies. This regulation is also necessary to align with the Department of Financial Services’ regulations regarding TNCs.

Subject: Insurance requirements for TNC vehicles.

Purpose: Technical amendment regarding insurance requirements for TNC vehicles.

Text of emergency/proposed rule: Paragraph (1) of subdivision (b) of section 80.4 is amended to read as follows:

(1) with respect to the TNC driver, a policy issued by an authorized New York insurer [or procured by a New York licensed excess line broker pursuant to section 2118 of the Insurance Law, and regulations promulgated thereunder, if such coverage is unavailable from an authorized

insurer.] that provides coverage in satisfaction of the financial responsibility requirements of section 1693 of the Vehicle and Traffic Law and regulations promulgated by the Superintendent of Financial Services;

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 9, 2017.

Text of rule and any required statements and analyses may be obtained from: Heidi A. Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Data, views or arguments may be submitted to: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Section 215(a) of the Vehicle and Traffic Law (VTL) authorizes the Commissioner of Motor Vehicles to promulgate regulations which shall regulate and control the exercise of the powers of the Department of Motor Vehicles (DMV). Section 1693 of such Law authorizes the Commissioner to promulgate regulations relative to insurance requirements for TNC vehicles connected to a TNC's digital network.

2. Legislative objectives: Part AAA of Chapter 59 of the Laws of 2017 establishes the statutory framework for the operation of Transportation Network Company Services outside the City of New York in a new Article 44-B of the VTL. One of the objectives of the law is to establish insurance requirements for TNC vehicles. The proposed rule clarifies an insurance requirement for TNC vehicles connected to a TNC's digital network.

3. Needs and benefits: This proposed rule is necessary to clarify an insurance requirement related to the implementation of Part AAA of Chapter 59 of the Laws of 2017, regarding the operation of Transportation Network Company Services outside the City of New York. Although a TNC group policy may be issued by an excess line carrier, an individual driver policy must be issued by an authorized insurer. In fact, VTL section 1693(7), which allows the group policy to be issued on the excess line, was expressly drafted to only refer to group policies. This amendment is necessary to clarify this distinction between group and individual policies. In addition, this technical amendment is necessary to align with the Department of Financial Services' companion regulation, which provides that individual policies may only be issued by authorized insurers.

4. Costs: a. To regulated entities: None.

b. To State and local governments: There is no fiscal impact to state and local governments.

c. Source: The Department's Office of Motor Carrier.

5. Local government mandates: There is no fiscal impact to local governments.

6. Paperwork: There are no additional paperwork requirements.

7. Duplication: The proposal does not duplicate or conflict with any State or Federal rule.

8. Alternatives: There are no known alternatives. A no action alternative was not considered.

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

10. The Department anticipates that all affected parties will be able to achieve compliance with the rule upon adoption.

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

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

This proposed rulemaking relates to insurance requirements governing Transportation Network Companies (TNCs) in New York State. Since the Department is not aware of a prospective TNC that employs 100 or less individuals, this rule will have no impact on small businesses. The proposed rule has no adverse impact on local governments and does not apply in New York City. The proposed rule will not have a negative impact on rural areas of the State, nor will it impair job creation and development.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Revisions to the Delivery Discount and Monthly Customer Charge for SC Nos. 15 and 16 and the Commodity Price for SC 15

I.D. No. PSC-26-17-00004-P

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

Proposed Action: The Commission is considering a proposal filed by Rochester Gas & Electric Corporation to revise its gas tariff schedule, P.S.C. No. 16, regarding a delivery discount and monthly customer charge for SC Nos. 15 and 16 and the commodity price for SC No. 15.

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

Subject: Revisions to the delivery discount and monthly customer charge for SC Nos. 15 and 16 and the commodity price for SC 15.

Purpose: To consider revisions to the delivery discount and monthly customer charge for SC 15 and 16 and the commodity price for SC 15.

Substance of proposed rule: The Commission is considering a proposal filed by Rochester Gas and Electric Corporation (RG&E or the Company) to make further revisions to Service Classification (SC) No. 15 – Interruptible Sales Service and SC No. 16 – Interruptible Transportation Service contained in P.S.C. No. 16 – Gas. RG&E proposes an interruptible service delivery discount to SC Nos. 15 and 16 of \$0.007351 per therm from each of the SC No. 3 – Large Transportation Service per therm rate blocks during the months of December through March. RG&E proposes that the charge for the first 1000 therms or less of monthly usage for SC Nos. 15 and 16 interruptible customers be set at 80% of the monthly charge paid by SC No. 3 customers. The Company plans to amend SC No. 15 to state that the commodity price shall be based on the highest cost of gas delivered on either the Dominion Transmission Incorporated Pipeline or the Empire Pipeline. The proposed amendments have an effective date of October 1, 2017. The full text of the proposal may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

Public comment will be received until: 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.

(16-G-0533SP3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-26-17-00005-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent of Waverly Arms Housing Development of Yonkers LLC to submeter electricity at 125 Waverly Street, Yonkers, New York.

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

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent to submeter electricity at 125 Waverly Street, Yonkers, New York.

Substance of proposed rule: The Commission is considering the Notice of Intent of Waverly Arms Housing Development of Yonkers LLC, filed on April 20, 2017, to submeter electricity at 125 Waverly Street, Yonkers, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The full text of the Notice of Intent may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

Public comment will be received until: 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.

(17-E-0202SP1)

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

Notice of Intent to Submeter Electricity and Waiver Request

I.D. No. PSC-26-17-00006-P

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

Proposed Action: The Commission is considering the Notice of Intent of Our Lady of Lourdes Apartments LLC to submeter electricity at 11 De Sales Place, 21 De Sales Place and 1875 Broadway, Brooklyn, New York and request for a waiver of 16 NYCRR section 96.5(k)(3).

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

Subject: Notice of Intent to submeter electricity and waiver request.

Purpose: To consider the Notice of Intent to submeter electricity and waiver request.

Substance of proposed rule: The Commission is considering the Notice of Intent of Our Lady of Lourdes Apartments LLC (Applicant), filed on April 19, 2017, to submeter electricity at 11 De Sales Place, 21 De Sales Place and 1875 Broadway, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission is also considering the Applicant's request for a waiver of 16 NYCRR § 96.5(k)(3), which requires proof that an energy audit has been conducted when 20 percent or more of the residents receive income-based housing assistance. The full text of the Notice of Intent and waiver request may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

Public comment will be received until: 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.

(17-E-0201SP1)

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

To Effectuate Amendments to 49 CFR Part 192 Mandated by the Pipeline and Hazardous Materials Safety Administration

I.D. No. PSC-26-17-00007-P

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

Proposed Action: The Commission is considering a proposal filed by Valley Energy, Inc. to revise its gas tariff schedule, P.S.C. No. 1, regarding the installation of excess flow valves pursuant to changes to 49 CFR part 192.

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

Subject: To effectuate amendments to 49 CFR part 192 mandated by the Pipeline and Hazardous Materials Safety Administration.

Purpose: To consider revisions to its gas tariff schedule regarding the installation of excess flow valves.

Substance of proposed rule: The Commission is considering a proposal filed by Valley Energy, Inc. to revise P.S.C. No. 1 – Gas, to effectuate amendments to 49 CFR Part 192 regarding the installation of excess flow valves mandated by the Pipeline and Hazardous Materials Safety Administration's Final Rule issued on October 14, 2016 and effective April 14, 2017. The revisions to 49 CFR Part 192 require that excess flow valves be installed at the customer request. The proposed amendments have an effective date of September 20, 2017. The full text of the proposal may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

Public comment will be received until: 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.

(17-G-0299SP1)

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

To Revise Its Provisions Regarding No-Access for Meter Reading

I.D. No. PSC-26-17-00008-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 Niagara Mohawk Power Corporation d/b/a National Grid (NMPC) to make revisions to its no access provisions for meter reading contained in its gas tariff schedule, P.S.C. No. 219.

Statutory authority: Public Service Law, sections 65 and 66(12)(b)

Subject: To revise its provisions regarding no-access for meter reading.

Purpose: To consider revisions to NMPC's no access provisions related to meter reading in its gas tariff schedule.

Substance of proposed rule: The Commission is considering a proposal filed by Niagara Mohawk Power Corporation d/b/a National Grid (NMPC) made on May 31, 2017, to amend P.S.C. No. 219 – Gas, regarding its no access provisions for meter reading contained in General Information Section Nos. 2 – Rules and Regulations and 13 – Meter Reading. NMPC proposes to: (i) align its non-access process with those of The Brooklyn Union Gas Company d/b/a National Grid, and KeySpan Gas East Corporation d/b/a National Grid L.I.; (ii) clarify the non-access process with regard to persons who control access to the customer's meter, Access Controllers, for both residential and non-residential accounts; and (iii) permit NMPC to charge its existing special charge of \$25.00 for refusal to provide access

to the meter on the customer’s next bill and every bill thereafter until access is granted. The proposed amendments have an effective date of October 1, 2017. The full text of the proposal may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

Public comment will be received until: 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.

(17-G-0306SP1)

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

To Revise Its Provisions Regarding No-Access for Meter Reading

I.D. No. PSC-26-17-00009-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 Corporation d/b/a National Grid L.I. (KEDLI) to make revisions to its no access provisions for meter reading contained in its gas tariff schedule, P.S.C. No. 1.

Statutory authority: Public Service Law, sections 65 and 66(12)(b)

Subject: To revise its provisions regarding no-access for meter reading.

Purpose: To consider revisions to KEDLI’s no access provisions related to meter reading in its gas tariff schedule.

Substance of proposed rule: The Commission is considering a proposal filed by KeySpan Gas East Corporation d/b/a National Grid L.I. (KEDLI) made on May 31, 2017, to amend P.S.C. No. 1 – Gas, regarding its no access provisions for meter reading contained in General Information Section II – Rules and Regulations. KEDLI proposes to: (i) align its non-access process with those of The Brooklyn Union Gas Company d/b/a National Grid, and Niagara Mohawk Power Corporation d/b/a National Grid; (ii) clarify the non-access process with regard to persons who control access to the customer’s meter, Access Controllers, for both residential and non-residential accounts; and (iii) permit KEDLI to charge its existing special charge of \$25.00 for refusal to provide access to the meter on the customer’s next bill and every bill thereafter until access is granted. The proposed amendments have an effective date of October 1, 2017. The full text of the proposal may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

Public comment will be received until: 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.

(17-G-0305SP1)

Department of State

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

Appraisal Experience Log

I.D. No. DOS-26-17-00001-P

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

Proposed Action: Amendment of section 1102.3 of Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d

Subject: Appraisal experience log.

Purpose: To clarify and update Department of State policy in reviewing appraisal experience.

Text of proposed rule: Section 1102.3(a) of 19 NYCRR is amended to read as follows:

§ 1102.3 Appraisal experience schedule

(a) Hours of experience shall be credited to an applicant based on actual time spent on appraisal assignments up to a maximum numbers of hours in accordance with the following schedule. *Except as provided for by paragraph (b) of this section, experience credits may only be granted for the following types of appraisal assignments.*

APPRAISAL EXPERIENCE SCHEDULE

Type of Property Appraised	Assigned hours <i>cannot exceed</i>	
	<i>Standard Appraisal</i>	<i>Review Appraisal</i>
Residential		
Residential Single-Family (Single Co-op or Condo)	6	1.5
Residential Single-Family Complex (Waterfront or Unique)	20	5
Residential Single-Family Complex (Over \$5,000,000)	40	10
Residential Multi-Family (2-4 units)	12	3
Vacant Lot (Residential, 1-4 units)	[3] 6	1.5
Farm (Less than 100 acres, with residence)	[12] 18	4.5
General		
Land: Farms of 100 acres or more in size, undeveloped tracts, residential multi-family sites, commercial sites, industrial sites	[18] 30	7.5
Complex Farms		
100 acres or more in size, multi-building with Processing facilities	40	10
Residential Multi-Family (5-12 units):		
Apartments, condominiums, townhouses and mobile home parks	36	9
Residential Multi-Family (13[+] or more units):		
Apartments, condominiums, townhouses and mobile home parks	48	12
Commercial/Industrial Single-Tenant:		
Office buildings, R&D, retail stores, restaurants, service stations, warehouses, day care centers, and other similar buildings [etc]	[36] 48	12

Commercial/Industrial Multi-Tenant:		
Office buildings, R&D, shopping centers, hotels, warehouses	60	15
Manufacturing plants	48	12
Institutional:		
Rest homes, nursing homes, hospitals, schools, churches, government buildings	48	12

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

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Executive Law section 160-d authorizes the New York State Board of Real Estate Appraisal to adopt regulations in aid or furtherance of the statute. One of the purposes of Article 6-E is to ensure the qualification of licensed and certified real estate appraisers. To meet this purpose, the Department of State (the “Department”), in conjunction with the New York State Board of Real Estate Appraisal, has issued rules and regulations which are found at Parts 1102, 1103, 1105 and 1107 of Title 19 of the NYCRR and is proposing this rule making.

2. Legislative objectives:

Pursuant to Executive Law, Article 6-E, the Department, in conjunction with the New York State Board of Real Estate Appraisal, licenses and regulates real estate appraisers. To provide protections against unqualified appraisers, the statute requires licensees and certificate holders to possess adequate appraisal experience. The proposed rule advances this legislative objective by ensuring that appraiser applicants possess the requisite experience required for licensure or certification.

3. Needs and benefits:

Section 160-j of the Executive Law requires appraisal applicants to possess minimum education and experience prior to taking the State licensing examination. The required experience is codified in 19 NYCRR 1102.3. The regulation is outdated and no longer reflects the time which an appraiser must devote to the relevant appraisal task. The NYS Board of Real Estate Appraisal has studied this issue and is proposing the instant rulemaking to ensure that appraisal applicants are given credit for the hours reasonably spent on completing an appraisal assignment.

4. Costs:

a. Costs to regulated parties:

The Department does not anticipate that the proposed rulemaking will result in costs to regulated parties.

b. Costs to the Department of State:

The Department does not anticipate any additional costs to implement the rule. Existing staff will handle the processing of applications, including the evaluation of appraiser experience.

5. Local government mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

When applying for an appraisal license or certification, applicants are required to complete an application establishing that they have the experience required by statute for the relevant license or certification. The proposed rulemaking does not alter current paperwork requirements.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department considered not proposing an amendment to the rule. It was determined, however that to ensure that applicants are given credit for time reasonably spent on completing an appraisal, the instant rule making should be proposed.

9. Federal standards:

The Federal Appraisal Subcommittee (ASC) is granted authority by Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Title XI), to establish the minimum qualifications for real property appraisers performing appraisals for federally related transactions. States are required to implement appraiser qualifications that

are no less stringent than those issued by the ASC. The proposed experience schedule complies with the requirements of Title XI.

10. Compliance schedule:

The rule will be effective immediately upon publication of the Notice of Adoption.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule will apply to those applying for a license or certification as a real estate appraiser. The Department of State (the “Department”) currently certifies and licenses approximately 4,362 real estate appraisers. While the Department does not track these numbers insofar as it does not license appraisal businesses, it is believed that many appraisers work for small businesses.

The rule does not apply to local governments.

2. Compliance requirements:

When applying for an appraisal license or certification, applicants are required to establish that they possess the requisite experience for the credential being sought. The proposed rulemaking will not alter this requirement but, rather, amends the regulation to clarify that experience points are granted based on the actual appraisal assignments completed. Additionally, the proposed rule provides new opportunities for applicants to earn experience by creating new criteria for appraisal hours.

3. Professional services:

Appraisers will not need to rely on professional services to comply with the requirements of the proposed rule. Applicants are already required to establish they met the minimum qualification to obtain a license or certification, and the proposed rulemaking does not alter this requirement, it simply clarifies the current qualification provisions. The application required for an appraisal license or certification is simple and can be completed without professional assistance.

4. Compliance costs:

The Department of State does not anticipate that the proposed rulemaking will result in costs to regulated parties.

5. Economic and technological feasibility:

The Department has determined that it will be economically and technologically feasible for small businesses to comply with the proposed rule. Applicants seeking an appraisal license or certification are already required to apply to the Department and, as part of the application, to establish that they possess the requisite appraisal experience. The statute sets forth a modest application fee criteria which varies based on the credential being sought: \$355 for an appraisal license or certification and \$250 for a license as an appraisal assistant. It is economically feasible for applicants to apply to the Department for a license or certification. The proposed rulemaking does not impose any additional costs but, rather, addresses the experience points which the Department of State awards based upon prior appraisal experience.

It will also be technologically feasible for small businesses to comply with the proposed rule. The application required for an appraisal license or certification is straight-forward and may be easily completed without technological assistance.

6. Minimizing adverse economic impact:

The Department has not identified any adverse economic impact of this rule. Although statutory application fees are required, the fees are modest and the proposed rule making does not impose any additional costs. Rather, the proposed rule is an explanation of Department policy in reviewing and crediting prior appraisal experience.

7. Small business participation:

Prior to proposing the rule, the Department published a substantially similar copy of the proposed text on its website. No comments were received. Additionally, as is customary proposed rules are discussed with the NYS Board of Real Estate Appraiser, at open meetings which are open to the public. The Department will continue its outreach after the rule is formally proposed as a Notice of Proposed Rule Making in the State Register. The publication of the rule in the State Register will provide additional notice to small businesses. Additional comments will be received and entertained by the Department during the formal public comment period indicated in this Notice of Proposed Rule Making.

8. Compliance:

The rule will be effective immediately upon publication of the Notice of Adoption.

9. Cure period:

Insofar as the proposed rule is a correction to clarify existing Department policy, and comports to non-discretionary Federal requirements, the Department is not providing for a cure period prior to enforcement of these regulations.

Rural Area Flexibility Analysis

1. Effect of the rule:

The rule will apply to those applying for a license or certification as a real estate appraiser. The Department of State (the “Department”) cur-

rently certifies and licenses approximately 4,362 real estate appraisers. While the Department does not track these numbers insofar as it does not license appraisal businesses, it is believed that many appraisers work for small businesses. Some of these appraisers work and/or reside in rural areas.

2. Compliance requirements:

When applying for an appraisal license or certification, applicants are required to establish that they possess the requisite experience for the credential being sought. The proposed rulemaking will not alter this requirement but, rather, amends the regulation to clarify that experience points are granted based on the actual appraisal assignments completed.

3. Professional services:

Appraisers will not need to rely on professional services to comply with the requirements of the proposed rule. Applicants are already required to establish they met the minimum qualification to obtain a license or certification, and the proposed rulemaking does not alter this requirement, it simply clarifies the current qualification provisions. The application required for an appraisal license or certification is simple and can be completed without professional assistance.

4. Compliance costs:

The Department of State does not anticipate that the proposed rulemaking will result in costs to regulated parties.

5. Minimizing adverse economic impacts:

The Department has not identified any adverse economic impact of this rule. Although statutory application fees are required, the fees are modest and the proposed rulemaking does not impose any additional costs. Additionally, the Department does not anticipate that this rule will result in any new costs to applicants as the rule merely clarifies existing qualification provisions and provides new opportunities for applicants to earn experience.

6. Rural area participation:

Prior to proposing the rule, the Department published a substantially similar copy of the proposed text on its website. No comments were received. Additionally, as is customary proposed rules are discussed with the NYS Board of Real Estate Appraiser, at open meetings which are open to the public. The Department will continue its outreach after the rule is formally proposed as a Notice of Proposed Rule Making in the State Register. The publication of the rule in the State Register will provide additional notice to appraisers located in rural areas. Additional comments will be received and entertained by the Department.

Job Impact Statement

1. Impact of the rule

The rule affects those applying to the Department of State (the "Department") for an appraisal license or certification. Insofar as the proposed rule principally clarifies existing Department policy, and does not impose any new requirements, the rule will not impact job creation or existing employment opportunities for real estate appraisers.

2. Categories and numbers affected

The rule will apply to those applying for a license or certification as a real estate appraiser. The Department currently certifies and licenses approximately 4,362 real estate appraisers. While the Department does not track these numbers insofar as it does not license appraisal businesses, it is believed that many appraisers work for small businesses.

3. Regions of adverse impact

The Department has not identified any region of the state where the rule would have a disproportionate adverse impact on jobs or employment opportunities. Appraisers work in all areas of the state. However, the compliance requirements imposed by the rule are minor and should not result in job loss or the inhibition of job creation.

4. Minimizing adverse impact

The Department has not identified any adverse impacts of this rule on employment or employment opportunities. The compliance requirements of the rule are minimal and should not result in a loss of jobs or impede the creation of new employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Distance Learning for Qualifying Real Estate Appraisal Courses

I.D. No. DOS-26-17-00002-P

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

Proposed Action: Amendment of sections 1103.2(e) and 1103.3(i); addition of sections 1103.12, 1103.13, 1103.14, 1103.15, 1107.29, 1107.30, 1107.31 and 1107.32 to Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d

Subject: Distance learning for qualifying real estate appraisal courses.

Purpose: To authorize distance learning for qualifying real estate appraisal courses.

Text of proposed rule: 1103.2(e) of Title 19 NYCRR is amended to read as follows:

(e) Course attendance requirements. To earn credit for any appraisal course in this section, a prospective licensee must [physically] attend 100 percent of the required instruction time.

1103.3(i) of Title 19 NYCRR is amended to read as follows:

(i) Attendance. To satisfactorily complete any appraisal course, a prospective licensee shall [physically] attend 100 percent of the required instruction time. If prospective licensees fail to attend the required instruction time, appraisal schools may, at their discretion, permit the prospective licensees to make up missed subject matter during subsequent classes. Appraisal schools shall not present a final examination to any student who has not completed the attendance requirements.

Sections 1103.12, 1103.13, 1103.14 and 1103.15 of Title 19 NYCRR are added to read as follows:

1103.12 Distance learning

Distance learning is defined as any educational process based on the geographical separation of instructor and student. Educational providers who wish to offer distance learning programs must have their programs evaluated and approved in accordance with sections 1103.13, 1103.14 and 1103.15.

1103.13 Distance learning program requirements

(a) *Distance learning course material must be divided into major units and the content of those units must be divided into modules of instruction.*

(b) *Distance learning programs must contain a time-default mechanism for inactivity so that a student does not receive credit when not actively participating in the program.*

(c) *Providers of distance learning programs must retain a record of each student's participation in and completion of the distance learning program for a period of three years from the date of completion and shall make these records available for review and inspection by the Department, upon request.*

(d) *Providers of distance learning programs must make an instructor approved pursuant to section 1103.4 of this Part available to students during reasonable business hours to answer questions pertaining to the qualifying course content.*

(e) *Distance learning courses must include a proctored final examination which must be held at a location within New York State approved by the Department.*

(f) *Distance learning courses must obtain course delivery mechanism approval from one of the following sources: (1) an Appraiser Qualifications Board approved organization providing approval or course design and delivery, (2) a college that qualifies for content approval and awards academic credit for the distance education course, or (3) a qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity.*

1103.14 Request for approval of distance learning programs

Applications for approval to conduct distance learning courses of study shall be made on an application prescribed by the Department 60 days before the proposed course is to be conducted.

1103.15 Course completion for distance learning courses

(a) *To earn credit for a distance learning course, a student must successfully complete the course within 12 months of starting the program. This shall include passing the course provider's final examination.*

(b) *Providers of distance learning courses shall provide students who have successfully completed such a distance learning course with a certificate of completion. The certificate shall include, at a minimum, the following information: the name of the student, the name of the person or entity providing the course, the name of the course, the Department of State-issued code number of the approved course provider and the date on which the student completed the course. The certificate must be signed by the owner of the entity providing the course or the course coordinator and dated.*

Sections 1107.29, 1107.30, 1107.31 and 1107.32 of Title 19 NYCRR are added to read as follows:

1107.29 Distance learning

Distance learning is defined as any educational process based on the geographical separation of instructor and student. Educational providers who wish to offer distance learning programs must have their programs evaluated and approved in accordance with sections 1107.30, 1107.31 and 1107.32.

1107.30 Distance learning program requirements

(a) *Distance learning course material must be divided into major units, and the content of those units must be divided into modules of instruction.*

(b) *Distance learning programs must contain a time-default mechanism for inactivity so that a student does not receive credit when not actively participating in the program.*

(c) *Providers of distance learning programs must retain a record of*

each student's participation in and completion of the distance learning program for a period of three years from the date of completion and shall make these records available for review and inspection by the Department, upon request.

(d) Providers of distance learning programs must make an instructor approved pursuant to section 1107.27 of this Part available to students during reasonable business hours to answer questions pertaining to the qualifying course content.

(e) Distance learning courses must obtain course delivery mechanism approval from one of the following sources: (1) an Appraiser Qualifications Board approved organization providing approval or course design and delivery, (2) a college that qualifies for content approval and awards academic credit for the distance education course, or (3) a qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity.

1107.31 Request for approval of distance learning programs

Applications for approval to conduct distance learning courses of study shall be made on an application prescribed by the Department 60 days before the proposed course is to be conducted.

1107.32 Course completion for distance learning courses

(a) To earn credit for a distance learning course, a student must successfully complete the course within 12 months of starting the program.

(b) Providers of distance learning courses shall provide students who have successfully completed such a distance learning course with a certificate of completion. The certificate shall include, at a minimum, the following information: the name of the student, the name of the person or entity providing the course, the name of the course, the Department of State issued code number of the approved course provider, and the date on which the student completed the course. The certificate must be signed by the owner of the entity providing the course or the course coordinator and dated.

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Executive Law section 160-d authorizes the New York State Board of Real Estate Appraisal to adopt regulations in aid or furtherance of the statute. One of the purposes of Article 6-E is to ensure that licensed and certified real estate appraisers are properly qualified. To meet this purpose, the Department of State ("Department"), in conjunction with the New York State Board of Real Estate Appraisal, has issued rules and regulations which are found at Parts 1103, 1105 and 1107 of Title 19 NYCRR and is proposing this rule making.

2. Legislative objectives:

Pursuant to Executive Law Article 6-E, the Department licenses and regulates real estate appraisers. To provide protection against inaccurate appraisal reports, the statute requires applicants to satisfactorily complete required education prior to obtaining an appraisal license or certification. The Department currently permits appraisers to complete continuing education by distance learning. The proposed rule making will formalize this concept for continuing education and expand it to permit appraisal students to also complete qualifying education by distance learning methodology. Advances in technology have made it possible to administer qualifying education by distance learning. These advances coupled with a required proctored in-person final examination and other requirements of the proposed rule will ensure that appraisal students attend and satisfactorily complete the required courses, thereby furthering the legislative objective of Article 6-E of the Executive Law.

3. Needs and benefits:

The Department has received numerous reports from appraisal students that educational providers are not regularly offering certain appraisal courses due to declining enrollment and lack of demand. Particularly in rural areas of the State, this has imposed a hardship on applicants who must either wait for a course to be offered or travel to another area of the State to attend a required course.

The Department currently permits appraisers to complete continuing education courses by distance learning. This methodology has proven effective at meeting the State's interest in ensuring that appraisers are properly educated while, at the same time, offering convenience to appraisers doing business in New York State. Expanding distance learning to qualifying courses will afford these benefits to those seeking an appraisal license or certification. It will also ensure that required courses are readily available to all appraisal candidates, particularly those who reside in areas of the state where appraisal courses are not regularly offered.

4. Costs:

a. Costs to regulated parties:

Course providers pay a \$250 annual registration fee to the Department to offer one or more residential appraisal course. The annual registration fee to offer one or more general appraisal course is also \$250. To offer other appraisal courses, the annual registration fee is \$25. These fees will apply to traditional classroom-based courses and to those taught by distance learning. This proposed rule does not impose any additional fees for distance learning courses.

Appraisal schools which offer distance learning courses either purchase a developed course or develop their own. The cost of purchasing an existing online program is between \$7,000 and \$15,000 per course. The cost of developing a course ranges from \$50,000 to \$100,000.

b. Costs to the Department of State:

The Department does not anticipate any additional costs to implement the proposed rule. Existing staff will handle the processing of course approval applications and will monitor and enforce compliance with the proposed rule.

5. Local government mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

To comply with the proposed rule, providers of distance learning programs will be required to apply to the Department for approval to conduct distance learning courses of study. Once approved, educational providers will be required to retain records of each student's participation in and completion of the distance learning program for a period of three years after the date of completion and will be required to provide the Department with a list of students who successfully completed each course of study. Finally, providers will be required to provide students who successfully complete a distance learning course with a certificate of completion.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department considered making these regulations effective immediately. It was determined, however, that a delayed effective date would provide adequate time for educational providers to develop distance learning courses and obtain course approval from the Department. The Department also considered not proposing this rule. It was determined, however, that technological advances have made it possible to provide effective course instruction through distance learning. The proctored in-person exam requirement and other safeguards will ensure that the applicant has satisfactorily completed the required course prior to licensure.

9. Federal standards:

There are no federal standards for appraisal distance learning.

10. Compliance schedule:

The rule will be effective 120 days following filing of the Notice of Adoption to afford educational providers sufficient time to develop and obtain approval from the Department to offer distance learning courses. Because the proposed rule provides an option for course delivery, and not a mandate, the Department is not providing a cure period.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule will impact educational providers and those seeking an appraisal license or certification in New York State.

The rule does not apply to local governments.

2. Compliance requirements:

To comply with the proposed rule, providers desiring to offer distance learning programs will be required to apply to the Department of State ("Department") for approval to conduct distance learning courses of study. Approved educational providers will be required to retain a record of student participation and completion of the distance learning program for a period of three years from the date of completion and will be required to provide the Department of State with a list of students who successfully completed each course of study. Finally, providers will be required to provide students who successfully complete a distance learning course with a certificate of completion.

3. Professional services:

It is not anticipated that appraisal students will need professional services to comply with the requirements of the proposed rule. Distance learning courses will not be mandatory; their availability will provide students will the option of completing course work online or in a traditional classroom setting. Additionally, distance learning courses offered by educational providers are designed to be user-friendly. Schools will be available to assist students with any technical issues.

Appraisal schools develop online courses by either purchasing an existing online program or developing their own course content. Those developing their own courses may require professional services for

development and programming issues. It is not anticipated that schools purchasing existing courses will require these or any other professional services.

4. Compliance costs:

The proposed regulation does not impose additional fees. Under current regulations, the following fees apply. Course providers pay a \$250 annual registration fee to the Department of State to offer one or more residential appraisal course. The annual registration fee to offer one or more general appraisal course is also \$250. To offer other appraisal courses, the annual registration fee is \$25. These fees will apply to traditional classroom-based courses and to those taught by distance learning.

Appraisal schools purchasing existing online programs may expend between \$7,000 and \$15,000 per course. Schools that develop their own online programs may expend from \$50,000 to \$100,000. Education providers have reported that traditional classroom-based courses are more expensive to provide due to the higher cost incurred by renting/purchasing space, paying instructors and utilities and providing refreshments to students.

5. Economic and technological feasibility:

The Department has determined that it will be economically and technologically feasible for small businesses to comply with the proposed rule. The proposed rule provides an option to schools that will permit them to offer courses in a traditional classroom setting or by distance learning. Distance learning courses will not be mandatory. Those opting to offer these distance learning courses, may either develop or purchase courses. While the cost associated with the purchase and development of courses is significant, educational providers have reported that, overall, distance learning courses are more cost-effective than those offered in a traditional classroom setting.

6. Minimizing adverse economic impact:

The Department has not identified any adverse economic impacts associated with this rule. The proposed rule is designed to provide a more convenient and cost-effective option to appraisal students and schools. Due to lack of demand, some appraisal courses are not offered on a regular basis and are therefore difficult to obtain. Students have reported having to wait long periods of time for courses to be offered and having to travel significant distances to attend an available course. The proposed rule will increase course availability thereby sparing these students expenses associated with travel and permitting them to enter the workforce more quickly.

The proposed rule will also offer another delivery option to education providers. While the initial costs to develop (\$50,000 to \$100,000) and purchase (\$7,000 to \$15,000) are significant, schools have reported that it is less expensive to provide distance learning courses insofar as schools do not need to expend money for space, utilities, instructors and refreshments.

7. Small business participation:

Prior to proposing the rule, the Department discussed the proposal at meetings of the NYS Board of Real Estate Appraisal. These meetings are open to the public and include a public comment period. The Department also published the proposal on its website for comment. No comments were received. The Department will continue its outreach after the rule is formally proposed as a Notice of Proposed Rule Making in the State Register. The publication of the rule in the State Register will provide additional notice to small businesses. Additional comments will be received and entertained by the Department during the formal public comment period indicated in this Notice of Proposed Rule Making.

8. Compliance:

The rule will be effective 120 days following filing of the Notice of Adoption to afford education providers sufficient time to develop and obtain approval from the Department to offer distance learning courses.

9. Cure period:

The Department is not providing for a cure period prior to enforcement of these regulations. The proposed rule making will be effective 120 days following filing of the Notice of Adoption to afford education providers sufficient time to develop and obtain approval from the Department of State to offer distance learning courses.

Prior to proposing this rule, the Department notified regulated parties about the new requirements. As such, education providers have had adequate notice of the proposed regulation and will be afforded sufficient time to bring themselves into compliance with the rule requirements. No education provider that is in compliance with current regulations will be out of compliance after the proposed regulations take effect if such a provider does not change its operations.

Rural Area Flexibility Analysis

1. Effect of the rule:

The rule will impact educational providers and those seeking an appraisal license or certification in New York State. Department of State ("Department") licenses appraisers and providers throughout the state, and some of those impacted by this rule reside in rural areas.

2. Compliance requirements:

To comply with the proposed rule, providers desiring to offer distance learning programs will have to apply to the Department for approval to conduct distance learning courses of study. Approved educational providers will be required to retain records of each student's participation and completion of the distance learning program for a period of three years from the date of completion and will be required to provide the Department with a list of students who successfully completed each course of study. Finally, providers will be required to provide students who have successfully completed a distance learning course with a certificate of completion.

3. Professional services:

It is not anticipated that appraisal students will need professional services to comply with the requirements of the proposed rule. Distance learning courses will not be mandatory; students will have the option of completing course work online, but courses in a traditional classroom setting will remain available as well. Additionally, distance learning courses offered by educational providers are designed to be user-friendly. Schools will be available to assist students with any technical issues.

Appraisal schools develop online courses by either purchasing an existing online program or developing their own course content. Those developing their own courses may require professional services for development and computer programming. It is not anticipated that schools purchasing existing courses will require these or any other professional services.

4. Compliance costs:

The proposed regulation does not impose additional fees. Under current regulations, the following fees apply. Course providers pay a \$250 annual registration fee to the Department to offer one or more residential appraisal courses. The annual registration fee to offer one or more general appraisal courses is also \$250. To offer other appraisal courses, the annual registration fee is \$25. These fees will apply to traditional classroom based courses and to those taught by distance learning.

Appraisal schools purchasing existing online programs may expend between \$7,000 and \$15,000 per course. Schools that develop their own online programs may expend from \$50,000 to \$100,000 per course. Education providers have reported that traditional classroom-based courses are more expensive to provide due to the higher cost incurred by renting/purchasing space, paying instructors and utilities and providing refreshments to students.

5. Minimizing adverse economic impacts:

The Department has not identified any adverse economic impacts associated with this rule. The proposed rulemaking is designed to provide a more convenient and cost effective option to appraisal students and schools. Due to lack of demand, appraisal courses in certain subject areas are difficult to obtain. Students have reported having to wait long periods of time for courses to be offered and having to travel significant distances to attend an available course. The proposed rule will increase course availability thereby sparing these students expenses associated with travel and permitting them to enter the workforce more quickly.

The proposed rule will also offer another delivery option to educational providers. While the initial costs to develop a distance learning course (\$50,000 to \$100,000) or purchase one to offer (\$7,000 to \$15,000) are significant, schools have reported that it is less expensive to provide distance learning courses insofar as schools do not need to expend money for space, utilities, instructors and refreshments for students.

6. Rural area participation:

Prior to proposing the rule, the Department published a copy of the proposed text on its website. No comments were received. The Department also discussed the proposal at several meetings of the NYS Board of Real Estate Appraisal. These meetings are open and include a public comment period. The Department will continue its outreach after the rule is formally proposed as a Notice of Proposed Rule Making in the State Register. The publication of the rule in the State Register will provide additional notice to appraisers located in rural areas. Additional comments will be received and entertained by the Department.

Job Impact Statement

1. Impact of the rule

The rule will impact educational providers and those seeking an appraisal license or certification in New York State.

2. Categories and numbers affected

The Department of State currently licenses and certifies approximately 4,362 real estate appraisers. The rule will affect new appraisal candidates seeking licensure or certification.

3. Regions of adverse impact

The Department of State has not identified any region of the state where the rule would have a disproportionate adverse impact on jobs or employment opportunities. The proposed rule is intended to have a positive impact on employment opportunities by making appraisal courses more available, particularly to candidates living in rural areas of the state.

4. Minimizing adverse impact

The Department of State has not identified any adverse impacts of this rule on employment or employment opportunities. By increasing availability of appraisal courses, the rule is intended to have a positive impact on employment opportunities.