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 critical 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.

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 case 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 political 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. 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

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

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

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

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

(17-G-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.