

# RULE MAKING ACTIVITIES

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

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

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

---

---

## Department of Civil Service

---

---

### NOTICE OF EXPIRATION

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

#### Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-44-16-00001-P	November 2, 2016	November 2, 2017
CVS-44-16-00002-P	November 2, 2016	November 2, 2017
CVS-44-16-00003-P	November 2, 2016	November 2, 2017
CVS-44-16-00004-P	November 2, 2016	November 2, 2017
CVS-44-16-00005-P	November 2, 2016	November 2, 2017
CVS-44-16-00006-P	November 2, 2016	November 2, 2017
CVS-44-16-00007-P	November 2, 2016	November 2, 2017
CVS-44-16-00008-P	November 2, 2016	November 2, 2017
CVS-44-16-00009-P	November 2, 2016	November 2, 2017

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

#### Jurisdictional Classification

I.D. No. CVS-47-17-00001-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from and classify positions in the non-competitive class.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Education Department under the subheading “New York State Higher Education Services Corporation,” by deleting therefrom the positions of Student Loan Control Representative (15) and by adding thereto the positions of Student Loan Control Representative 1 (15).

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

#### Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

#### Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

#### Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

#### Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

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

#### Jurisdictional Classification

I.D. No. CVS-47-17-00002-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the non-competitive class.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Westchester County Service under the subheading “Department of Emergency Services,” by adding thereto the positions of Disaster Volunteer Coordinator(s) part time.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

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

**Jurisdictional Classification**

**I.D. No.** CVS-47-17-00003-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from and classify a position in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Public Service, by deleting therefrom the positions of Assistant to the Secretary of the Public Service Commission and Coordinator of Generating Facilities Siting and by increasing the number of positions of Secretary from 3 to 4.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously

printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

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

**Jurisdictional Classification**

**I.D. No.** CVS-47-17-00004-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office for the Aging," by increasing the number of positions of Special Assistant from 2 to 3.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

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

**Jurisdictional Classification**

**I.D. No.** CVS-47-17-00005-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the non-competitive class.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State University of New York under the subheading "State University Colleges," by adding thereto the position of øSecretary 1 (1) at SUC at New Paltz and by increasing the number of positions of øSecretary 2 at SUC at New Paltz from 1 to 2.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

*Data, views or arguments may be submitted to:* Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

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

**Jurisdictional Classification**

**I.D. No.** CVS-47-17-00006-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the non-competitive class.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State University of New York under the subheading “State University Agricultural and Technical Colleges,” by increasing the number of positions of  $\phi$ Secretary 2 at Delhi from 3 to 4.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

*Data, views or arguments may be submitted to:* Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

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

**Jurisdictional Classification**

**I.D. No.** CVS-47-17-00007-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Financial Services, by increasing the number of positions of Special Assistant from 23 to 28.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

*Data, views or arguments may be submitted to:* Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

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

**Jurisdictional Classification**

**I.D. No.** CVS-47-17-00008-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading “Division of Criminal Justice Services,” by increasing the number of positions of Special Assistant from 6 to 7.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

*Data, views or arguments may be submitted to:* Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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



**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-17-00013-P, Issue of January 4, 2017.

---



---

## Department of Corrections and Community Supervision

---



---

### NOTICE OF ADOPTION

#### Officials of the Department of Corrections and Community Supervision

**I.D. No.** CCS-35-17-00001-A

**Filing No.** 981

**Filing Date:** 2017-11-07

**Effective Date:** 2017-11-22

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

**Action taken:** Amendment of section 50.1(ah) of Title 7 NYCRR.

**Statutory authority:** Correction Law, sections 7 and 112; Criminal Procedure Law, sections 1.20, subdivision 33 and 2.10(25)

**Subject:** Officials of the Department of Corrections and Community Supervision.

**Purpose:** To designate certain employees of the Department as officials with peace officer status.

**Text or summary was published** in the August 30, 2017 issue of the Register, I.D. No. CCS-35-17-00001-EP.

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

**Text of rule and any required statements and analyses may be obtained from:** Kevin P. Bruen, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue, Harriman State Campus, Albany, NY 12226-2050, (518) 457-4951, email: Rules@DOCCS.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.

---



---

## Education Department

---



---

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

#### Requirements for the Educational Leadership Service

**I.D. No.** EDU-37-17-00003-RP

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

**Proposed Action:** Amendment of section 80-3.10 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207(not subdivided), 305(1), 3001(1), 3004(1) and 3009(1)

**Subject:** Requirements for the Educational Leadership Service.

**Purpose:** Modify the educational requirements for out-of-state candidates seeking licensure in New York.

**Text of revised rule:** 1. Subclause (1) of clause (a) of subparagraph (ii) of paragraph (1) of subdivision (a) of section 80-3.10 is amended to read as follows:

(1) [The] (i) *For candidates who apply for and meet the requirements for a certificate under this subdivision on or before September 1, 2019, the candidate shall hold a master's or higher degree from a regionally accredited higher education institution or an equivalently approved higher education institution as determined by the department and have successfully completed a program leading to the initial certificate as a school building leader in the educational leadership service registered pursuant to section 52.21(c)(2) of this Title, or its equivalent as determined by the department, or an educational leadership program leading to a regular certificate in an equivalent title to a school building leader, accredited by an accrediting body recognized by the United States Department of Education at a regionally accredited institution outside of New York State.*

(ii) [The] *For candidates who apply for a certificate under this subdivision on or after September 1, 2019 or candidates who apply for a certificate on or before September 1, 2019 but do not meet all the requirements for a certificate on or before September 1, 2019, the candidate shall hold a master's or higher degree from a regionally accredited higher education institution or an equivalently approved higher education institution as determined by the department and have successfully completed a program leading to the initial certificate as a school building leader in the educational leadership service registered pursuant to section 52.21(c)(2) of this Title, or its equivalent as determined by the department, or an educational leadership program leading to a regular certificate in an equivalent title to a school building leader, accredited by an accrediting body recognized by the United States Department of Education at a regionally accredited institution outside of New York State, provided that such program leads to an initial certificate, or a similar certificate title and type, in the jurisdiction in which the higher education institution is located.*

2. Item (ii) of subclause (2) of clause (a) of subparagraph (i) of paragraph (3) of subdivision (b) of section 80-3.10 is amended to read as follows:

(ii) (A) *for candidates who apply for and meet the requirements for a certificate under this subdivision on or before September 1, 2019, have successfully completed an educational leadership program outside of New York State that is equivalent to a program leading to a professional certificate as a school district leader in the educational leadership service registered pursuant to section 52.21(c)(3) of this Title or an educational leadership program leading to a regular certificate in an equivalent title to school district leader, accredited by an accrediting body recognized by the United States Department of Education at a regionally accredited institution outside of New York State, including a requirement to pass an assessment equivalent to the New York State assessment for school district leadership, or alternatively the candidate shall satisfy this component of the educational leadership program by passing the New York State assessment for school district leadership. The requirement of achieving a satisfactory level of performance on an assessment equivalent to the New York State assessment for school district leadership or alternatively passing such New York State assessment shall be waived if the candidate completes the program prior to the availability of such New York State assessment. The department shall determine the date on which such assessment is available. The candidate shall have successfully completed at least 60 semester hours of graduate study, which may include graduate study completed outside of the educational leadership program.*

(B) *for candidates who apply for a certificate under this subdivision on or after September 1, 2019 or candidates who apply for a*

certificate on or before September 1, 2019 but do not meet all the requirements for a certificate on or before September 1, 2019, have successfully completed an educational leadership program outside of New York State that is equivalent to a program leading to a professional certificate as a school district leader in the educational leadership service registered pursuant to section 52.21(c)(3) of this Title or an educational leadership program leading to a regular certificate in an equivalent title to school district leader, accredited by an accrediting body recognized by the United States Department of Education at a regionally accredited institution outside of New York State, provided that such program leads to a professional certificate, or a similar certificate title and type, in the jurisdiction in which the higher education institution is located, including a requirement to pass an assessment equivalent to the New York State assessment for school district leadership, or alternatively the candidate shall satisfy this component of the educational leadership program by passing the New York State assessment for school district leadership. The requirement of achieving a satisfactory level of performance on an assessment equivalent to the New York State assessment for school district leadership or alternatively passing such New York State assessment shall be waived if the candidate completes the program prior to the availability of such New York State assessment. The department shall determine the date on which such assessment is available. The candidate shall have successfully completed at least 60 semester hours of graduate study, which may include graduate study completed outside of the educational leadership program.

3. Clause (b) of subparagraph (ii) of paragraph (3) of subdivision (c) of section 80-3.10 is amended to read as follows:

(b) (1) for candidates who apply for and meet the requirements for a certificate under this subdivision on or before September 1, 2019, have successfully completed an educational leadership program outside of New York State that is equivalent with a program leading to a professional certificate as a school district business leader in the educational leadership service registered pursuant to section 52.21(c)(5) of this Title or an educational leadership program leading to a regular certificate in an equivalent title to school district business leader, accredited by an accrediting body recognized by the United States Department of Education at a regionally accredited institution outside of New York State, including a requirement to pass an assessment equivalent to the New York State assessment for school district business leadership, or alternatively the candidate shall satisfy this component of the educational leadership program by passing the New York State assessment for school district business leadership. The requirement of achieving a satisfactory level of performance on an assessment equivalent to the New York State assessment for school district business leadership or alternatively passing such New York State assessment shall be waived if the candidate completes the program prior to the availability of such New York State assessment. The department shall determine the date on which such assessment is available. The candidate shall have successfully completed at least 60 semester hours of graduate study, which may include graduate study completed outside of the educational leadership program.

(2) for candidates who apply for a certificate under this subdivision on or after September 1, 2019 or candidates who apply for a certificate on or before September 1, 2019 but do not meet all the requirements for a certificate on or before September 1, 2019, have successfully completed an educational leadership program outside of New York State that is equivalent with a program leading to a professional certificate as a school district business leader in the educational leadership service registered pursuant to section 52.21(c)(5) of this Title or an educational leadership program leading to a regular certificate in an equivalent title to school district business leader, accredited by an accrediting body recognized by the United States Department of Education at a regionally accredited institution outside of New York State, provided that such program leads to a professional certificate, or a similar certificate title and type, in the jurisdiction in which the higher education institution is located, including a requirement to pass an assessment equivalent to the New York State assessment for school district business leadership, or alternatively the candidate shall satisfy this component of the educational leadership program by passing the New York State assessment for school district business leadership. The requirement of achieving a satisfactory level of performance on an assessment equivalent to the New York State assessment for school district business leadership or alternatively passing such New York State assessment shall be waived if the candidate completes the program prior to the availability of such New York State assessment. The department shall determine the date on which such assessment is available. The candidate shall have successfully completed at least 60 semester hours of graduate study, which may include graduate study completed outside of the educational leadership program.

**Revised rule compared with proposed rule:** Substantial revisions were made in section 80-3.10(c)(3).

**Text of revised proposed rule and any required statements and analyses may be obtained from** Kirti Goswami, New York State Education Department, 89 Washington Avenue, Albany, NY 12234, (518) 474-8966, email: kgoswami@nysed.gov

**Data, views or arguments may be submitted to:** Kelly Grace, New York State Education Department, 89 Washington Avenue, Albany, New York 12234, (518) 486-3633, email: REGCOMMENTS@nysed.gov

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

**Revised Regulatory Impact Statement**

Since publication of a Proposed Rule Making in the State Register on September 13, 2018, the following substantial revisions were made to the proposed rule:

Section 80-3.10(c)(3)(ii)(b)(1) is amended to eliminate the language that states that for candidates who apply for, and meet the certification requirements in this subdivision by September 1, 2019, a higher education institution that the commissioner deems substantially equivalent, provided that such program leads to a professional certificate, or a similar certificate title and type, in the jurisdiction in which the higher education institution is located because this language was inadvertently added and is addressed by the new added subclause (b)(2) to subdivision (c)(3)(ii) of section 80-3.10 of the Commissioner's regulations.

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

**Revised Regulatory Flexibility Analysis**

Since publication of a Notice Proposed Rule Making in the State Register on September 13, 2017, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above revisions to the proposed rule do not require any revisions to the previously published Regulatory Flexibility Analysis.

**Revised Rural Area Flexibility Analysis**

Since publication of a Notice Proposed Rule Making in the State Register on September 13, 2017, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above revisions to the proposed rule do not require any revisions to the previously published Rural Area Flexibility Analysis.

**Revised Job Impact Statement**

Since publication of a Notice Proposed Rule Making in the State Register on September 13, 2017, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above revisions to the proposed rule do not require any revisions to the previously published Job Impact Statement.

**Assessment of Public Comment**

The agency received no public comment.

---



---

## State Board of Elections

---



---

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

**Voting by Certain Special Federal Voters**

**I.D. No.** SBE-47-17-00009-P

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

**Proposed Action:** Addition of Part 6219 to Title 9 NYCRR.

**Statutory authority:** Election Law, sections 11-220, 3-102[1] and 3-102[17]

**Subject:** Voting by certain special Federal voters.

**Purpose:** Provide procedures for certain special Federal voters.

**Text of proposed rule:** A new Part 6219 is added 9 NYCRR to read as follows:

6219 Certain Special Federal Voters Also Entitled to State and Local Ballots.

6219.1 Absentee Voters Entitled to Special Federal Ballot.

Voters who submit an otherwise valid Federal Post Card Application pursuant to Article 11 Title 2 of the Election Law and 52 USC § 20302[a][4] and select on such application the category "I am a US citizen residing outside the United States, and I intend to return" are entitled to a special federal ballot. Such voters when also duly registered to vote pursuant to Article 5 of the Election Law are entitled to the state and local ballot in conformity with the provisions of the Election Law.

6219.2 Procedure.



*Voters meeting the criteria of 6219.1 shall be entered into the special federal ballot transmittal system provided by the state board of elections. Such special federal voters shall be identified therein apart from other special federal voters as also entitled to receive a state and local ballot. Such voters shall receive the special federal ballot in conformity with state and federal law, and shall receive the state and local portion of the ballot in conformity with state law through the aforesaid transmittal system.*

**6219.3 No New State Law Entitlement.**

*Nothing herein shall be construed to permit a voter who does not meet the requirements for voter registration provided for in Article 5 of the Election law to receive a ballot containing state or local offices.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Brian L. Quail, Esq., New York State Board of Elections, 40 North Pearl Street, Suite 5, Albany, New York 12207-2729, (518) 474-2063, email: brian.quail@elections.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: New York State Election Law Sections 11-220; 3-102 [1], 3-102 [17] give the State Board of Elections the authority to promulgate rules relating to the administration of the election process.

2. Legislative objectives: The principle purpose of this proposal is implement Article 11 Title 2 of the Election Law in a manner that comports with operative state and federal law, in particular providing to certain special federal voters the state and local portion of the ballot when such voters are duly entitled to same as a matter of state law.

3. Needs and benefits: This proposal is needed to conform state and federal law and ensure proper processing of applications pursuant to Title 2 of Article 11 of the Election Law. The need and benefit of this regulation is that it ensures voter receive the correct ballot(s).

4. Costs: The proposed amendment is cost neutral in that it does not require any additional processing costs or other burdens.

5. Local government mandates: There are no additional responsibilities imposed by this rule upon any county, city, town, village, school district, fire district or other special district. The regulation provides for processing certain applications using existing resources.

6. Paperwork: This proposal imposes no new reporting or regulatory filing requirements.

7. Duplication: This proposal does not impose any duplicative regulatory burden or reporting requirements.

8. Alternatives: There is no alternative to this regulation. The regulation does not make policy choices; it conforms practices to relevant state and federal law.

9. Federal standards: This rulemaking is related to ensuring 52 USC § 20302 is properly applied.

10. Compliance schedule: Compliance can be immediate upon publication of the Notice of Adoption in the State Register.

#### **Regulatory Flexibility Analysis**

Under SAPA 202-b(3)(a), when a rule does not impose an adverse economic impact on small business or local government and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on such entities, the agency may file a Statement in Lieu of. This rule will not impact small business operations or local government functions. This rule provides procedures for processing certain applications for special federal ballots. It imposes no additional compliance, regulatory or reporting requirements on local governments or small businesses.

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

Under SAPA 202-bb(4)(a), when a rule does not impose an adverse economic impact on rural areas and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas, the agency may file a Statement in Lieu of. This rule has statewide application, providing procedure related to processing certain applications for special federal ballots. The proposed rule does not create any materially new reporting, recordkeeping or other routine compliance requirements other than to define how the optional use of the independent automated audit tool will be accomplished. Accordingly, this rule has no adverse impact.

#### **Job Impact Statement**

Under SAPA 201-a(2)(a), when it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities, the agency may file a Statement in Lieu of. This rulemaking, as is apparent from its nature and purpose, will not have an adverse impact on jobs or employment opportunities. The proposed amendment provides for a change to processing certain applications for special federal voters. This rulemaking imposes no regulatory burden on any facet of job creation or employment.

## New York State Gaming Commission

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

#### Anti-Stacking of NSAIDs, Add Diclofenac (HA) and Delete Meclofenamic Acid From 48-Hour NSAIDs

I.D. No. SGC-45-16-00004-RP

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

**Proposed Action:** Amendment of sections 4043.2(e) and 4120.2(e) of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19), 301(1), (2) and 902(1)

**Subject:** Anti-stacking of NSAIDs, add diclofenac (HA) and delete meclofenamic acid from 48-hour NSAIDs.

**Purpose:** To enable the Commission to preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

**Text of revised rule:** Paragraph 14 of subdivision (e) of section 4043.2 of 9 NYCRR would be amended, as follows:

§ 4043.2. Restricted use of drugs, medication and other substances.

\* \* \*

(e) The following substances are permitted to be administered by any means until 48 hours before the scheduled post time of the race in which the horse is to compete:

\* \* \*

(14) *no more than one of the following nonsteroidal anti-inflammatory drugs ([NSAID's] NSAIDs): diclofenac, flunixin (e.g., Banamine), ketoprofen (e.g., Orudis), [meclofenamic acid (e.g., Arquel), naproxen (e.g., Naprosyn, Equiproxen), and phenylbutazone (e.g., [Butazolidin] Butazolidin). One other such NSAID may be administered within one week of the race in which the horse is to compete, provided that such NSAID is administered at least 96 hours before such race;*

Paragraphs 9, 14 and 21 of subdivision (e) of section 4120.2 of 9 NYCRR would be amended, as follows:

§ 4120.2. Restricted use of drugs, medication and other substances.

\* \* \*

(e) The following substances are permitted to be administered by any means until 48 hours before the scheduled post time of the race in which the horse is to compete:

\* \* \*

(9) hormones and, *except for any formulation of methylprednisolone, non-anabolic steroids, e.g., progesterone, estrogens, chorionic gonadotropin, glucocorticoids, except in joint injections as restricted in subdivision (i) of this section;*

\* \* \*

(14) *no more than one of the following nonsteroidal anti-inflammatory drugs ([NSAID' s] NSAIDs): [Phenylbutazone (e.g., Butazolidin)] diclofenac, [Flunixin] flunixin (e.g., Banamine), ketoprofen (e.g., Orudis), [meclofenamic acid (Arquel),] naproxen (e.g., Naprosyn, Equiproxen), [Ketoprofen (e.g., Orudis)] and phenylbutazone (e.g., Butazolidin). One other such NSAID may be administered within one week of the race in which the horse is to compete, provided that such NSAID is administered at least 96 hours before such race;*

\* \* \*

[21] notwithstanding paragraph (9) of this subdivision, the corticosteroid methylprednisolone (e.g., Depo Medrol) is not a substance that is permitted to be administered by any means until 48 hours before the scheduled post time of the race in which the horse is to compete.]

**Revised rule compared with proposed rule:** Substantial revisions were made in sections 4043.2(e)(14) and 4120.2(e)(14).

**Text of revised proposed rule and any required statements and analyses may be obtained from** Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, PO Box 7500, Schenectady, NY 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

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

#### **Revised Regulatory Impact Statement**

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Rac-

ing, Pari-Mutuel Wagering and Breeding Law (“Racing Law”) Sections 103(2), 104(1, 19), 301(1, 2) and 902(1). Under Section 103(2), the Commission is responsible for supervising, regulating and administering all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Under Section 301, which applies to only harness racing, the Commission is authorized to supervise generally all harness race meetings and to adopt rules to prevent the circumvention or evasion of its regulatory purposes and provisions, and is directed to adopt rules to prevent horses from racing under the influence of substances affecting their speed. Section 902(1) authorizes the Commission to promulgate rules and regulations for an equine drug testing program that assures the public’s confidence and continues the high degree of integrity in pari-mutuel racing and to impose administrative penalties for racing a drugged horse.

2. Legislative objectives: To enable the Commission to preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: This revised rulemaking is necessary to adjust the Commission’s restricted time periods governing the administration of non-steroidal anti-inflammatory drugs (“NSAID”) within one week of a horse racing.

The revised proposal would allow the use of a second NSAID within one week of racing, provided it was used at least 96 hours before racing, in addition to the original proposal that would allow one NSAID to be used until 48 hours before racing. Currently, six NSAIDs may be used until 48 hours before racing under subdivision (e)(14) to 9 NYCRR § 4043.2 (thoroughbred racing) and 4120.2 (standardbred racing). As originally proposed, only one of these NSAIDs could be used as an exception to the general one-week restriction against using equine drugs at 9 NYCRR §§ 4043.2(h) and 4120.2(n). The revision will allow the use of a second NSAID, because this may provide a veterinary benefit to a race horse, within one week of racing.

Such revision will meet the original proposal’s objective of preventing concurrent (“stacking”) or other excessive administrations of NSAIDs to race horses. As revised, a person cannot combine NSAIDs in sub-clinical doses in the 48 hours before a horse’s race to conceal the impermissible administration of substances that could remain efficacious because of the synergy of combined NSAID administrations. Further, the overuse of multiple NSAIDs in the week before racing, aggressively to prepare a horse for racing, will be restricted by limiting NSAIDs to only two.

A second revision deletes meclufenamic acid from the list of NSAIDs that are permitted within one week of racing at 9 NYCRR §§ 4043.2(e)(14) and 4120.2(e)(14). This substance is no longer marketed by a pharmaceutical company and compounded forms may be efficacious for more than 48 hours. There is no veterinary necessity for its use within one week of racing and there is no national threshold for this drug.

The proposal would continue to add diclofenac to the list of permissible NSAIDs to use within one week of racing in standardbred horses by conforming 9 NYCRR § 4120.2 (e)(14) to 9 NYCRR § 4043.2(e)(14), which permits this for thoroughbred horses. This will be consistent with national threshold adopted by the Commission for standardbred horses at 9 NYCRR § 4120.3(7).

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no new or additional costs imposed by this rule upon regulated persons. The rule merely revises an existing rule in regard to allowable time of administration of various medications.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs imposed upon the Commission, the State, or local government. The rule will be implemented using the Commission’s existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed based upon the fact that the rule does not create any new mandatory duty or obligation, utilizes an existing regulatory framework and medication testing program, and merely modifies a medication rule.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None.

8. Alternatives. The Commission considered restricting only three NSAIDs by adopting the model anti-stacking (“secondary”) thresholds

recommended by the Association of Racing Commissioners International, Inc. (“ARCI”). This alternative was rejected because it is incomplete and restricted time periods are easier and safer for trainers to follow.

9. Federal standards: None.

10. Compliance schedule: Regulated persons will be able to achieve compliance with the rule upon publication of a Notice of Adoption in the New York State Register.

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

This rulemaking proposal does not necessitate a revision to the previously published analyses and statement and does not have an adverse effect on small businesses, local governments, jobs, or rural areas.

**Assessment of Public Comment**

The Commission received public comments from the New York Thoroughbred Horsemen’s Association (NYTHA) and the Racing Medication and Testing Consortium (RMTC).

NYTHA urges the Commission to consider uniformity with other jurisdictions and, while understanding the goal of simplifying the complicated national model rule of the Association of Racing Commissioners International, Inc. (ARCI), cautions against restricting horsepersons far more in New York than would the ARCI approach. Many states, particularly mid-Atlantic racing jurisdictions, have adopted the ARCI approach which, in particular, allows more than one non-steroidal anti-inflammatory drug (NSAID) to be used within one week of a race. NYTHA recommended that the Commission not take action until further discussions with RMTC and ARCI. The Commission has been in further contact with leading veterinarians and members of RMTC and ARCI and has revised its proposal to permit the use of a second NSAID within one week of racing. The Commission notes that the proposal continues the Commission’s approach of regulating equine drugs, including NSAIDs, with restricted time periods that provide clear guidance and assures trainers and veterinarians that those who abide by the time restrictions will not incur an equine drug positive. As when the Commission approved 48-hour restricted time periods to regulate six NSAIDs that are permitted within one week of racing, see December 31, 2014 State Register, p. 59, the Commission’s general restriction on equine drugs, the revised proposal is the best method that trainers may rely on when following accepted veterinary practices (e.g., clinical doses) to ensure compliance with the ARCI anti-stacking thresholds in other states. The Commission’s revised proposal also accomplishes the twin objectives of proscribing the stacking of all (the ARCI model rule regulates only three) NSAIDs and the overuse of multiple NSAIDs during race week, which is medically unnecessary and a health risk to race horses.

RMTC shares NYTHA’s concern that the Commission should allow more than one NSAID within one week of a race and similarly urges uniformity. As noted above, the Commission has revised the proposal to permit the use of a second NSAID but believes that its proposed restricted time periods are more complete than the ARCI model rule, easier to comprehend and follow, and beneficial because trainers and veterinarians can rely on the Commission’s approach to ensure that they will comply with the ARCI model rule, which only applies laboratory thresholds. RMTC also indicates that one research article disputes that stacking NSAIDs may create a greater clinical effect. This is only one aspect of the anti-stacking rule proposal, however, and RMTC does not advocate that racing commissions should no longer attempt to regulate the stacking of NSAIDs.

---



---

## Department of Health

---



---

### NOTICE OF ADOPTION

**Physician and Pharmacies; Prescribing, Administering and Dispensing for the Treatment of Narcotic Addiction**

**I.D. No.** HLT-21-17-00001-A

**Filing No.** 980

**Filing Date:** 2017-11-07

**Effective Date:** 2017-11-22

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

**Action taken:** Amendment of section 80.84 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 3308(2)

**Subject:** Physician and Pharmacies; Prescribing, Administering and Dispensing for the Treatment of Narcotic Addiction.



**Purpose:** To allow any authorized practitioner to prescribe, administer and dispense buprenorphine for the treatment of narcotic addiction.

**Text or summary was published** in the May 24, 2017 issue of the Register, I.D. No. HLT-21-17-00001-P.

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

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

#### Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 5th year after the year in which this rule is being adopted.

#### Assessment of Public Comment

Public comments were submitted to the NYS Department of Health (DOH) in response to this regulation. The public comment period for this regulation ended on July 10, 2017. The Department received two comments.

These comments and the Department of Health's responses are summarized below:

**Comment:** A joint comment received from the American Society of Addiction Medicine (ASAM) and the New York Society of Addiction Medicine (NYSAM) indicate that the proposed rulemaking to expand the authority to treat addiction patients with buprenorphine to nurse practitioners (NPs) and physician assistant (PAs) would align state law with the newly enacted Federal law. Comments also applaud the Department of Health and New York State for taking the lead and begin to expand access to this evidence-based treatment to save lives. The NYSAM and ASAM share the State of New York's goal of providing access to quality and evidence-based comprehensive addiction treatment services.

**Comment:** One comment was on behalf of an individual who was in support of the proposed changes.

Since both comments to this proposed regulation were supportive, no changes were made to the proposed regulations.

### NOTICE OF ADOPTION

#### Communication Between Clinical Laboratory Physicians and Patients

**I.D. No.** HLT-25-17-00010-A

**Filing No.** 977

**Filing Date:** 2017-11-02

**Effective Date:** 2017-11-22

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

**Action taken:** Amendment of section 34-2.11 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, sections 586 and 587

**Subject:** Communication Between Clinical Laboratory Physicians and Patients.

**Purpose:** To allow lab physicians to discuss the meaning and interpretation of test results with patients under certain circumstances.

**Text or summary was published** in the June 21, 2017 issue of the Register, I.D. No. HLT-25-17-00010-P.

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

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

#### Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 5th year after the year in which this rule is being adopted.

#### Assessment of Public Comment

The New York State Department of Health ("Department") received two public comments in response to the proposed amendment to Title 10 NYCRR Section 34-2.11, which would allow licensed laboratory physicians, under specific circumstances, to communicate test results to patients. These comments and the Department's response are summarized below:

**Comment:** Comments received in support of the proposed regulation stated that it will help ensure that patients are aware of, and understand, their laboratory test results. In addition, a commenter praised that having an additional avenue of communication is particularly important for criti-

cal value test results in cases where the ordering provider cannot be reached.

**Response:** These comments in support of the proposed regulation are noted.

**Comment:** One commenter stated that the proposed regulation could result in a lack of involvement and follow up with the ordering provider. An emphasis was placed on test results involving communicable diseases and sexually transmitted diseases. It was suggested that the Department of Health provide additional guidance in the form of additional rules, a frequently asked question document or a webinar.

**Response:** The proposed regulation does not circumvent involvement of the ordering provider; it provides an additional avenue for communication of test results to patients. Federal and State regulations and clinical laboratory standards of practice already exist that require laboratories to report results to the ordering provider. These existing requirements will ensure the continued involvement of the ordering provider. No revisions to the proposed regulation were made as a result of this comment.

## Department of Labor

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

#### Employee Scheduling (Call-In Pay)

**I.D. No.** LAB-47-17-00011-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 142-2.3 and 142-3.3 of Title 12 NYCRR.

**Statutory authority:** Labor Law, sections 21(11) and 659(2)

**Subject:** Employee Scheduling (Call-In Pay).

**Purpose:** To strengthen existing call-in pay protections involving employee scheduling.

**Text of proposed rule:** Sections 142-2.3 and 142-3.3 of 12 NYCRR are amended to read as follows:

§ 142-2.3 Call-in pay.

(a) *Call-in pay shall be provided as set forth below.*

(1) *Reporting to work.* An employee who by request or permission of the employer reports for work on any [day] shift shall be paid for at least four hours[, or the number of hours in the regularly scheduled shift, whichever is less, at the basic minimum hourly wage] of call-in pay.

(2) *Unscheduled shift.* An employee who by request or permission of the employer reports to work for any shift for hours that have not been scheduled at least 14 days in advance of the shift shall be paid an additional two hours of call-in pay.

(3) *Cancelled shift.* An employee whose shift is cancelled within 72 hours of the scheduled start of such shift shall be paid for at least four hours of call-in pay.

(4) *On-call.* An employee who by request or permission of the employer is required to be available to report to work for any shift shall be paid for at least four hours of call-in pay.

(5) *Call for schedule.* An employee who by request or permission of the employer is required to be in contact with the employer within 72 hours of start of the shift to confirm whether to report to work shall be paid for at least four hours of call-in pay.

(b) *Calculation of call-in pay.* Call-in pay shall be calculated as follows.

(1) *Actual attendance.* Payments for time of actual attendance shall be calculated at the employee's regular rate or overtime rate of pay, whichever is applicable, minus any allowances permitted under this Part.

(2) *Minimum rate.* Payments for other hours of call-in pay shall be calculated at the basic minimum hourly rate with no allowances. Such payments are not payments for time worked or work performed and need not be included in the regular rate for purposes of calculating overtime pay.

(3) *Offsets.* Call-in pay shall not be offset by the required use of leave time, or by payments in excess of those required under this Part.

(4) *Shorter work days.* The four hours of call-in pay for reporting to work and for cancelled shifts under paragraphs (1) and (3) of subdivision (a) of this section may be reduced to the lesser number of hours that the employee normally works for that shift, as long as the employee's total hours worked, or scheduled to work, for that shift do not change from week to week.



(c) *Applicability.* This section applies to all employees, except as provided below.

(1) This section shall not apply to employees who are covered by a valid collective bargaining agreement that expressly provides for call-in pay.

(2) Paragraphs (2) through (5) of subdivision (a) of this section shall not apply to employees during work weeks when their weekly wages exceed 40 times the applicable basic hourly minimum wage rate.

(3) Paragraph (2) of subdivision (a) of this section shall not apply to any new employee during the first two weeks of employment or to any regularly scheduled employee who volunteers to cover: (i) a new and additional shift during the first two weeks that the shift is worked; or (ii) a shift that had been scheduled at least fourteen days in advance to be worked by another employee. For purposes of this and the following paragraph, “regularly scheduled employee” means an employee who is scheduled at least fourteen days in advance for shifts consistent with a written good faith estimate of hours provided by the employer at the time of hiring (or at the time this section takes effect, whichever is later), which may be amended at the employee’s request. In addition, as used in this paragraph, “volunteers to cover” means acceptance of any request from another regularly scheduled employee or of an open request from the employer that is extended to all eligible employees, with no penalty or consequence for any employee who does not extend or accept such requests.

(4) Paragraph (3) of subdivision (a) of this section shall not apply when an employer cancels a shift at the employee’s request for time off, or when operations at the workplace cannot begin or continue due to an act of God or other cause not within the employer’s control, including, but not limited to, a state of emergency declared by federal, state, or local government, provided, however, that where operations can begin or continue but staffing needs are reduced due to act of God or other cause not within the employer’s control, the 72-hour period of paragraph (3) of subdivision (a) of this section shall be reduced to 24-hours for regularly scheduled employees.

#### § 142-3.3 Call-in pay.

(a) Call-in pay shall be provided as set forth below.

(1) *Reporting to work.* An employee who by request or permission of the employer reports for work on any [day] shift shall be paid for at least four hours[, or the number of hours in the regularly scheduled shift, whichever is less, at the basic minimum hourly wage] of call-in pay.

(2) *Unscheduled shift.* An employee who by request or permission of the employer reports to work for any shift for hours that have not been scheduled at least 14 days in advance of the shift shall be paid an additional two hours of call-in pay.

(3) *Cancelled shift.* An employee whose shift is cancelled within 72 hours of the scheduled start of such shift shall be paid for at least four hours of call-in pay.

(4) *On-call.* An employee who by request or permission of the employer is required to be available to report to work for any shift shall be paid for at least four hours of call-in pay.

(5) *Call for schedule.* An employee who by request or permission of the employer is required to be in contact with the employer within 72 hours of start of the shift to confirm whether to report to work shall be paid for at least four hours of call-in pay.

(b) *Calculation of call-in pay.* Call-in pay shall be calculated as follows.

(1) *Actual attendance.* Payments for time of actual attendance shall be calculated at the employee’s regular rate or overtime rate of pay, whichever is applicable, minus any allowances permitted under this Part.

(2) *Minimum rate.* Payments for other hours of call-in pay shall be calculated at the basic minimum hourly rate with no allowances. Such payments are not payments for time worked or work performed and need not be included in the regular rate for purposes of calculating overtime pay.

(3) *Offsets.* Call-in pay shall not be offset by the required use of leave time, or by payments in excess of those required under this Part.

(4) *Shorter work days.* The four hours of call-in pay for reporting to work and for cancelled shifts under paragraphs (1) and (3) of subdivision (a) of this section may be reduced to the lesser number of hours that the employee normally works for that shift, as long as the employee’s total hours worked, or scheduled to work, for that shift do not change from week to week.

(c) *Applicability.* This section applies to all employees, except as provided below.

(1) This section shall not apply to employees who are covered by a valid collective bargaining agreement that expressly provides for call-in pay.

(2) Paragraphs (2) through (5) of subdivision (a) of this section shall not apply to employees during work weeks when their weekly wages exceed 40 times the applicable basic hourly minimum wage rate.

(3) Paragraph (2) of subdivision (a) of this section shall not apply

to any new employee during the first two weeks of employment or to any regularly scheduled employee who volunteers to cover: (i) a new and additional shift during the first two weeks that the shift is worked; or (ii) a shift that had been scheduled at least fourteen days in advance to be worked by another employee. For purposes of this and the following paragraph, “regularly scheduled employee” means an employee who is scheduled at least fourteen days in advance for shifts consistent with a written good faith estimate of hours provided by the employer at the time of hiring (or at the time this section takes effect, whichever is later), which may be amended at the employee’s request. In addition, as used in this paragraph, “volunteers to cover” means acceptance of any request from another regularly scheduled employee or of an open request from the employer that is extended to all eligible employees, with no penalty or consequence for any employee who does not extend or accept such requests.

(4) Paragraph (3) of subdivision (a) of this section shall not apply when an employer cancels a shift at the employee’s request for time off, or when operations at the workplace cannot begin or continue due to an act of God or other cause not within the employer’s control, including, but not limited to, a state of emergency declared by federal, state, or local government, provided, however, that where operations can begin or continue but staffing needs are reduced due to act of God or other cause not within the employer’s control, the 72-hour period of paragraph (3) of subdivision (a) of this section shall be reduced to 24-hours for regularly scheduled employees.

**Text of proposed rule and any required statements and analyses may be obtained from:** Michael Paglialonga, NYS Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-4380, email: regulations@labor.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

##### STATUTORY AUTHORITY:

Labor Law §§ 21(11) and 659(2).

##### LEGISLATIVE OBJECTIVES:

The Legislature, in adopting the New York State Minimum Wage Act, empowered the Commissioner of Labor to promulgate regulations as she “deems necessary or appropriate to carry out the purposes of this article and to safeguard the minimum wage” (L. 1960, Ch. 619, § 2, at Labor Law § 652(2) & (4)), to order “such modifications of or additions to any regulations as he may deem appropriate to effectuate the purposes of this article” (Labor Law § 659(2)), and to investigate hours worked (Labor Law §§ 660(b)(1) & 661).

The regulations to be amended. In 1960, based on the Legislature’s delegation of authority, the Commissioner promulgated a new Minimum Wage Order for Miscellaneous Industries and Occupations (currently codified at 12 NYCRR Part 142) (hereinafter “the Wage Order”). The Wage Order contains “Call-in pay” regulations (12 NYCRR §§ 142-2.3 & 142-3.3) that require employers to pay employees who report to work for four hours of work or the amount of their regularly scheduled shift, whichever is less, at the applicable minimum wage rate.

Public hearings. In 2017, the Commissioner published notices of hearings pursuant to Labor Law § 659(2) soliciting public testimony regarding employer scheduling practices including “just-in-time,” “call-in,” or “on-call” scheduling for employees subject to the Wage Order. The Commissioner held those hearings on September 28, October 3, October 11, and October 17, 2017, in Albany, Binghamton, Buffalo, and New York City, respectively. Recordings of those hearings, and copies of written testimony received in connection with those hearings, are available online at [www.labor.ny.gov/scheduling](http://www.labor.ny.gov/scheduling).

The proposed rule. The proposed regulation amends the Wage Order’s Call-in pay regulations (12 NYCRR §§ 142-2.3 & 142-3.3) to strengthen the protections for employees who report to work, who report for unscheduled shifts, who have shifts cancelled at the last minute, who are required to be on-call, and who are required to call-in to be scheduled for work. The proposed regulation includes provisions addressing the calculation and applicability of call-in pay under various circumstances.

##### NEEDS AND BENEFITS:

Testimony received through the four public hearings referenced above demonstrated that work schedule unpredictability has a detrimental impact both employees and employers.

Employers. Business and industry advocates agreed that many industries require flexibility and employers need a mechanism to adjust to unpredictable circumstances like an employee calling out sick, a worker leaving unexpectedly, delays in the delivery of materials or inclement weather conditions. For businesses, testimony pointed to a decrease in employee

turnover and an increase in attendance and worker loyalty as likely benefits of predictable scheduling practices. In addition, these proposed regulations still allow employers, without an unfair burden, to contend with unforeseen issues, including severe weather, fluctuations due to seasonal demand and other market conditions like material supply and emergency situations.

**Employees.** Many workers and advocates described the precarious nature of jobs that involve schedules with little to no worker input, schedules that vary wildly day-to-day or week-to-week, and schedules that demand around-the-clock availability. Workers said they often do not find out until hours before their shift whether they will work that day and face involuntary rotation or shift extensions with little to no notice. Even as part-time workers, they must be ready to work during the amount of time equivalent to working a full-time job, but are not compensated and, in the end, do not actually work many shifts for which they're supposed to be available. The hearings revealed that low wage workers are most likely to contend with the difficulties of unpredictable work schedules as well as be severely impacted by unpredictable work scheduling practices that commonly involve announcing schedules less than a week, or sometimes less than a day, in advance. Additionally:

- Testimony at these hearings showed that unpredictable work schedules negatively impact workers' income, leaving them without the ability to hold a second job – potentially having to turn down all other opportunities for outside income – or receive a reliable and predictable paycheck. These scheduling practices prevent workers from working full-time or making overtime, budget for recurring expenses and large purchases, pursue further educational opportunities like attending college classes, and securing reliable and affordable transportation.

- Testimony showed that workers were unable to predict childcare with employees sometimes being forced to pay in advance and lose that money if the need never materialized. Such scheduling practices also impacted their eligibility for supportive services like childcare subsidies and limited their access to high-quality and reliable childcare.

- Testimony also pointed to the inability to achieve an appropriate work-life balance with unpredictable schedules that cause stress and psychological distress, which has been shown to lead to unhealthy behaviors like smoking and excessive alcohol consumption. In addition, these practices made it more difficult for individuals trying to get their life back together (as a domestic violence survivor, for example) by eliminating dependable routines. Testimony pointed to problems workers had attending important family gatherings, buying tickets to events, and attending to their own or a family member's health needs.

- Testimony also showed that unpredictable scheduling is bad for business, resulting in high turnover, which leads to lost productivity and higher unemployment insurance contributions. This, in turn, can cause reduced morale and low customer satisfaction, which, in industries like home health care, can leave patients severely impacted. Today, sophisticated technology and algorithms has changed the nature of work and how workers are notified of work hours and require the state's regulatory framework to be updated to address and acknowledge the realities of modern working conditions.

- Testimony pointed to numerous benefits of increased predictability in scheduling, including stability in workers' lives as workers get more control and are allowed a voice in setting their own schedules. Workers would be compensated for the time they give up for the sake of the employer but retain the ability to have a flexible schedule if desired and the ability to swap shifts without employer intervention – all while participating in a transparent scheduling process.

The proposed regulation updates the Wage Order's long-established call-in pay regulations (12 NYCRR §§ 142-2.3 & 142-3.3) to protect minimum wage employees from unpredictable work schedule practices, while providing for appropriate exceptions for emergency and other unforeseen circumstances.

#### **COSTS:**

This proposed regulation does not impose any mandatory costs on the regulated community, as employers may avoid call-in pay by providing sufficient notice to employees of work schedules. Additionally, the requirements of the proposed regulation provide for exceptions for unforeseeable or unavoidable changes or delays in informing employees of their work schedule, including changes necessitated due to declared states of emergency and during the initial two weeks of an employee's employment. Costs for employers who fail to comply with the requirements of the proposed regulation are limited to the payment of employees at their regular rate of pay for actual attendance at work and pay for other hours required by this proposed rule at the applicable minimum wage rate.

The Department of Labor also estimates that there will be no increased or additional costs to the Department, or to state and local governments to implement this regulation.

#### **LOCAL GOVERNMENT MANDATES:**

None. Employees of federal, state and municipal governments and po-

litical subdivisions thereof are generally excluded from coverage under the Minimum Wage Law and the Wage Order by Labor Law §§ 651(5)(n) and 12 NYCRR §§ 142-2.14(b) & 142-3.12(b).

#### **PAPERWORK:**

This rulemaking does not impact any reporting requirements currently required in either statute or regulation.

#### **DUPLICATION:**

This rulemaking does not duplicate, overlap, or conflict with any other state or federal requirements.

#### **ALTERNATIVES:**

There were no significant alternatives considered.

#### **FEDERAL STANDARDS:**

There are no federal standards relating to this rule.

#### **COMPLIANCE SCHEDULE:**

Employers who do not currently provide timely notice of scheduling changes will need up to 14 days to comply with this rulemaking.

#### **Regulatory Flexibility Analysis**

**EFFECT OF RULE:** The proposed regulation amends the Minimum Wage Order for Miscellaneous Industries and Occupations (12 NYCRR Part 142) (hereinafter "the Wage Order") to strengthen the Call-in pay regulation (12 NYCRR §§ 142-2.3 & 142-3.3) to protections for employees who report to work, who report for unscheduled shifts, who have shifts cancelled at the last minute, who are required to be on-call, and who are required to call-in to be scheduled for work. The proposed regulation includes provisions addressing the calculation and applicability of call-in pay under various circumstances. The proposed rule does not apply to local governments.

**COMPLIANCE REQUIREMENTS:** Small businesses and local governments will not have to undertake any new reporting, recordkeeping, or other affirmative act, other than providing timely notice of scheduling changes, in order to comply with this regulation.

**PROFESSIONAL SERVICES:** No professional services would be required to effectuate the purposes of this regulation.

**COMPLIANCE COSTS:** The Department estimates that there will be no costs to the small businesses or local governments to implement this regulation. See Regulatory Impact Statement, at Costs.

**ECONOMIC AND TECHNOLOGICAL FEASIBILITY:** The regulation does not require any use of technology to comply.

**MINIMIZING ADVERSE IMPACT:** The Department does not anticipate that this regulation will adversely impact small businesses or local governments. Since no adverse impact to small businesses or local governments will be realized, it was unnecessary for the Department to consider approaches for minimizing adverse economic impacts as suggested in State Administrative Procedure Act § 202-b(1).

**SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:** The Department does not anticipate that this rule will have an adverse economic impact upon small businesses or local governments, nor will it impose new reporting, recordkeeping, or other compliance requirements upon them. Nevertheless, small businesses and local governments have an opportunity to participate in the rulemaking process by participating in public hearings that were held pursuant to Labor Law § 659 and by providing comment during the public comment period.

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

**TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:** The Department anticipates that this regulation will have a positive or neutral impact upon all areas of the state; there is no adverse impact anticipated upon any rural area of the state resulting from adoption of this regulation.

**REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS:** This regulation will not impact reporting, recordkeeping or other compliance requirements.

**PROFESSIONAL SERVICES:** No professional services will be required to comply with this regulation.

**COSTS:** The Department estimates that there will be no new or additional costs to rural areas to implement this regulation. See Regulatory Impact Statement at Costs.

**MINIMIZING ADVERSE IMPACT:** The Department does not anticipate that this regulation will have an adverse impact upon any region of the state. As such, different requirements for rural areas were not necessary.

**RURAL AREA PARTICIPATION:** The Department does not anticipate that the regulation will have an adverse economic impact upon rural areas nor will it impose new reporting, recordkeeping, or other compliance requirements. Nevertheless, rural areas in the state have an opportunity to participate in the rulemaking process by participating in public hearings that were held pursuant to Labor Law § 659 and by providing comment during the public comment period.

#### **Job Impact Statement**

**NATURE OF IMPACT:** The Department of Labor (hereinafter "Department") projects there will be no adverse impact on jobs or employment



opportunities in the State of New York as a result of this regulation. The nature and purpose of this regulation is such that it will not have an adverse impact on jobs or employment opportunities.

**CATEGORIES AND NUMBERS AFFECTED:** The Department does not anticipate that this regulation will have an adverse impact on jobs or employment opportunities in any category of employment. This regulation will apply to employees covered by the Minimum Wage Order for Miscellaneous Industries and Occupations (12 NYCRR Part 142) (hereinafter "the Wage Order") and will exclude workers who are covered by collective bargaining agreements that provide for call-in pay and workers whose weekly wages exceed 40 times the applicable minimum wage. The Wage Order covers all industries and occupations other than those that are covered by the hospitality and the building services industries. The Department's Division of Research and Statistics estimates that just under one million employees will be covered by this regulation, based on the number of employees who work in industries and occupations other than hospitality and building service whose weekly wages do not exceed 40 times the hourly minimum wage.

**REGIONS OF ADVERSE IMPACT:** The Department does not anticipate that this regulation will have an adverse impact upon jobs or employment opportunities statewide or in any particular region of the state.

**MINIMIZING ADVERSE IMPACT:** Since the Department does not anticipate any adverse impact upon jobs or employment opportunities resulting from this regulation, no measures to minimize any unnecessary adverse impact on existing jobs or to promote the development of new employment opportunities are required.

**SELF-EMPLOYMENT OPPORTUNITIES:** The Department does not foresee a measureable impact upon opportunities for self-employment resulting from adoption of this regulation.

---



---

## Public Service Commission

---



---

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

#### Con Edison's Petition for Approval of the Smart Solutions for Natural Gas Customers Program

**I.D. No.** PSC-47-17-00010-P

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

**Proposed Action:** The Commission is considering a petition filed by Consolidated Edison Company of New York, Inc. (Con Edison) on September 29, 2017, requesting approval of the Smart Solutions for Natural Gas Customers Program.

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

**Subject:** Con Edison's petition for approval of the Smart Solutions for Natural Gas Customers Program.

**Purpose:** To consider Con Edison's multi-solution strategy to decrease gas usage and procure alternative resources.

**Substance of proposed rule:** The Public Service Commission (Commission) is considering a petition filed by Consolidated Edison Company of New York, Inc. (Con Edison) on September 29, 2017, requesting approval of the Smart Solutions for Natural Gas Customers Program. The program is a multi-solution strategy to decrease gas usage and procure alternative resources so that Con Edison may meet its customers' demand for natural gas despite a forecasted growing shortfall of peak gas day pipeline capacity. The full text of the petition may be reviewed online at the Department of Public Service web page: [www.dps.ny.gov](http://www.dps.ny.gov). The Commission may adopt, reject, or modify, in whole or in part, the relief proposed, and may resolve other related matters.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: [john.pitucci@dps.ny.gov](mailto: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](mailto: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-0606SP1)

---



---

## Department of State

---



---

### AMENDED NOTICE OF ADOPTION

#### Distance Learning for Qualifying Real Estate Appraisal Courses

**I.D. No.** DOS-26-17-00002-AA

**Filing No.** 978

**Filing Date:** 2017-11-02

**Effective Date:** 2018-01-30

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

**Action taken:** Amendment of sections 1103.2(e), 1103.3(i); addition of sections 1103.13, 1103.14, 1103.15, 1103.16, 1107.29, 1107.30, 1107.31 and 1107.32 to Title 19 NYCRR.

**Amended action:** This action amends the rule that was filed with the Secretary of State on October 2, 2017, to be effective January 30, 2018, File No. 00826. The notice of adoption, I.D. No. DOS-26-17-00002-A, was published in the October 18, 2017 issue of the *State Register*.

**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 amended 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 1103.13, 1103.14, 1103.15 and 1103.16 of Title 19 NYCRR are added to read as follows:

#### 1103.13 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 1103.14, 1103.15 and 1103.16.*

#### 1103.14 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.



**1103.15 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.

**1103.16 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.

**Amended rule as compared with adopted rule:** Nonsubstantive revisions were made in sections 1103.13, 1103.14, 1103.15 and 1103.16.

**Text of amended 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

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

Changes made to the last published rule do not necessitate revisions to the previously published: Rural Area Flexibility Analysis; Regulatory Impact Statement; Regulatory Flexibility Analysis for small businesses and local governments; or Job Impact Statement. The Department has made technical corrections to the rulemaking to provide correct number citations from the originally proposed 1103.12 – 1103.15, to 1103.13 – 1103.16. Accordingly, non-substantive changes were made to ensure proper citations of the proposed rule as there already exists a Section 1103.12.

## Department of Taxation and Finance

### NOTICE OF ADOPTION

#### Metropolitan Transportation Business Tax Surcharge

**I.D. No.** TAF-51-16-00002-A

**Filing No.** 979

**Filing Date:** 2017-11-07

**Effective Date:** 2017-11-22

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

**Action taken:** Amendment of section 9-1.2 of Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subdivision First; 209-B, subdivision First; and L. 2014, ch. 59, part A, section 7

**Subject:** Metropolitan Transportation Business Tax Surcharge.

**Purpose:** To provide metropolitan transportation business tax surcharge rate for tax year 2017.

**Text or summary was published** in the December 21, 2016 issue of the Register, I.D. No. TAF-51-16-00002-EP.

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

**Text of rule and any required statements and analyses may be obtained from:** Kathleen O'Connell, Tax Regulations Specialist II, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2070, email: kathleen.oconnell@tax.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.

## Workers' Compensation Board

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

#### Impairment Guidelines for Schedule Loss of Use Evaluations

**I.D. No.** WCB-36-17-00015-RP

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

**Proposed Action:** Addition of section 325-1.6 to Title 12 NYCRR.

**Statutory authority:** Workers' Compensation Law, sections 15(3)(x), 117 and 141

**Subject:** Impairment Guidelines for Schedule Loss of Use Evaluations.

**Purpose:** Incorporate by reference Impairment Guidelines.

**Text of revised rule:** A new section 325-1.6 is added to Title 12 NYCRR as follows:

325-1.6 *The Impairment Guidelines for Schedule Loss of Use Determinations*

a) All evaluations of permanent impairment for use in a schedule loss of use determination shall be performed in accordance with the Workers' Compensation Guidelines for Determining Impairment, First Edition, November 22, 2017, effective January 1, 2018, which is herein incorporated by reference. Such evaluations must be completed in the format prescribed by the Chair.

b) Obtaining the Workers' Compensation Guidelines for Determining Impairment. The Workers' Compensation Guidelines for Determining Impairment incorporated by reference herein may be examined at the office of the Department of State, 99 Washington Avenue, Albany, New York, 12231, the Legislative Library, the libraries of the New York State Supreme Court, and the district offices of the Board. Copies may be downloaded

from the Board's website or obtained from the Board by submitting a request in writing, with the appropriate fee, identifying the specific guideline requested and the choice of format to Publications, New York State Workers' Compensation Board, 328 State Street, Schenectady, New York 12305-2318. Information about the Workers' Compensation Guidelines for Determining Impairment can be requested by email at GENERAL\_INFORMATION@wcb.ny.gov, or by telephone at 1-800-781-2362. The Workers' Compensation Guidelines for Determining Impairment are available on paper or compact disc. A fee of ten dollars will be charged for the guideline requested in paper format, and a fee of five dollars will be charged for a compact disc. Payment of the fee shall be made by check or money order payable to "Chair WCB."

**Revised rule compared with proposed rule:** Substantial revisions were made in sections 300.2, 300.39 and 325-1.6.

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

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

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

**Additional matter required by statute:** Workers' Compensation Guidelines for Determining Impairment, First Edition, November 22, 2017, effective January 1, 2018 is incorporated by reference.

#### **Revised Regulatory Impact Statement**

1. Statutory authority: The Workers' Compensation Board (hereinafter referred to as Board) is authorized to add 12 NYCRR 325-1.6. Workers' Compensation Law (WCL) Sections 141 and 117(1) authorize the Chair to adopt reasonable rules consistent with and supplemental to the provisions of the WCL. WCL section 15(x) requires the Board to adopt new permanency impairment guidelines.

2. Legislative objectives: Section 15(x) of the WCL requires the Board to consult with labor, business, medical, and insurance representatives on revisions to the permanency impairment guidelines. The Board must propose for public comment revised permanency impairment guidelines for the schedule loss of use injuries covered by paragraphs (a) through (v) of subdivision (3) of section 15 of the WCL. The revisions will reflect the advances in modern medicine that result in better outcomes. The Board must adopt the new permanency guidelines by January 1, 2018. The 2012 Permanency Guidelines paragraphs pertaining to WCL § 15(3)(a)-(v) will be repealed on January 1, 2018.

3. Needs and benefits: Section 325-1.6 incorporates by reference the proposed 2017 Workers' Compensation Guidelines for Determining Impairment.

4. Costs: There are no additional projected costs to regulated parties who may be affected by the amendment, as the regulation adopts permanency impairment guidelines designed to reflect improved healing and outcomes. There are no projected costs to the Board, State and local governments.

5. Local government mandates: The proposed amendment does not impose any additional mandate, duty or responsibility upon any municipality or governmental entity.

6. Paperwork: The proposed regulations do not require additional paperwork.

7. Duplication: The statutory authority for the revision to the impairment guidelines exists in section 15(x) of the WCL. It explicitly requires regulations to adopt revised permanency impairment guidelines.

8. Alternatives: There were no significant alternative proposals under consideration.

9. Federal standards: There are no applicable federal standards which address the standards contained in the proposed regulation.

10. Compliance schedule: There is no new compliance burden on employers.

#### **Revised Regulatory Flexibility Analysis**

##### 1. Effect of rule:

This proposed rule applies to any claimant seeking a schedule loss of use determination. It provides impairment guidelines for conducting impairment evaluations and making schedule loss of use determinations. The rule will have no effect on local governments.

##### 2. Compliance requirements:

Under this new rule, evaluations of permanent impairment must be completed using the Workers' Compensation Guidelines for Determining Impairment.

##### 3. Professional services:

The Board believes that no professional services will be needed to comply with this rule. This new rule simply offers revised guidelines on making schedule loss of use determinations.

##### 4. Compliance costs:

This proposal does not involve any new compliance costs. It offers revised guidelines for making schedule loss of use determinations.

##### 5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed rule to comply with the rule.

##### 6. Minimizing adverse impact:

The Board does not anticipate any increased costs or adverse impact, other than revised guidelines to follow in making schedule loss of use determinations. The new rule establishes guidelines for making those determinations in response to a legislative mandate.

##### 7. Small business and local government participation:

Pursuant to the legislative mandate the Board conferred and consulted with labor, business, medical providers, insurance carriers and self-insured employers on the draft Impairment Guidelines on August 15, 2017 at Board offices around the State.

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

##### 1. Types and estimated numbers of rural areas:

This rule applies to any schedule loss of use determinations for claimants in New York State, regardless of geographical location. The proposed regulation provides a revised system for evaluating permanent impairment and applies to all claimants.

##### 2. Reporting, recordkeeping and other compliance requirements:

Under this rule, the evaluations of permanent impairment must be made in the format prescribed by the Chair. There is currently a form (C-4.3) that is used for this purpose. It has simply been included with the incorporation of the Impairment Guidelines for clarity's sake.

##### 3. Costs:

This proposal will not impose any compliance costs on rural areas. The rule solely implements revised Impairment Guidelines.

##### 4. Minimizing adverse impact:

This proposed rule is in response to a legislative mandate, and establishes revised impairment guidelines for use in schedule loss of use determinations.

##### 5. Rural area participation:

The Board is implementing these guidelines in response to a legislative mandate.

#### **Revised Job Impact Statement**

##### 1. Nature of Impact

The impairment guidelines proposed in these rules are not expected to have any impact on jobs in New York State. These guidelines simply create a system to help in making schedule loss of use determinations.

##### 2. Categories and Numbers Affected

The impairment guidelines are not expected to have any adverse impact on jobs.

##### 3. Regions of Adverse Impact

The impairment guidelines do not affect any region specifically, but impact across the state – however, these guidelines are for making schedule loss of use determinations and are not expected to have any impact on jobs.

##### 4. Minimizing Adverse Impact

The proposed rules provide that medical examinations in determining impairment comply with the Workers' Compensation Guidelines for Determining Impairment. There is not expected to be any impact on jobs with these guidelines.

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

The Chair and Board received approximately 400 formal written comments from Survey Monkey, emailed comments, and regular mail. Additionally, the Board received approximately 1,993 form letters from individuals using a website form, approximately 398 form letters from individuals, a petition with approximately 7,875 signatures, and approximately 17,000 postcards.

After the public comment period closed, the Board received an additional 1,100 postcards from associations objecting to the proposed changes, as well as approximately 37 additional form letters, a hard copy of a form letter with approximately 780 signatures from a labor organization, and approximately five comments from individuals.

Most of the comments received by the Board objected to the proposed changes, citing the legislative mandate to take into account advancements in modern medicine only and that the proposals were broader than necessary.

Most detailed comments, from claimant representatives and associations as well as business owners, carriers, health care providers, and in some instances individual claimants, objected to the use of pain as a factor in SLU awards, because it's too subjective.

The Board received many comments from various individuals and associations, as well as legislators, objecting to the ability of injured workers

to be questioned without counsel and the use of a questionnaire, as well as the requirement that claimants be cooperative.

Nearly all comments from claimant organizations, TPAs and law firms, as well as several comments from legislators, objected to the use of loss of earning power as a factor in determining SLU awards.

Many of the written comments from individuals objected to changing the impairment guidelines at all.

The full Assessment of Public Comment can be viewed at:  
[www.wcb.ny.gov/revised-impairment-guidelines-regulation](http://www.wcb.ny.gov/revised-impairment-guidelines-regulation)