

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; or 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.

Office of Children and Family Services

EMERGENCY RULE MAKING

Performance and Outcome Based Provisions for Preventive Services

I.D. No. CFS-36-07-00002-E
Filing No. 871
Filing date: Aug. 15, 2007
Effective date: Aug. 15, 2007

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

Action taken: Amendment of section 423.5 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 153-k and 409-a; and L. 2007, chs. 53 and 57 (part H)

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

Specific reasons underlying the finding of necessity: To require preventive services to include performance and outcome-based provisions to promote the efficient use of State and local resources so that resources are used to achieve desired results. The regulation defines performance and outcome-based provisions and specifies the authorized fiscal consequence that may be imposed in the absence of the required provisions. The regulation also updates regulatory conditions for State reimbursement of district

expenditures for preventive services so that they are consistent with existing statutory and budgetary standards. Part H of chapter 57 of the Laws of 2007 mandates that these regulations be effective by Aug. 15, 2007.

Subject: Performance and outcome-based provisions for preventive services.

Purpose: To require preventive services to include performance and outcome-based provisions to promote the efficient use of State and local resources so that resources are used to achieve desired results.

Text of emergency rule: Section 423.5 of Title 18 NYCRR is amended to read as follows:

(a) General requirements. A social services district will be reimbursed for [75] 65 percent of the costs of mandated, *non-mandated*, and *community optional* preventive services provided pursuant to section 409-a of the Social Services Law [to children and their families] when the following conditions are met:

(1) [such]children and their families *receiving such preventive services* meet the client eligibility criteria as defined in sections 423.3 and 430.9 of this Title *or a community optional preventive services program approved by the Office of Children and Family Services ("OCFS") under subdivision (3) of section 409-a of the Social Services Law*;

(2) the social services district receives approval of its *county's child and family services* [multi-year service] plan pursuant to section 34-a of the Social Services Law;

(3) *the social services district certifies that it will not be using these funds to supplant other state and local funds and that it will not submit claims for reimbursement for the same type and level of services that the district previously provided and claimed under any contract in existence on October 1, 2002 as other than child protective, preventive, independent living, or after care services or adoption administration and services;*

(4) *for a district to receive an increase in funding for child protective, preventive, independent living, or after care services, or adoption administration and services over the amount the district received for such services that were reimbursable in state fiscal year 2004-05:*

(i) *the amount of funds that the district expends on such services from its flexible fund for family services allocation and any flexible fund for family services funds transferred at the district's request to the title XX social services block grant must, to the extent that families are eligible therefore, be equal to or greater than the amount the district spent for such services that were reimbursed during state fiscal year 2004-05 with temporary assistance to needy families block grant funds for families eligible for emergency assistance to families and with temporary assistance to needy families block grant funds transferred to the title XX social services block grant; or*

(ii) *the district must increase the gross amount of such funds above the amount claimed for state fiscal year 2004-05, in which case, the increase in funding will only be available for 65 percent of the claims that exceed the gross amount claimed in state fiscal year 2004-05;*

(5) *beginning January 1, 2008, such preventive services, whether purchased or provided directly by the district, include performance or outcome-based provisions.*

(i) *For purposes of complying with this requirement, performance means quantifiable and verifiable interim changes in, or maintenance of, the conditions or behaviors of the target population resulting from the provision of services that indicate progress towards an outcome, and outcome means the anticipated change in, or maintenance of, conditions or behaviors of a targeted population as a result of the provision of services.*

(ii) *In the absence of the required performance or outcome-based provisions, OCFS may limit up to 100% of a district's state reimbursement for preventive services expenditures related to any increases in the amount of the district's gross claims for such expenditures that are otherwise reimbursable during state fiscal year 2007-08 and thereafter that exceed the amount of its gross claims for the period October 1, 2005 through September 30, 2006 that were claimed through March 31, 2007. However, OCFS may determine, in its discretion, not to reduce a district's reimbursement in this manner if the district is able to demonstrate, in a form and manner determined by OCFS, that the absence of the required performance or outcome-based provisions is due to extenuating circumstances beyond the district's control including, but not limited to, the inability to amend a contract for the purchase of preventive services that was in effect on April 9, 2007 that extends past January 1, 2008.*

[(3) the social services district expends an amount on child protective services equal to or greater than its child protective services maintenance of effort amount as published annually by the office based on expenditures and rate of child protective services reporting and indicators. In the event that the social services district does not meet its child protective services maintenance of effort amount, preventive services expenditures up to such an amount will be reimbursed as child protective services expenditures; and

(4) expenditures of the social services district are in excess of its title XX ceiling and total preventive services expenditures of such district exceed the preventive services maintenance of effort amount as specified in section 409-b of the Social Services Law unless otherwise specified in the State's annual aid to localities budget.]

(b) In-kind or indirect services and donated funds.

[(1) Up to one half of the social services district's total annual share of the cost of mandated preventive services may be met by in-kind or indirect services or by nontax levy funds, including, but not limited to, privately donated funds. However, this limitation does not apply to that amount equal to the total reimbursable preventive services expenditures, the local share of which was met by privately donated funds and subject to State reimbursement, during the State fiscal year ending March 31, 1981.

(2) A social services district's share of the costs of nonmandated preventive services provided pursuant to subdivision (2) of section 409-a of the Social Services Law or of the costs of community preventive services provided pursuant to subdivision (3) of section 409-a of the Social Services Law may be met in whole or in part by in-kind or indirect services or by nontax levy funds, including, but not limited to, privately donated funds.]

Claims for preventive services and independent living services submitted by a social services district for reimbursement may be comprised of in-kind, indirect services, and non-tax levy funds, including but not limited to privately donated funds, up to the same amount as the social services district's claims for such services during federal fiscal year 1998-99 were comprised of in-kind, indirect services and non-tax levy funds; provided, however, that up to 17½ percent of a social services district's claims for preventive services and independent living services may be comprised of privately donated funds if the percentage of its claims comprised of privately donated funds was less than 17½ percent during federal fiscal year 1998-99. Federal reimbursement of such claims shall be available only to the extent permitted by federal law or regulations.

[(c) Nonmandated preventive services. Expenditures for nonmandated preventive services shall be subject to 50 percent State reimbursement, provided that the Legislature has appropriated sufficient funds for this purpose and that these expenditures are not reimbursed through title XX of the Social Services Act.

(d) Reimbursement by the department to local social services departments for day care, homemaker, housekeeper/chore, home management, transportation, and family planning as mandated preventive services shall not exceed 30 percent of Group I and II local department's and 15 percent of Group III and IV local department's total expenditures for mandated preventive services unless adjusted by a decline in foster care days as set forth in this paragraph. Groups I, II, III and IV as defined in section 679.2 of this Title and are as follows:

(1) Group I. Social services districts having a caseload of less than 1,000 cases;

(2) Group II. Social services districts having a caseload of 1,000, but less than 5,000 cases;

(3) Group III. Social services districts having a caseload of 5,000, but less than 50,000 cases; and

(4) Group IV. Social services districts having a caseload of 50,000 cases and over. Each local social services department's percentage will be

increased by one percent for every three percent decline in foster care days. Such percentage will be computed by the department annually for each Federal fiscal year, using the State fiscal year 1979-80 as a base year. This provision will become effective October 1, 1983.

(e) Reimbursement by the department to local social services departments for emergency cash, goods and shelter as preventive services shall not exceed three percent of such local department's total expenditures for mandated preventive services. Such reimbursement shall only be made for those expenditures not eligible for reimbursement under the Emergency Assistance to Needy Families with Children Program pursuant to Part 372 of this Title.]

(c) [(f)] Reimbursement by OCFS [the department] for foster care services, including casework contact requirements pursuant to section 441.21 of this Title and diligence of efforts requirements pursuant to section 430.12 of this Title may not be claimed as preventive services.

(d) [(g)] Reimbursement by OCFS [the department] for child protective services, including activities of receiving and investigating reports and monitoring shall not be claimed as preventive services.

(e) [(h)] Reimbursement by OCFS [the department] to local social services districts [departments] for preventive services expenditures shall be claimed on such forms as designated by OCFS [the department].

(f) [(i)] Notwithstanding any provision of this section, reimbursement by OCFS [the department] to local social services districts [departments] for preventive services expenditures shall not be made unless the local social services districts [departments] explore and use other available funding sources including [emergency assistance to needy families with children and] title XIX of the Social Security Act where applicable.

(g) [(j)] Notwithstanding any provision of this section, reimbursement by OCFS [the department] to local social services districts [departments] for preventive services expenditures shall not be made if OCFS [the department] determines that such local districts [departments] are over-utilizing particular forms or types of preventive services or are not providing balanced preventive services programs based on the identified needs of children and families residing in such local districts [departments].

(h) *Social services districts shall prepare and submit to OCFS information about compliance with this section in a form and manner and at the times specified by OCFS.*

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire November 12, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-7793

Regulatory Impact Statement

1. Statutory Authority

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (OCFS) to establish rules, regulations and policies to carry out OCFS' powers and duties under the SSL.

Section 409-a of the SSL authorizes social services districts (districts) to provide preventive services to children and families under specified circumstances. Section 409-a(5)(a) of the SSL authorizes OCFS to establish regulations governing preventive services, including reimbursement limitations for such services. Section 153-k of the SSL specifies standards and conditions for state reimbursement of expenditures by districts for preventive and other child welfare services. Additional conditions for state reimbursement are set forth in the Education, Labor and Family Assistance portion of the state budget enacted for Fiscal Year 2007-2008 (Chapter 53 of the Laws of 2007) and in the state budgets enacted for prior fiscal years. The non-supplantation budgetary requirement in section 423.5(a)(3) of the regulation has been in place since April 1, 2003, and the budgetary child welfare threshold requirement in section 423.5(a)(4) of the regulation has been in place since April 1, 2005.

Part H of Chapter 57 of the Laws of 2007 ("the Act") requires that any preventive services provided pursuant to section 409-a of the SSL include performance or outcome-based provisions beginning January 1, 2008. The Act authorizes OCFS to limit, in accordance with regulations, a social services district's state reimbursement for preventive services expenditures in the absence of the required performance or outcome-based provisions. The Act also directs OCFS to grant a waiver from implementation of the required performance and outcome-based provisions under specified circumstances and to promulgate on an emergency basis no later than August 15, 2007, any regulations necessary to implement the requirements established by the Act.

2. Legislative Objectives

The regulation carries out the intent of the statutory provisions discussed above, and in particular Part H of Chapter 57 of the Laws of 2007, by establishing rules that define the required performance and outcome-based provisions and specify the circumstances under and the manner in which OCFS may limit a district's state reimbursement in the absence of the required provisions. The regulation also carries out the intent of section 153-k of the SSL and related budget appropriation requirements by revising existing regulation to reflect the current statutory standards for state reimbursement of preventive services expenditures.

3. Needs and Benefits

The legislative requirement that preventive services include performance and outcome-based provisions is intended to promote the efficient use of state and local resources so that resources are used to achieve desired results. To effectuate this legislative intent, the regulation defines performance and outcome-based provisions and specifies the authorized fiscal consequence that may be imposed in the absence of the required provisions.

The regulation also updates regulatory conditions for state reimbursement of district expenditures for preventive services so that they are consistent with existing statutory and budgetary standards.

4. Costs

Because the amendment is necessary to implement Part H of Chapter 57 of the Laws of 2007 and other statutory standards governing state reimbursement for preventive services (SSL 153-k; Chapter 53 of the Laws of 2007), this regulatory amendment will not impose any costs on districts beyond those imposed by these laws. Technical assistance from OCFS, as required by statute, will assist local districts in meeting this statutory requirement. Additionally, based on discussions with districts, OCFS understands that many districts already include performance or outcome measures for the preventive services they provide or for which they contract, and thus many districts already satisfy the minimum standards required by statute and the implementing regulation.

There is no adverse fiscal impact to OCFS or the State related to the regulatory amendment.

5. Local Government Mandates

The requirement that social services districts include performance or outcome-based provisions in directly-provided and contracted-for preventive services and the conditions for state reimbursement implement statutory requirements and conditions. Therefore, the regulation does not impose any additional requirements on local governments.

6. Paperwork

OCFS is mandated by statute to report to the Governor and Legislature on local compliance with respect to performance or outcome-based provisions for preventive services. OCFS has developed a one-page attestation form for local districts to report on initial compliance. Subsequent reporting will be incorporated into existing district reporting procedures.

7. Duplication

This regulation does not duplicate other state or federal requirements.

8. Alternate Approaches

Part H of Chapter 57 of the Laws of 2007 requires OCFS to promulgate any regulations necessary to implement the statutory provisions. The regulation does this by defining the statutorily-required performance or outcome-based provisions for preventive services and by providing a fiscal consequence under certain circumstances if the statutory requirement is not met. Proposed definitions of performance and outcome were shared with representatives of regulated parties (commissioners and staff of local social services districts), their input was given careful consideration and appropriate suggestions were adopted in drafting the final regulation.

Insofar as the regulation codifies other existing statutory standards and conditions for state reimbursement the amendments are technical in nature and there were no significant alternatives to be considered.

9. Federal Standards

These regulations meet but do not exceed any applicable federal standards.

10. Compliance Schedule

Local districts must include performance or outcome-based provisions for preventive services by January 1, 2008. Other technical amendments to the regulation reflect existing statutory standards and conditions for state reimbursement of preventive services expenditures that are already in effect. This regulation is being filed on an emergency basis to comply with the statutory requirement that any necessary regulations be in place by August 15, 2007.

Regulatory Flexibility Analysis

1. Effect on Small Businesses and Local Governments

The regulation implements statutory requirements applicable to all social services districts (districts). Those voluntary agencies contracting with social services districts to provide preventive services also will be affected by the regulation. Currently, there are approximately 200 such agencies.

2. Compliance Requirements

As required by Part H of Chapter 57 of the Laws of 2007 (the Act), the regulation implements the statutory requirement that social services districts include performance or outcome-based provisions in preventive services. OCFS is mandated by the Act to report to the Governor and Legislature on local compliance with this requirement, and the regulation therefore directs local districts to prepare and submit information about compliance in a form and manner specified by OCFS. OCFS has developed a one-page attestation form for local districts to report on initial compliance. Subsequent reporting will be incorporated into existing district reporting procedures.

3. Professional Services

The technical assistance to be provided by OCFS will include professional services to assist local districts in complying with the statutory requirements implemented by the regulation. It is anticipated that this assistance will minimize the need for districts to incur any additional costs for professional services to comply with the regulation.

4. Compliance Costs

Because the regulation is necessary to implement Part H of Chapter 57 of the Laws of 2007 and other statutory standards governing state reimbursement for preventive services (SSL 153-k; Chapter 53 of the Laws of 2007), the regulation will not impose any costs on local social services districts beyond those imposed by these laws. Technical assistance from OCFS will assist local districts, and any private services agencies with which they contract, in meeting this statutory requirement.

5. Economic and Technological Feasibility

It is anticipated that the affected local governmental agencies (social services districts) have the economic and technological feasibility to include performance or outcome-based provisions in preventive services.

6. Minimizing Adverse Impact

It is not anticipated that the regulation will result in an adverse impact on small businesses or local government agencies or instrumentalities. As outlined above, OCFS is offering technical assistance to affected local governmental agencies (social services districts) to assist with compliance. Consistent with State Administrative Procedure Act § 202-b(1), the regulation does not impose design standards or mandate specific types of performance or outcome-based provisions that local districts must include. The regulation also appropriately allows for exemption from fiscal consequences where compliance is not possible due to extenuating circumstances beyond the district's control. Additionally, based on discussions with districts, OCFS understands that many districts already include performance or outcome measures for the preventive services they provide or for which they contract, and thus many districts already satisfy the minimum standards required by statute and the implementing regulation.

7. Small Business and Local Government Participation

OCFS presented a workshop on the implementation of Part H of Chapter 57 of the Laws of 2007, the statutory provision that requires OCFS to develop this regulation, at the New York State Public Welfare Association's summer 2007 conference. Comments on the proposed regulation were received from workshop participants, who included commissioners and staff of local social services districts. OCFS subsequently held a telephone conference on the proposed regulation for all districts during which OCFS received input from district representatives on issues concerning compliance and the types of technical assistance needed by districts.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

The regulation applies to all social services districts (districts), including the 44 districts that contain rural areas. Those voluntary agencies in rural areas contracting with social services districts to provide preventive services also will be affected by the regulation. Currently, there are approximately 84 such agencies.

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

OCFS is mandated by statute to report to the Governor and Legislature on local compliance with respect to performance or outcome-based provisions for preventive services. OCFS has developed a one-page attestation form for local districts to report on initial compliance. Subsequent reporting will be incorporated into existing district reporting procedures.

As provided for in statute, OCFS will be offering technical assistance to local districts to assist with compliance. This technical assistance will minimize the need for additional professional services.

3. Costs:

Because the regulation is necessary to implement Part H of Chapter 57 of the Laws of 2007 and other statutory standards governing state reimbursement for preventive services (SSL 153-k; Chapter 53 of the Laws of 2007), the regulation will not impose any costs on social services districts, including those in rural areas, beyond those imposed by these laws. Technical assistance from OCFS will assist local districts and any private services agencies with which they contract in meeting this statutory requirement.

4. Minimizing adverse impact:

It is not anticipated that the regulation will result in an adverse impact on rural areas. As outlined above, OCFS is offering technical assistance to all affected local governmental agencies to assist with compliance. Consistent with State Administrative Procedure Act § 202-bb(2), the regulation does not impose input or design standards or mandate specific types of performance or outcome-based provisions that local districts must include. The regulation also appropriately allows for exemption from fiscal consequences where compliance is not possible due to extenuating circumstances beyond the district's control. Additionally, based on discussions with districts, OCFS understands that many local districts already include performance or outcome measures for the preventive services they provide or for which they contract, and thus many districts already satisfy the minimum standards required by statute and the implementing regulation.

5. Rural area participation:

OCFS presented a workshop on the implementation of Part H of Chapter 57 of the Laws of 2007, the statutory provision that requires OCFS to develop this regulation, at the New York State Public Welfare Association's summer 2007 conference. Comments on the proposed regulation were received from workshop participants, who included commissioners and staff of social services districts that contain rural areas. OCFS subsequently held a telephone conference on the proposed regulation for all districts during which OCFS received input from district representatives on issues concerning compliance and the types of technical assistance needed by districts, including those districts encompassing rural areas.

Job Impact Statement

A full job impact statement has not been prepared for the regulation. The regulation would not result in the loss of any jobs. It is apparent from the nature and purpose of the rule (implementation of statutory requirements for state reimbursement to social services districts of expenditures for preventive services) that it will not have a substantially adverse impact on jobs and employment opportunities. To the extent that social services districts expand the types of preventive services they currently provide and the private agencies with which they contract in order to comply with the statutory requirement underlying the regulation, the regulation may result in job creation.

Department of Correctional Services

ERRATUM

A Notice of Proposed Rule Making, I.D. No. COR-26-07-00005-P pertaining to Inmate Legal Visits, published in the June 27, 2007 issue of the *State Register* referred to an Appendix printed in the back of that issue. The Appendix was inadvertently left out of the issue. See Appendix in the back of this issue.

The Department of State apologizes for any confusion this may have caused.

NOTICE OF ADOPTION

Temporary Release Programs

I.D. No. COR-25-07-00005-A

Filing No. 873

Filing date: Aug. 20, 2007

Effective date: Sept. 5, 2007

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

Action taken: Amendment of section 1900.4(c)(1)(ii) and (2)(ii) of Title 7 NYCRR.

Statutory authority: Correction Law, section 851(2)

Subject: Temporary release programs.

Purpose: To amend Part 1900 of Title 7 NYCRR in accordance with the Governor's Executive Order No. 9, enacted March 5, 2007.

Text or summary was published in the notice of proposed rule making, I.D. No. COR-25-07-00005-P, Issue of June 29, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 485-9613, e-mail: AJAnnucci@docs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Education Department

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Administration of Ability-to-Benefit Tests for Eligibility for Awards and Loans

I.D. No. EDU-26-07-00010-RP

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

Revised action: Addition of section 145-2.15 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 215 (not subdivided) and 661(4); L. 2007, ch. 57, part E-1, sections 1 and 2

Subject: Administration of ability-to-benefit tests for eligibility for awards.

Purpose: To identify certain ability-to-benefit tests and the passing scores for such tests that the Board of Regents approve for purposes of eligibility for awards under section 661 of the Education Law. The proposed amendment also establishes criteria that the department will utilize to determine if an approved ability-to-benefit test is independently administered; in order to implement the requirements of chapter 57 of the Laws of 2007.

Substance of revised rule: The Board of Regents has added section 145-2.15 to the Regulations of the Commissioner of Education relating to the administration of ability-to-benefit tests for eligibility for awards. Since publication of a Notice of Emergency Adoption and Revised Rule Making in the *State Register* on July 18, 2007, the rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith. The following is a summary of the revised proposed rule.

Subdivision (a) of section 145-2 sets forth the applicability of this section, i.e., the identification of certain ability-to-benefit tests approved by the Board of Regents and the passing scores for such tests and the criteria the commissioner shall utilize when determining whether an approved ability-to-benefit test is independently administered.

Subdivision (b) of section 145-2.15 defines the following terms: assessment center; federally approved ability-to-benefit test; school providing secondary education from a state within the United States; and Secretary.

Paragraph (1) of Subdivision (c) of section 145-2.15 provides that for students first receiving aid in the 2007-2008 academic year and each academic year thereafter, students shall have a certificate of graduation from a recognized school providing secondary education from a state

within the United States, or the recognized equivalent of such certificate, or receive a passing score on a federally approved ability-to-benefit test identified by the Board of Regents as satisfying the eligibility requirements of this section that has been independently administered and evaluated.

Paragraph (2) of subdivision (c) of section 145-2.15 requires the department to publish a list of ability-to-benefit tests that the Board of Regents has identified as satisfactory in determining eligibility to receive an award. The identification of such tests shall be without term unless the department determines that a test is no longer satisfactory in determining eligibility for awards or the Secretary discontinues federal recognition of such test.

Subdivision (d) of section 145-2.15 provides that an eligible institution shall submit for approval by the Board of Regents, the passing score it proposes to utilize on any ability-to-benefit test approved by the Board of Regents, in a form prescribed by the commissioner. This subdivision states that the score shall not be lower than the score set by the Secretary and the eligible institution shall submit an explanation of its reasons for selecting such passing score. Approval of such score shall be without term unless the department determines that the passing score is no longer satisfactory in determining eligibility for awards or the institution seeks to change such passing score or no longer offers the approved ability-to-benefit test. This subdivision also sets forth the factors that the Commissioner must consider when determining whether to approve an institution's proposed score or scores, including: (1) the level of curricula the institution offers; (2) the admission criteria and procedures the institution utilizes to evaluate the capacity of a student to undertake a course of study and the capacity of the institution to provide instructional and other support services to ensure that the student can complete the course of study; (3) evidence that the admission criteria and procedures that the institution utilizes are effective in admitting only persons who have the capacity to undertake a course of study and the institution provides proper instructional and support services; (4) the adequacy of the academic support services the institution provides; and (5) evidence that the institution evaluates the success of its academic and other support services in providing instructional and other support services that the student needs to complete the program.

Subdivision (e) of section 145-2.15 requires an institution to independently administer ability-to-benefit tests approved by the Board of Regents.

Paragraph (1) of subdivision (e) of section 145-2.15 provides that an ability-to-benefit test is independently administered if the test is administered at an assessment center that is not located and/or affiliated with the institution for which the student is seeking enrollment and the test administrator is an employee of such center.

Paragraph (2) of subdivision (e) of section 145-2.15 provides that an ability-to-benefit test is independently administered if the test is administered at a degree-granting institution that confers two-year or four-year degrees or an institution that qualifies as an eligible public vocational institution and the chief executive officer of such institution certifies annually, in a form prescribed by the commissioner, that: (1) the test is administered by a unit of the institution that is responsible for other forms of testing or for a provision of academic support services, or both, and such unit does not report to officers responsible for admissions or the administration of student financial aid for such institution; (2) the test is administered in an environment that is separate, secure, closed and continuously monitored during testing; (3) students are required to provide written verification of identity, such as a photo identification, and to sign in prior to taking the test and students are prohibited from bringing into the test area any materials prohibited by the test publisher and are required to leave the test area immediately upon completion of the test; (4) the test is proctored by professional employees who have been trained in test administration and federal guidelines regarding the administration of ability-to-benefit tests and who are not employed through the admissions, student financial aid, or registrar's offices of the institution; (5) the scoring of such test is overseen by institutional employees who are not employed through the admissions, student financial aid, or registrar's offices and such scores are verified by more than one employee; (6) all tests, test results, and test databases, if any, are kept in locked and secured containers; (7) the test administrator has no prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the interest obtained through its agreement to administer the test; (8) the test administrator is not a current or former member of the board of directors, a current or former employee or a consultant to a member of the board of directors or a chief executive officer; (9) the test administrator is not a current or former student of the institution and (10) the test administrator is not scoring the test. The annual certification shall include the following information relat-

ing to the previous academic year: the number of students examined, the number of re-tests administered, the scores on all ability-to-benefit tests for each student examined, the number of students achieving passing scores on such tests, the number of students tested that are enrolling in such institution and the success of tested students in terms of retention and graduation.

Paragraph (3) of subdivision (e) of section 145-2.15 states that the department will consider an ability-to-benefit test to be independently administered if the test is administered at an eligible institution that does not have degree-conferring authority and the test is given by a test administrator who: (1) has no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the interest obtained through its agreement to administer the test, and has no controlling interest in any other educational institution; (2) is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation, a person in control of another institution, or a member of the family of any of these individuals; (3) is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors, chief executive officer, chief financial officer of the institution or its parent corporation or at any other institution, or a member of the family of any of the above individuals; and (4) is not a current or former student of the institution; (5) is certified by the test publisher to give and score the publisher's test; (6) administers the test in accordance with instructions provided by the test publisher and in a manner that insures the integrity and security of the test; (7) makes the test available only to a test-taker, and then only during a regularly scheduled test; (8) secures the test against disclosure or release; (9) submits the completed test to the test publisher within two business days after test administration in accordance with the test publisher's instructions; and (10) upon request, gives the commissioner guaranty agency, accrediting agency, and law enforcement agencies access to test records or other documents related to an examination, audit, investigation, or program review of the institution or test publisher.

Paragraph (4) of subdivision (e) of section 145-2.15 provides that the commissioner will not consider a test to be independently administered if an institution: (1) compromises test security or testing procedures; (2) pays a test administrator a bonus, commission, or other incentive based upon the test scores or pass rates of its students who take the test; or (3) otherwise interferes with the test administrator's independence or test administration.

Paragraph (5) of subdivision (e) of section 145-2.15 requires any institution administering an ability-to-benefit test to maintain a record for each student who sat for an ability-to-benefit test, including the name of the test taken by the student, the date of the test and the student's scores on such tests.

Paragraph (6) of subdivision (e) provides that, upon request, each eligible institution must provide the commissioner with access to test records or other documents related to an audit, investigation or program review of the institution.

Paragraph (7) of subdivision (e) states that if the commissioner finds that an institution has violated the certification procedures or the ability-to-benefit test procedures under this section, the commissioner shall have the authority to require an eligible institution to employ an assessment center independent of such institution.

Revised rule compared with proposed rule: Substantial revisions were made in section 145-2.15(e)(2)(v), (3).

Revised rule making(s) were previously published in the State Register on July 18, 2007.

Text of revised proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Senior Deputy Commissioner of Education - P16, Education Department, 2M West Wing, Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: p16education@mail.nysed.gov

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

Revised Regulatory Impact Statement

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the *State Register* on July 18, 2007, the following substantial revisions were made to the proposed rule:

The rule was revised to delete references to student loans to ensure consistency with the legislative intent that the ability-to-benefit provisions of Education Law section 611(4), as amended by section 1 of Part E-1 of Chapter 57 of the Laws of 2007, are intended to apply only to general

awards and academic performance awards prescribed under Education Law section 661.

The rule was revised, in response to public comment, to remove section 145-2.15(e)(2)(v) which required each Ability-to-Benefit (ATB) test to be administered to all students together.

Section 145-2.15(e)(3) was added, in response to public comment, to establish requirements for eligible non-degree conferring institutions to meet when administering ability-to-benefit tests on campus.

The above revisions to the proposed rule require that the "Needs and Benefits", "Costs" and "Paperwork" sections of the previously published Regulatory Impact Statement be revised to read as follows:

3. NEEDS AND BENEFITS:

Education Law section 661 sets forth the eligibility requirements and procedures governing awards under the State student financial aid programs established in Education Law Articles 13 and 14. Education Law section 661(4)(d) and (e) establish new requirements for students who do not hold diplomas from high schools located within the U.S., or its recognized equivalent, seeking State financial aid for the first time in the 2007-2008 academic year.

Currently, under the federal Higher Education Act, students seeking to qualify for Pell grants or other federal Title IV aid who do not have a high school diploma or its recognized equivalent must demonstrate the ability to benefit from the education or training provided by achieving a score set by the Secretary of the U.S. Department of Education ("Secretary") on a test approved by the Secretary.

Prior to the 2007-2008 academic year, a student applying for State student financial aid who did not have a diploma from a U.S. high school, or its recognized equivalent, was required to achieve a passing score set by the Secretary, on an ability-to-benefit test approved by the Secretary. Education Law section 661(4)(e) modifies this requirement. Students seeking State financial aid for the first time in the 2007-2008 academic year, without a high school diploma or the recognized equivalent of such, must achieve a passing score on an ability-to-benefit test approved by the Regents and the test must be independently administered as defined by the Commissioner.

The regulation requires the Regents to publish a list of the federally approved ability-to-benefit tests the Regents identify as satisfactory in determining eligibility for State aid for students without a high school diploma from the U.S., or its recognized equivalent. For the 2007-2008 academic year fall semester, all seven federally approved ability-to-benefit tests may be used. For subsequent academic terms, the Department intends to identify and publish a list of federally approved ability-to-benefit tests that the Board of Regents identifies as satisfactory in determining eligibility to receive a State aid award. Once identified, such tests shall be without term unless the Department determines a test is no longer satisfactory in determining eligibility for awards or the Secretary discontinues federal recognition of such test.

Each eligible institution must submit for Regents approval, the passing score it proposes to utilize on any approved ability-to-benefit test, which passing score may not be lower than the federally approved score for such test. For the 2007-2008 academic year fall semester, eligible institutions may utilize any passing score that is not lower than the federally approved score. For subsequent academic terms, in determining whether to approve an institution's proposed passing score, the regulation requires the Regents take into consideration several factors delineated in the regulation. Once approved, an institution's passing score(s) will remain approved unless the institution proposes to change such score(s) or the Regents determine that such passing score is no longer satisfactory in determining eligibility for awards under Education Law section 661.

The regulation also sets forth factors the Department will consider to determine if an ability-to-benefit is independently administered and evaluated. For the 2007-2008 academic year fall semester, the test will be deemed independently administered if its administration meets the criteria set forth in federal regulations. For subsequent academic terms, the regulation provides that an ability-to-benefit test is independently administered if the test is administered by an assessment center not located at, or affiliated with, the institution for which the student is seeking enrollment and the test administrator is an employee of such center. If the ability-to-benefit test is administered at an eligible degree-granting institution, the institution's chief executive officer shall provide the Department an annual certification that it independently administers such tests according to the factors delineated in the regulation. If the ability-to-benefit test is administered by an eligible institution that does not grant degrees, the ability-to-benefit test must be administered pursuant to the federal regulations' criteria. If the Department finds an institution has violated the certification procedure or

the federal ability-to-benefit procedures, it may require the institution to use an assessment center external to the institution.

4. COSTS:

(a) Costs to State government. The regulation will not impose any additional costs on State government over and above those resulting from the enactment of Chapter 57 of the Laws of 2007.

(b) Costs to local government. The Department believes the regulation will result in minimal costs over and above those resulting from enactment of Chapter 57 of the Laws of 2007.

The regulation may impose negligible costs on institutions eligible to participate in State student financial aid programs that admit students without a diploma from a U.S. high school and seek to qualify such students for State student financial aid. Each such eligible institution would be required to submit an application for approval of the passing score it proposes to utilize. However, once the institution's passing score(s) is approved by the Regents, an institution's passing score(s) will remain approved unless the institution proposes to change them or the Department revokes the approval for cause.

To administer an ability-to-benefit test on campus, each eligible degree-granting institution would be required to submit to the Department an annual certification by their chief executive officer that its administration of these tests meets the regulation's requirements. The majority of the regulation's requirements for the independent administration of such tests duplicate requirements set forth in the federal Higher Education Act and its corresponding federal regulations. Therefore, eligible degree-granting institutions should already be administering ability-to-benefit tests in a similar manner and any additional costs imposed should be minimal.

Since the regulation proposes minimal reporting and recordkeeping requirements, the Department expects existing staff at eligible institutions will have the necessary expertise to satisfy the regulation's requirements as part of their ongoing responsibilities.

Minimal costs may arise in the sponsor contributions to the budgets of community colleges that are subject to approval by the sponsoring local government(s).

(c) Costs to private regulated parties. As stated above under "Costs to local government", private regulated parties may incur minimal costs to submit an application for approval of the passing score it proposes to utilize and to complete the annual certification required of institutions that wish to administer ability-to-benefit tests on campus.

(d) Costs to the regulatory agency. The regulation may add one time negligible additional responsibilities for the Department to develop a basic application and an annual certification form. The Department will administer the program using existing staff and resources.

6. PAPERWORK:

The regulation requires additional paperwork only for institutions eligible to participate in State student aid programs that admit students without a diploma from a U.S. high school and seek to qualify such students for State student financial aid. Each such eligible institution would be required to submit an application for approval of the passing score it proposes to use, including information to assist the Department, in determining whether to approve a score, about the curricula the institution offers, admission criteria and procedures the institution uses in its evaluation of the capacity of a student to undertake a course of study and the capacity of the institution to provide instructional and other support that the student needs to complete the program, and adequacy of the academic support services the institution provides. Once approved, an institution's passing score(s) will remain approved unless the institution proposes to change them or the Department revokes the approval for cause.

To administer an ability-to-benefit test on campus, each eligible degree-granting institution would also be required to have its chief executive officer annually certify to the Department that its administration of the tests meets the requirements set forth in the text of the regulation.

Since the regulation proposes minimal reporting and recordkeeping requirements, the Department expects existing staff at eligible institutions will have the necessary expertise to satisfy the regulation's requirements as part of their ongoing responsibilities.

In addition, it has been determined that the "Statutory Authority" section should be revised to add the following reference to Education Law section 215:

"Education Law section 215 provides that the Regents, or the Commissioner, or their representatives, may visit, examine into and inspect, any institution in the University of the State of New York and any school or institution under the educational supervision of the State, and may require, as often as desired, duly verified reports giving such information and in such form as they shall prescribe."

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the *State Register* on July 18, 2007, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The revisions to the proposed rule require that the "Compliance Requirements" and "Compliance Costs" sections for small businesses and local governments of the previously published Regulatory Flexibility Analysis be revised to read as follows:

2. COMPLIANCE REQUIREMENTS:

Prior to the 2007-2008 academic year, a student applying for State student financial aid who did not have a diploma from a U.S. high school, or its recognized equivalent, was required to achieve a passing score set by the Secretary of the U.S. Department of Education ("Secretary"), on an ability-to-benefit test approved by the Secretary. Education Law section 661(4)(e) modifies this requirement. Students seeking State financial aid for the first time in the 2007-2008 academic year, without a high school diploma or the recognized equivalent of such, must achieve a passing score on a federally approved ability-to-benefit test identified by the Regents as satisfactory in determining eligibility for awards and the test must be independently administered as defined by the Commissioner.

The regulation requires the Regents to publish a list of the federally approved ability-to-benefit tests that the Regents identify as satisfactory in determining eligibility for State aid for students without a high school diploma from the U.S., or its recognized equivalent. For the fall semester of the 2007-2008 academic year, all seven federally approved ability-to-benefit tests may be used. For subsequent academic terms, the Department intends to identify and publish a list of federally approved ability-to-benefit tests that the Regents identify as satisfactory in determining eligibility to receive a State aid award. Once identified, such tests shall be without term unless the Department determines that a test is no longer satisfactory in determining eligibility for awards or the Secretary discontinues federal recognition of such test.

The regulation requires each eligible institution to submit for approval by the Board of Regents, the passing score it proposes to utilize on any approved ability-to-benefit test, however, the passing score may not be lower than the federally approved score for such test. For the fall semester of the 2007-2008 academic term, eligible institutions may utilize any passing score that is not lower than the federally approved score. For subsequent academic terms, in determining whether to approve an institution's proposed passing score, the regulation requires the Regents take into consideration the following factors: (1) the curricula the institution offers; (2) the admission criteria and procedures the institution uses to evaluate the capacity of a student to undertake a course of study and the capacity of the institution to provide instructional and other support services that the student needs to complete the program; (3) evidence that the admission criteria and procedures that the institution utilizes are effective in admitting only persons who have the capacity to undertake a course of study; (4) the adequacy of the academic support services the institution provides; and (5) evidence that the institution evaluates the success of its academic and other support services in providing instructional and other support that the student needs to complete the program. Once approved, an institution's passing score(s) will remain approved unless the institution proposes to change such score(s) or the Regents determines that such passing score is no longer satisfactory in determining eligibility for awards under Education Law section 661.

The regulation also establishes factors the Department will consider to determine if an ability-to-benefit is independently administered and evaluated. For the fall semester of the 2007-2008 academic year, the test will be deemed independently administered if its administration meets the criteria set forth in federal regulations. For subsequent academic terms, the regulation provides an ability-to-benefit test is independently administered if the test is administered by an assessment center not located at, or affiliated with, the institution at which the student is seeking enrollment and the test administrator is an employee of such center. If the ability-to-benefit test is administered at an eligible degree-granting institution, the chief executive officer of such institution shall provide an annual certification to the Department that it independently administers such tests according to the factors delineated in the regulation. If the ability-to-benefit test is administered by an eligible institution that does not grant degrees, the ability-to-benefit test must be administered pursuant to the criteria set forth in the federal regulations. If the Department finds that an institution has violated the certification procedure or the federal ability-to-benefit procedures, it may require the institution to use an assessment center external to the institution.

4. COMPLIANCE COSTS:

The regulation may impose negligible costs on institutions eligible to participate in State student aid programs that admit students without a diploma from a U.S. high school and seek to qualify such students for State student financial aid. Each such institution would be required to submit an application for approval of the passing score it proposes to use, including information to assist the Department in determining whether to approve a score, about the curricula the institution offers, admission criteria and procedures the institution uses in its evaluation of the capacity of a student to undertake a course of study and the capacity of the institution to provide instructional and other support that the student needs to complete the program, and adequacy of the academic support services the institution provides. However, once approved, an institution's passing score(s) will remain approved unless the institution proposes to change them or the Department revokes the approval for cause.

To administer an ability-to-benefit test on campus, eligible degree-granting institutions would be required to submit to the Department an annual certification by their chief executive officer that its administration of these tests meets the requirements set forth in the text of the regulation. The majority of the regulation's requirements for the independent administration of such tests duplicate requirements set forth in the federal Higher Education Act and its corresponding federal regulations. Therefore, eligible institutions should already be administering ability-to-benefit tests in a similar manner and any additional costs imposed by this regulation should be minimal.

Since the regulation proposes minimal reporting and recordkeeping requirements, the Department expects existing staff at eligible institutions will have the necessary expertise to satisfy the regulation's requirements as part of their ongoing responsibilities.

Minimal costs may arise in the sponsor contributions to the budgets of community colleges that are subject to approval by the sponsoring local government(s).

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the *State Register* on July 18, 2007, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The above revisions to the proposed rule require that the "Reporting, Recordkeeping and other Compliance Requirements and Professional Services" and the "Costs" sections of the previously published Rural Area Flexibility Analysis be revised to read as follows:

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

Prior to the 2007-2008 academic year, a student applying for State student financial aid who did not have a diploma from a U.S. high school, or its recognized equivalent, was required to achieve a passing score set by the Secretary of the U.S. Department of Education ("Secretary"), on an ability-to-benefit test approved by the Secretary. Education Law section 661(4)(e) modifies this requirement. Students seeking State financial aid for the first time in the 2007-2008 academic year, without a high school diploma or the recognized equivalent of such, must achieve a passing score on a federally approved ability-to-benefit test identified by the Regents as satisfactory in determining eligibility for awards and the test must be independently administered, as defined by the Commissioner.

The regulation requires the Regents to publish a list of the federally approved ability-to-benefit tests that the Regents identify as satisfactory in determining eligibility for State aid for students without a high school diploma from the U.S., or its recognized equivalent. For the fall semester of the 2007-2008 academic year, all seven federally approved ability-to-benefit tests may be utilized. For subsequent academic terms, the Department intends to identify and publish a list of federally approved ability-to-benefit tests that the Regents identify as satisfactory in determining eligibility to receive a State aid award. Once identified, such tests shall be without term unless the Department determines that a test is no longer satisfactory in determining eligibility for awards or the Secretary discontinues federal recognition of such test.

The regulation requires each eligible institution to submit for approval by the Board of Regents, the passing score it proposes to utilize on any approved ability-to-benefit test, however, the passing score may not be lower than the federally approved score for such test. However, for the fall semester of the 2007-2008 academic term, eligible institutions may utilize any passing score that is not lower than the federally approved score. For subsequent academic terms, in determining whether to approve an institution's proposed passing score, the regulation requires the Regents take into consideration the following factors; (1) the curricula the institution offers;

(2) the admission criteria and procedures the institution uses to evaluate the capacity of a student to undertake a course of study and the capacity of the institution to provide instructional and other support services that the student needs to complete the program; (3) evidence that the admission criteria and procedures that the institution utilizes are effective in admitting only persons who have the capacity to undertake a course of study; (4) the adequacy of the academic support services the institution provides and (5) evidence that the institution evaluates the success of its academic and other support services in providing instructional and other support that the student needs to complete the program. Once approved, an institution's passing score(s) will remain approved unless the institution proposes to change such score(s) or the Board of Regents determines that such passing score is no longer satisfactory in determining eligibility for awards under Education Law section 661.

The regulation also establishes factors the Department will consider to determine if an ability-to-benefit is independently administered and evaluated. For the fall semester of the 2007-2008 academic year, the test will be deemed independently administered if its administration meets the criteria set forth in federal regulations. For subsequent academic terms, the regulation provides an ability-to-benefit test is independently administered if the test is administered by an assessment center not located at, or affiliated with, the institution for which the student is seeking enrollment and the test administrator is an employee of such center. If the ability-to-benefit test is administered at an eligible degree-granting institution, the chief executive officer of such institution shall provide an annual certification to the Department that it independently administers such tests according to the factors delineated in the regulation. If the ability-to-benefit test is administered by an eligible institution that does not grant degrees, the ability-to-benefit test must be administered pursuant to the criteria set forth in the federal regulations. If the Department finds that an institution has violated the certification procedure or the federal ability-to-benefit procedures, it may require the institution to use an assessment center external to the institution.

The regulation will not require eligible institutions, including those located in rural areas, to hire professional services to comply.

3. COSTS:

The regulation may impose negligible costs on institutions eligible to participate in State student aid programs that admit students without a diploma from a U.S. high school and seek to qualify such students for State student financial aid, including those located in rural areas. Each such institution would be required to submit an application for approval of the passing score it proposes to use, including information to assist the Department in determining whether to approve a score, about the curricula the institution offers, admission criteria and procedures the institution uses in its evaluation of the capacity of a student to undertake a course of study and the capacity of the institution to provide instructional and other support that the student needs to complete the program, and adequacy of the academic support services the institution provides. However, once approved, an institution's passing score(s) will remain approved unless the institution proposes to change them or the Department revokes the approval for cause.

To administer an ability-to-benefit test on campus, each eligible degree-granting institution would be required to submit to the Department an annual certification by their chief executive officer that its administration of these tests meets the requirements set forth in the text of the regulation. The majority of the regulation's requirements for the independent administration of such tests duplicate the requirements set forth in the federal Higher Education Act and its corresponding regulations. Therefore, eligible degree-granting institutions should already be administering ability-to-benefit tests in a similar manner and any additional costs imposed by this regulation should be minimal.

Since the regulation proposes minimal reporting and recordkeeping requirements, the Department expects that existing staff at eligible institutions will have the necessary expertise to satisfy the regulation's requirements as part of their ongoing responsibilities.

Minimal costs may arise in the sponsor contributions to the budgets of community colleges that are subject to approval by the sponsoring local government(s).

Job Impact Statement

Since publication of the Notice of Emergency Adoption and Revised Rule Making in the *State Register* on July 18, 2007, the proposed regulation was revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The proposed regulation, as so revised, relates to the administration of ability-to-benefit tests for eligibility for awards pursuant to Education Law

section 661. The revised regulation will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the revised regulation that it will have no impact on jobs or employment opportunities, no further measures were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

A Notice of Proposed Rule Making was published in the *State Register* on June 27, 2007 and a Notice of Emergency Adoption and Revised Rule Making was published in the *State Register* on July 18, 2007. Below is a summary of written comments received by the State Education Department (SED) and SED's assessment of issues raised.

1. COMMENT: The proposed rule would prevent eligible nondegree institutions from administering ability-to-benefit (ATB) tests on school premises. The rule should be amended to permit such schools to continue to use the federally approved process for testing ATB students.

DEPARTMENT RESPONSE: SED agrees with this comment and has revised the proposed rule to allow eligible nondegree schools to administer ATB tests on school premises so long as such schools comply with the prescribed federal requirements for the independent administration of ATB tests.

2. COMMENT: The proposed rule prohibits an eligible degree-granting institution from using its own employees to administer ATB tests. The rule should be amended to allow such institutions to use their own employees when administering ATB tests.

DEPARTMENT RESPONSE: SED agrees that eligible degree-granting institutions should be able to use their own employees to administer ATB tests. As a result, the proposed rule was revised to remove the provision that prohibited such institutions from using their own employees to administer ATB tests. A Notice of Emergency Adoption and Revised Rule Making, with the revised language, was published in the *State Register* on July 18, 2007.

3. COMMENT: The proposed rule prohibits an eligible degree-granting institution from employing a former student to administer ATB tests. While institutions should not be allowed to use current students to administer ATB tests, the rule should be amended to permit such institutions to use former students in that capacity.

DEPARTMENT RESPONSE: The prohibition of the use of former students in the administration of ATB tests is similar to a prohibition in the Federal government's requirements for the independent administration of ATB tests on campus. SED believes that consistency should be maintained between the State and federal requirements.

4. COMMENT: One commenter sought clarification on subparagraph (v) of paragraph (2) of section 145-2.15 which reads:

"each test used for ability to benefit purposes is administered to all students together and the test administrator is unaware which students are taking the test for ability to benefit purposes until after the test is completed and scored."

The commenter expressed concern that this provision implies that all students (including high school graduates) would be required to take the ATB test in order for ATB students to remain unidentified. The commenter stated that at their community college, they administer Accuplacer tests and have established "branching profiles" in order to administer the appropriate tests to the appropriate population. When students seek to enroll under the "Ability to Benefit" program, they are administered tests under the ATB branching profile (Reading Comprehension, Sentence Skills, and Arithmetic). In contrast, students who have a high school diploma or GED are administered tests under the "basic skills" profile (Reading Comprehension and Sentence Skills) as well as any other tests that may be necessary for their particular major. The commenter indicated that the new regulation would require that all students (both those with high school diplomas/GEDs and ATBs) take the Arithmetic test and that this change would have significant budgetary and logistical implications for their institution.

DEPARTMENT RESPONSE: The original purpose of this requirement was to ensure that students would not be set apart if they were being tested for ATB purposes or placement purposes. However, the Department has recently been advised by several colleges that some ATB tests are used differently by colleges for ATB students and students with a high school diploma for academic reasons. The Department agrees that setting these tests apart for academic reasons seems to make sense. Therefore, the proposed rule has been revised to remove the provision that requires each ATB test to be administered to all students together.

5. COMMENT: The regulation should not include the percentage of first-time students enrolling in noncredit remedial courses as a measure of the adequacy of an institution's academic support services. That metric is a

reflection of an institution’s student population, rather than a measure of the effectiveness of an institution’s support services.

DEPARTMENT RESPONSE: The metric helps to describe the nature of an institution and is one element among many that the Department will weigh to determine the adequacy of academic support services and, more broadly, the appropriateness of the proposed ATB test scores.

6. COMMENT: The list of measures of evidence of the adequacy of an institution’s academic support services concludes with the statement that the measures may include “such other information as the commissioner shall specify . . .” That phrase is too broad in scope to provide clear guidance to institutions.

DEPARTMENT RESPONSE: The regulation allows for flexibility, as information needs evolve, to support the Department’s efforts to ensure the quality of higher education and the sound use of public financial aid monies. The Department will provide guidance documents to the field as needed to inform the implementation of the regulation.

Allegany	first Saturday after the opening of the Southern Zone regular deer season through the end of the Southern Zone regular deer season
Catskill	[the first Monday after] the opening of the Southern Zone regular deer season through the end of the Southern Zone regular deer season
Rest of State	Closed

Text of proposed rule and any required statements and analyses may be obtained from: Jeremy Hurst, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8867, e-mail: jehurst@gw.dec.state.ny.us

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

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

Additional matter required by statute: A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

This action was not under consideration at the time this agency’s regulatory agenda was submitted.

Regulatory Impact Statement

1. Statutory Authority

Section 11-0303 of the Environmental Conservation Law (ECL) directs the Department of Environmental Conservation (Department) to develop and carry out programs that will maintain desirable species in ecological balance, and to observe sound management practices. This directive is to be met with regard to: ecological factors, the compatibility of production and harvest of wildlife with other land uses, the importance of wildlife for recreational purposes, public safety, and protection of private premises. ECL Sections 11-0903 and 11-0907 contain the Department’s authority to establish black bear hunting regulations.

2. Legislative Objectives

The legislative objective behind the statutory provisions listed above is to authorize the Department to establish, by regulation, certain basic wildlife management tools, including the setting of open areas, and restrictions on methods of take and possession. These tools are used by the Department to maintain desirable wildlife species in ecological balance, and to protect public health and welfare.

3. Needs and Benefits

The Department proposes to change the black bear hunting regulations by modifying the opening day of the regular season for bear hunting in the Catskill bear range. The new opening day would be two days earlier than the current regulation and would coincide with the opening day for the Southern Zone regular deer season. This change is expected to increase the harvest of bears by hunters, reduce bear population growth, and lessen the number and severity of negative bear-human interactions.

In recent years black bear numbers have been continually increasing, and bears have expanded their distribution and abundance throughout the Catskill bear range. The opportunistic behavior of black bears coupled with increased human density in the Catskill bear range has contributed to a growing number of negative interactions between bears and people.

Bear abundance, bear nuisance complaints, and hunter harvest have all increased since 1980. An especially troublesome trend has been the dramatic increase in the number of home entry incidents in the last five years. In these cases, black bears break into the living area of a residence to look for food. Between 2001 and 2003, the Department recorded only 3 to 5 home entry bears in the Catskill bear range. Recently, however, the Department recorded 21 to 45 home entry bears in this area in each of the last three years. Bears involved in home entry incidents cause significant property damage, and are considered dangerous toward people. The Department’s standard operating procedures require destruction of home entry bears.

Beginning in 2001, the Department held a series of meetings in the Catskill bear range to address black bear management issues that have resulted from increasing numbers of bear-human interactions since 1980. This process resulted in the adoption of the Statewide Black Bear Management Plan, and included the creation and use of Stakeholder Input Groups (SIGs). SIGs are tasked to identify the full array of bear impacts, and to help the Department develop black bear management objectives. Two SIGs were established during the fall and winter of 2003-04 to prioritize these impacts, and recommend actions which reduce the negative impacts of bears in the Catskill bear range.

Both Catskill SIG groups concurrently recommended that bear populations not be allowed to increase in size. Consequently the Department expanded the areas open to bear hunting in the Catskill range in both 2004 and 2006.

Department of Environmental Conservation

NOTICE OF ADOPTION

Sanitary Condition of Shellfish Lands

I.D. No. ENV-26-07-00003-A

Filing No. 875

Filing date: Aug. 21, 2007

Effective date: Sept. 5, 2007

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

Action taken: Amendment of Part 41 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0307 and 13-0319

Subject: Sanitary condition of shellfish lands.

Purpose: To protect consumers of shellfish.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. ENV-26-07-00003-EP, Issue of June 27, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Melissa Albino, Department of Environmental Conservation, 205 N. Belle Meade Rd., Suite 1, East Setauket, NY 11733, (631) 444-0491, e-mail: maalbino@gw.dec.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Hunting Season for Black Bear

I.D. No. ENV-36-07-00006-P

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

Proposed action: Amendment of section 1.31 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0903 and 11-0907

Subject: Hunting season for black bear.

Purpose: To lengthen the black bear hunting season in the Catskill bear range.

Text of proposed rule: Paragraph 1 of subdivision 1.31(b) of 6 NYCRR is amended as follows:

(1) Regular bear seasons:

Bear range	Open season
Adirondack	next to last Saturday in October through the first Sunday in December

One of the last remaining management actions recommended by the two Catskill SIGs was a change to the regular season by creating a concurrent opening day with the regular deer season, and eliminating the two day lag between the regular deer and bear seasons. By taking this action, deer hunters who are afield during the first weekend of the deer hunting season will be able to take a black bear. Since a majority of deer hunters hunt on the opening weekend, a higher take of black bears can be expected. This change will increase bear harvest, thereby reducing black bear damage to residential property, and lowering the number of negative bear-human incidents, including home entry bears, and damage to agricultural interests.

4. Costs

There are no costs associated with these regulatory changes beyond normal administrative costs.

5. Local Government Mandates

This rule making does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

6. Paperwork

The proposed revisions do not require any new or additional paperwork from any regulated party.

7. Duplication

There are no other local, state or federal regulations concerning hunting season structure and license use. The Department is the primary government agency with regulatory authority for the managed harvest of game species in New York.

8. Alternatives

Failure to implement actions to control the number and distribution of bears will result in the continued growth of the Catskill bear population and the continued increase in the number of negative bear-human incidents, including home entry bears. It could also result in an increase in the number of destruction permits issued outside of the normal seasons.

9. Federal Standards

There are no federal standards affecting this regulatory proposal.

10. Compliance Schedule

Hunters will be subject to the new regulation beginning with the start of the 2007 regular bear hunting season in the Southern Zone.

Regulatory Flexibility Analysis

The proposed rule making will lengthen the bear hunting season in the Catskill range of the Southern Zone. The Department of Environmental Conservation (Department) has historically made regular revisions to its hunting regulations in New York. Based on the Department's experience in promulgating those revisions and the familiarity of the Department's regional personnel with the Catskill range of the Southern Zone, the Department has determined that this rule making will not have an adverse economic effect on small businesses or local governments.

Few, if any, small businesses directly participate in hunting activities. Such a business (e.g., professional hunting guides) will not suffer any substantial adverse impact as a result of this proposed rule making because it increases the bear hunting season by two days and could increase the number of participants or the frequency of participation in the bear hunting season.

The Department has also determined that these amendments will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments. All reporting or recordkeeping requirements associated with black bear hunting are administered by the Department.

Therefore, the Department has concluded that a regulatory flexibility analysis is not required.

Rural Area Flexibility Analysis

The proposed rule making will lengthen the bear hunting season in the Catskill range of the Southern Zone. The Department of Environmental Conservation (Department) has historically made regular revisions to hunting regulations in an effort to maintain long-term black bear population viability while observing sound management practices, and improving hunter satisfaction. Based on the Department's experience in promulgating those revisions and the familiarity of the Department's regional personnel with the Catskill range of the Southern Zone, the Department has determined that this rule making will not impose an adverse economic impact on rural areas.

The proposed rule making will expand the bear hunting season by two days and could increase the number of participants or the frequency of participation in the bear hunting season. The proposed rule making is expected to reduce negative bear-human interactions and to reduce the levels of bear nuisance activity, thereby reducing property damage in the Catskill bear range. The proposed changes will continue management

actions recommended by the public and enhance bear hunter satisfaction, thereby having a positive effect on rural areas.

The Department has also determined that this rule will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. All reporting or recordkeeping requirements associated with hunting are administered by the Department.

Therefore, the Department has concluded that a rural area flexibility analysis is not required.

Job Impact Statement

The proposed rule making will lengthen the bear hunting season in the Catskill range of the Southern Zone. The Department of Environmental Conservation (Department) has historically made regular revisions to hunting regulations in an effort to maintain long-term black bear population viability while observing sound management practices, and improving hunter satisfaction. Based on the Department's experience in promulgating those revisions and the familiarity of the Department's regional personnel with the Catskill range of the Southern Zone, the Department has determined that this rule making will not impose a substantial adverse impact on jobs and employment opportunities.

Few, if any, persons actually hunt as a means of employment. Such a person, for whom hunting is an income source (e.g., professional guides), will not suffer any substantial adverse impact as a result of this proposed rule making because it increases the bear hunting season by two days and could increase the number of participants or the frequency of participation in the bear hunting season. For this reason, the Department anticipates that this rule making will have no impact on jobs and employment opportunities.

Therefore, the Department has concluded that a job impact statement is not required.

Division of the Lottery

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Video Lottery Gaming Advertising

I.D. No. LTR-36-07-00003-P

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

Proposed action: This is a consensus rule making to amend section 2836-18.6(b)(2)(ii) of Title 21 NYCRR.

Statutory authority: Tax Law, section 1617-a

Subject: Video lottery gaming advertising.

Purpose: To allow for the use of the term "racino" in advertising.

Text of proposed rule: Section 2836-18.6(b)(2)(ii) is amended to read as follows:

2836-18.6 Advertising.

(b) Criteria governing advertising.

2. The following practices shall be prohibited with respect to all advertisements:

ii. The use of the term "slot machine", "casino" [, "racino"] or "gambling" or any similar term(s) to describe or refer to video lottery terminals or video lottery gaming.

Text of proposed rule and any required statements and analyses may be obtained from: Julie B. Silverstein Barker, Acting General Counsel, Division of the Lottery, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: jrbarker@lottery.state.ny.us

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

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

Consensus Rule Making Determination

The enactment of this proposed revision to the Video Lottery Gaming ("VLG") regulations permits the use of the term "racino" in advertising for VLG facilities. The term "racino" is widely used to describe the VLG facilities throughout the State of New York in media coverage and among the general public. Such proposed revision allows the New York Lottery and the VLG Agents to use the term "racino" in advertising to further

identify the VLG facilities to the general public who are familiar with such term. Due to the non-controversial nature of this amendment, no person is likely to object to the revisions proposed by this amendment.

Job Impact Statement

The proposed amendment to 21 NYCRR Part 2836-18.6(b)(2)(ii) does not require a Job Impact Statement, because there will be no adverse impact on jobs and employment opportunities in New York. The amendment involves a revision to permit use of the term "racino" in advertising for Video Lottery Gaming facilities. Such revision to advertising practices will not have any effect on jobs or employment opportunities.

Office of Mental Health

EMERGENCY RULE MAKING

Medical Assistance Payment for Outpatient Programs

I.D. No. OMH-27-07-00002-E
Filing No. 872
Filing date: Aug. 16, 2007
Effective date: Aug. 16, 2007

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

Action taken: Amendment of Part 588 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b) and 31.04(a)

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

Specific reasons underlying the finding of necessity: These amendments increase the Medicaid rate schedule associated with clinic treatment programs and day treatment programs serving children, equalize reimbursement fees for certain outpatient programs, and make certain other changes consistent with the enacted 2005-06 State Budget and the enacted 2006-07 State Budget. These changes will avoid a reduction in services that would otherwise take place.

Subject: Medical assistance payment for outpatient programs.

Purpose: To increase certain Medicaid rate schedules and make other changes consistent with the enacted 2005-06 and 2006-07 State Budgets.

Text of emergency rule: Subdivision (a) of Section 588.13 is amended to read as follows:

(a) Reimbursement under the medical assistance program for outpatient programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title which serve adults with a diagnosis of mental illness and children with a diagnosis of emotional disturbance shall be in accordance with the following fee schedule. This section shall not apply to programs licensed by both the Office of Mental Health and the Department of Health.

(1) Reimbursement under the medical assistance program for clinic treatment programs [operated by agencies which received State aid under article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City,] shall be in accordance with the following fee schedule. Such reimbursement shall be adjusted pursuant to [Section 579.7] subdivisions (i), (j) and (k) of this [Title] Section.

(i) For programs operated in Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Putnam, Rockland and Westchester counties:

Regular at least 30 minutes	[\$66.00] \$71.94
Brief at least 15 minutes	[33.00] 35.97
Group at least 60 minutes	[23.10] 25.18
Collateral at least 30 minutes	[66.00] 71.94
Group Collateral at least 60 minutes	[23.10] 25.18
Crisis at least 30 minutes	[66.00] 71.94

(ii) For programs operated in Allegheny, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Wyoming and Yates counties:

Regular at least 30 minutes	[\$59.40] \$64.75
Brief at least 15 minutes	[29.70] 32.37
Group at least 60 minutes	[20.79] 22.66

Collateral at least 30 minutes	[59.40] 64.75
Group Collateral at least 60 minutes	[20.79] 22.66
Crisis at least 30 minutes	[59.40] 64.75

(iii) For programs operated in Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, St. Lawrence, Albany, Columbia, Dutchess, Greene, Orange, Rensselaer, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren and Washington counties:

Regular at least 30 minutes	[\$58.30] \$63.55
Brief at least 15 minutes	[29.15] 31.77
Group at least 60 minutes	[20.41] 22.25
Collateral at least 30 minutes	[58.30] 63.55
Group Collateral at least 60 minutes	[20.41] 22.25
Crisis at least 30 minutes	[58.30] 63.55

(2) [Reimbursement under the medical assistance program for clinic treatment programs operated by providers of services which did not receive State aid under article 41 of the Mental Hygiene Law during fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule unless a higher fee was approved by the commissioner in accordance with the appeal methodology under the previous reimbursement regulations.

Regular at least 30 minutes	\$58.30
Brief at least 15 minutes	29.15
Group at least 60 minutes	20.41
Collateral at least 30 minutes	58.30
Group Collateral at least 60 minutes	20.41
Crisis at least 30 minutes	58.30]

The minimum duration of a group or group collateral visit at a school-based clinic program shall consist of the duration of a scheduled class period at the school in which the program is based, or 60 minutes, whichever is less.

(3) Reimbursement under the medical assistance program for non-state operated continuing day treatment programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title shall be in accordance with the following fee schedule. [Such reimbursement shall be adjusted pursuant to Part 579.7 of this Title.]

(i) For programs operated in Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Putnam, Rockland and Westchester counties:

(a) Regular, collateral, group collateral, and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When the service hours of any single visit include more than one rate the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50	\$13.20 per service hour
Service hour 51-80	\$10.45 per service hour
Service hour beyond 80	\$ 7.70 per service hour

(ii) For programs operated in Allegheny, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Tompkins, Wayne, Wyoming and Yates counties:

(a) Regular, collateral, group collateral, and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When service hours of any single visit include more than one rate, the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50	\$11.88 per service hour
Service hour 51-80	\$10.45 per service hour
Service hour beyond 80	\$ 7.70 per service hour

(iii) For programs operated in Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, St. Lawrence, Tioga, Albany, Columbia, Dutchess, Greene, Orange, Rensselaer, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren and Washington counties:

(a) Regular, collateral, group collateral, and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When the service hours for any single visit include more than one rate, the provider of

service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50	\$11.66 per service hour
Service hour 51-80	\$10.45 per service hour
Service hour beyond 80	\$ 7.70 per service hour

(4) Reimbursement under the medical assistance program for day treatment programs serving children [operated by agencies which received State aid under article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City.] shall be in accordance with the following fee schedule.

(i) For programs operated in Bronx, Kings, New York, Queens and Richmond counties:

Full day at least 5 hours	[\$70.01] 72.89
Half day at least 3 hours	[35.01] 36.45
Brief day at least 1 hour	[23.34] 24.30
Collateral at least 30 minutes	[23.34] 24.30
Home at least 30 minutes	[70.01] 72.89
Crisis at least 30 minutes	[70.01] 72.89
Preadmission - full day at least 5 hours	[70.01] 72.89
Preadmission - half day at least 3 hours	[35.01] 36.45

(ii) For programs operated in other than Bronx, Kings, New York, Queens and Richmond counties:

Full day at least 5 hours	[\$67.68] 70.46
Half day at least 3 hours	[33.84] 35.23
Brief day at least 1 hour	[22.52] 23.45
Collateral at least 30 minutes	[22.52] 23.45
Home at least 30 minutes	[67.68] 70.46
Crisis at least 30 minutes	[67.68] 70.46
Preadmission - full day at least 5 hours	[67.68] 70.46
Preadmission - half day at least 3 hours	[33.84] 35.23

(5) [Reimbursement under the medical assistance program for day treatment programs serving children operated by agencies which did not receive State aid under article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule unless a higher fee was approved by the commissioner in accordance with the appeal methodology under the previous reimbursement regulations.

Full day at least 5 hours	\$63.80
Half day at least 3 hours	31.90
Brief day at least 1 hour	21.23
Collateral at least 30 minutes	21.23
Home at least 30 minutes	63.80
Crisis at least 30 minutes	63.80
Preadmission - full day at least 5 hours	63.80
Preadmission - half day at least 3 hours	31.90

(6) Providers whose reimbursement under the medical assistance program for clinic, continuing day treatment, and/or day treatment has been supplemented in accordance with subdivision (g) of this section will have this additional reimbursement limited in total to an amount established by the Commissioner which shall be subject to the availability of appropriations in the Office of Mental Health's budget. Supplemental reimbursement received in excess of this threshold will be recovered in a succeeding year through the medical assistance recovery process authorized pursuant to Section 368-c of the Social Services Law.

Subdivision (b) of Section 588.13 is amended to read as follows:

(b) Reimbursement under the medical assistance program for regular, collateral, and crisis visits to all non-State operated partial hospitalization programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title shall be in accordance with the following fee schedule.

(1) For programs located in Nassau and Suffolk counties, the fee shall be [\$21.55] \$22.15 for each service hour.

(2) For programs located in New York City, the fee shall be [\$28.30] \$29.09 for each service hour.

(3) For programs located in the counties included in the region of New York State designated by the Office of Mental Health as the Hudson River Region, the fee shall be [\$23.78] \$24.45 for each service hour.

(4) For programs located in the counties in the region of New York State designated by the Office of Mental Health as the Central Region, the fee shall be [\$16.30] \$16.76 for each service hour.

(5) For programs located in the counties included in the region of New York State designated by the Office of Mental Health as the Western Region, the fee shall be [\$20.21] \$20.78 for each service hour.

Subdivision (c) of section 588.13 is amended to read as follows:

(c) Reimbursement under the medical assistance program for on-site, and off-site visits for all *non-State operated* intensive psychiatric rehabilitation treatment programs, licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title shall be at [\$23.22] \$23.87 for each service hour.

New subdivisions (i), (j), and (k) are added to Section 588.13 to read as follows:

(i) *Clinic treatment programs for which an operating certificate has been issued shall receive an adjustment to the fee schedules set forth in paragraph (1) of subdivision (a) of this Section if they are enrolled in a continuous quality improvement initiative implemented by the Commissioner. In order to be enrolled in such continuous quality improvement initiative, the program shall execute an agreement with the Office of Mental Health under which the provider agrees to participate in such initiative, and undertake such quality improvement measures as shall be developed by the Commissioner.*

(j) *Any program eligible to receive supplemental medical assistance reimbursement pursuant to subdivision (i) of this Section, and which fails at any time to meet the requirements set forth in the agreement executed pursuant to such subdivision, shall have its continuous quality improvement adjustment suspended until such time as the program meets such requirements, as determined by the Commissioner.*

(k) *A clinic treatment program that has been approved by the Office of Mental Health to provide services to children and adolescents during evening and weekend hours shall receive a rate enhancement for regular or collateral clinic visits provided to recipients under the age of 18 years, when such services are provided during weekdays commencing 6 p.m. or later, or on a Saturday or Sunday, provided, however, that an enhanced rate shall only be paid for one visit provided for a recipient on any given day.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. OMH-27-07-00002-EP, Issue of July 3, 2007. The emergency rule will expire October 14, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Joyce Donohue, Bureau of Policy, Regulation and Legislation, Office of Mental Health, 44 Holland Ave., 8th Fl., Albany, NY 12229, (518) 474-1331, e-mail: cocbjdd@omh.state.ny.us

Regulatory Impact Statement

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

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

Subdivision (a) of Section 43.02 of the Mental Hygiene Law grants the Commissioner the power to set rates for facilities licensed under Article 31 of the Mental Hygiene Law.

Sections 364-3 and 364-a of the Social Services Law give the Office of Mental Health responsibility for establishing and maintaining standards for care and services eligible for Medicaid reimbursement in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

Chapter 54 of the Laws of 2005 provides increased funding appropriations in support of amendments to Part 588. (Section 1, State Agencies, Office of Mental Health, lines 25-29 on page 268 and lines 16-20 on page 273.)

Chapter 54 of the Laws of 2006 provides increased funding appropriations in support of further amendments to Part 588. (Section 1, State Agencies, Office of Mental Health, lines 44-50 on page 277 and lines 1-5 on page 278.)

2. Legislative Objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs.

3. Needs and Benefits: These amendments increase the medicaid reimbursement associated with certain outpatient treatment programs regulated by the Office of Mental Health (OMH) consistent with the enacted 2005-2006 state budget and the enacted 2006-2007 state budget. These changes will be targeted in such a way as to provide general fiscal relief to providers, as well as improve the quality and availability of services. They will also clarify that the minimum duration of a group or group collateral visit for a school-based clinic is the shorter of 60 minutes or the duration of a

alternative of developing a continuous quality improvement program without a financial incentive was rejected as lacking incentive and less fair to those providers who choose to invest the time and effort necessary to maintain and enhance quality service and improve their service delivery. The alternative of also providing added funds to programs that do not participate in the CQI initiative was rejected as not supportive of the Office's efforts to improve program quality.

D. Alternatives to equalize reimbursement for certain outpatient programs.

Equalizing Medicaid reimbursement fees, within geographic areas, for clinic, children's day treatment and continuing day treatment programs licensed solely under Article 31 of the Mental Hygiene Law is required by the enacted 2006-2007 state budget. This will provide added resources to these programs to enable them to continue to deliver quality services. The rates involved with equalization, or "leveling up", require approval by the Division of Budget. The alternative of not providing equalization was not available since it would conflict with statute.

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

10. Compliance Schedule: The rate changes associated with the 2005-2006 enacted state budget regulatory amendments were effective upon their adoption, and were deemed to have been effective on and after April 1, 2005 consistent with the 2005-2006 enacted state budget. The adjustment of minimum duration of a group or group collateral visit and the continuous quality improvement incentive were effective on September 26, 2005.

The rate changes associated with the 2006-2007 enacted budget which provide for equalization for clinic, children's day treatment and continuing day treatment were effective upon adoption and were deemed to have been effective on and after April 1, 2006, consistent with the 2006-2007 enacted state budget. The fee increases for partial hospital programs and intensive psychiatric rehabilitation treatment programs were effective upon adoption and were deemed to have been effective on and after October 1, 2006, consistent with the 2006-2007 enacted state budget.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rule will not impose a significant economic impact on small businesses, or local governments. The rate increases associated with this rule are required by state statute, the enacted state budgets for state fiscal years 2005-2006 and 2006-2007.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the amended rules will not impose any adverse economic impact on rural areas. This rule impacts outpatient treatment program rates of reimbursement. The impact of the rate change will be to increase the medicaid reimbursement rates associated with outpatient programs in rural and non-rural areas. This will support the continued provision of these vital programs which serve children, adolescents and adults in both rural and non-rural areas.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is apparent from the nature and purpose of this rule that it involves adjustments to financing mechanisms for existing outpatient treatment programs and will not have a substantial adverse impact on jobs and employment activities.

Assessment of Public Comment

The agency received no public comment.

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

Comprehensive Psychiatric Emergency Program Rates

I.D. No. OMH-36-07-00001-P

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

Proposed action: This is a consensus rule making to amend Part 591 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b) and 31.04(a)

Subject: Comprehensive Psychiatric Emergency Program (CPEP).

Purpose: To increase the Medicaid reimbursement rates associated with CPEP.

Text of proposed rule: Section 591.5 of Part 591 of 14 NYCRR is amended as follows:

§ 591.5 Reimbursement for comprehensive psychiatric emergency programs.

Reimbursement for comprehensive psychiatric emergency programs under the medical assistance program shall be in accordance with the following fee schedule:

Brief emergency visit	\$[80.18] 82.02
Full emergency visit	[470.82] 481.65
Crisis outreach service visit	[470.82] 481.65
Interim crisis service visit	[470.82] 481.65

Text of proposed rule and any required statements and analyses may be obtained from: Joyce Donohue, Office of Mental Health, 44 Holland Ave., 8th Fl., Albany, NY 12229, (518) 474-1331, e-mail: cocbjdd@omh.state.ny.us

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

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

Consensus Rule Making Determination

No person is likely to object to this rule making since it merely increases rates for Comprehensive Psychiatric Emergency Programs (CPEP) as required by the enacted budgets for State Fiscal Year 2007-08. This amendment provides a cost of living adjustment (COLA) for the Office of Mental Health's CPEP program. Such COLA is required by Chapter 54 of the Laws of 2007, the enacted budget for 2007-08. The language authorizing the 2007-08 COLA for CPEP and certain other programs appears page 334 of Chapter 54 of the Laws of 2007. As required by the language of the enacted state budget, these rate increases have been approved by the Director of the Division of the Budget. There are no costs to providers or local governments associated with these amendments. Implementation of the 2007-08 COLA was budgeted to cost New York State \$143,265 annually, and appropriations for the state share of Medicaid were included in the enacted State budget for 2007-08.

These regulatory amendments will be effective upon their adoption, the COLA associated with the 2007-08 enacted budget shall be deemed to have been effective on April 1, 2007. The chart details the rate changes:

Visit Type – code	Rate effective 10/01/06	Rate effective 4/1/07
Brief emergency - 4007	\$80.18	82.02
Full emergency – 4008	470.82	481.65
Crisis outreach service – 4009	470.82	481.65
Interim crisis service – 4010	470.82	481.65

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is apparent from the nature and purpose of this rule that it involves rate increases as required by the enacted State budget for Fiscal Year 2007-08 for existing Comprehensive Psychiatric Emergency Programs (CPEP) and will not have a substantial adverse impact on jobs and employment activities.

**Office of Mental Retardation
and Developmental Disabilities**

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

Habilitation Services

I.D. No. MRD-36-07-00005-P

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

Proposed action: Amendment of sections 635-10.4 and 635-10.5 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

Subject: Habilitation services.

Purpose: To update the definitions of residential habilitation and day habilitation to parallel the wording in the Federal HCBS waiver agreement. The amendment also includes the billing requirement of a face-to-face contact for at-home residential habilitation and for family care residential habilitation.

Text of proposed rule: • Subparagraph 635-10.4(b)(1)(xi) is amended as follows:

(xi) Providing [on-site] professional services for the individual by qualified members of a clinical discipline which are part of the development or implementation of an individualized service plan and which are intended to enable the person [or] and, as appropriate, his or her family to cope with health care, emotional, psychological, behavioral or programmatic [problems] issues. [in order] The purpose of the professional service is to maintain or improve the person's health, safety or level of functioning.

• New subparagraphs (xii), (xiii) and (xiv) are added to paragraph 635-10.4(b)(1) as follows:

(xii) Training, support and assistance in pursuing personal valued outcomes as stated in the person's individualized service plan (ISP).

(xiii) Training, support and assistance in self-advocacy and making informed choices.

(xiv) Training, support and assistance with community inclusion and relationship building.

Note: Rest of section is renumbered accordingly.

• New subparagraphs (xii), (xiii), (xiv) and (xv) are added to paragraph 635-10.4(b)(2) as follows:

(xii) Professional services provided for the individual by qualified members of a clinical discipline which are part of the development or implementation of an individualized service plan and which are intended to enable the person and, as appropriate, his or her family to cope with health care, emotional, psychological, behavioral or programmatic issues. The purpose of the professional service is to maintain or improve the person's health, safety or level of functioning.

(xiii) Training, support and assistance in pursuing personal valued outcomes as stated in the person's individualized service plan (ISP).

(xiv) Training, support and assistance in self-advocacy and making informed choices.

(xv) Training, support and assistance with community inclusion and relationship building.

Note: Rest of section is renumbered accordingly.

• A new paragraph (14) is added to subdivision 635-10.5(b) as follows:

(14) To bill for each day that residential habilitation services are provided in the consumer's home (At-Home Residential Habilitation), staff shall deliver and daily document at least one face-to-face individualized residential habilitation service for each continuous time period that residential habilitation is provided to the individual. To bill for each day that family care residential habilitation services are provided, the family care provider shall deliver and daily document at least one face-to-face individualized residential habilitation service to the individual.

Note: Rest of section is renumbered accordingly.

Text of proposed rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

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

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

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Regulatory Impact Statement

1. Statutory Authority –

a. The New York State Office of Mental Retardation and Developmental Disabilities' (OMRDD) responsibility to assure and encourage the development of programs and services in the area of care, treatment, rehabilitation, education and training of persons with mental retardation and developmental disabilities, is stated in the New York Mental Hygiene Law Section 13.07.

b. OMRDD's authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction is stated in the New York State Mental Hygiene Law Section 13.09(b).

c. Section 16.00 of the Mental Hygiene Law grants the commissioner the authority to adopt and promulgate any regulation reasonably necessary to implement and effectively exercise the powers and perform duties set forth in article 16 of the Mental Hygiene Law, which are necessary to maintain the consistent high quality of services provided within the State to its citizens with mental retardation and developmental disabilities.

2. Legislative Objectives – These amendments further the legislative objectives embodied in the sections 13.07, 13.09(b), and 16.00 of the Mental Hygiene Law. The promulgation of these amendments will promote greater latitude in service provision incorporating community oriented activities and achievement of person-centered outcomes.

3. Needs and Benefits –

a. The revised wording will recognize the types of community oriented services people with a developmental disability now receive in contrast to the institutional focused supports that were commonly used in past years. The OMRDD has progressively moved towards services that allow people with a developmental disability to participate in the community using the generic resources that are available to everyone. In order to become a contributing member of the community, people must be able to advocate for their own interests and needs. Community members make choices about jobs, where to live and how to recreate based on information that is acquired through personal experience.

The new wording also brings the OMRDD regulations into compliance with the directives of the federal agency that provides funding for many habilitation services, the Center for Medicare and Medicaid Services (CMS). The regulations will verify that New York State is conforming to the standards that have been set forth and approved in the documents that authorize federal funding support for the state's developmental disability services. The Olmstead decision (*Olmstead v. L.C.*, 527 U.S. 581) handed down by the U.S. Supreme Court in 1999 has compelled CMS to allow people with a developmental disability to reside and work in their community. CMS in turn has expected each state to also comply with the spirit of the Olmstead decision. The new regulations will serve to demonstrate how New York State will adhere to Olmstead as well as the progressive changes that are current in the field of developmental disabilities.

4. Costs –

a. There will be no additional costs associated with implementation and compliance with the amendments. The change will not have fiscal impacts for providers of service because the revisions represent standards already set forth that authorize federal funding for the state's developmental disability services.

b. There will be no additional costs to OMRDD as the agency will use existing staff to implement this rule.

c. There will be no additional costs to local governments.

5. Paperwork –

a. There will be no additional paperwork required by these amendments. Paperwork utilized by providers of services associated with the delivery of residential habilitation and day habilitation has been required by OMRDD through regulation and various policy memorandums for several years now. Current regulatory requirements specify that a Habilitation Plan and Individualized Service Plan be written. These proposed regulations merely expand the specific types of services that may be listed as a part of these plans to include additional person-centered activities focused on choice and community inclusion. In addition, current administrative requirements specify that service delivery be documented in order to claim reimbursement, in the same manner as would be specified by this regulation.

6. Local Government Mandates –

a. There are no new requirements imposed by the rule on any county, city, town, village, or school, fire, or other special district.

7. Duplication –

a. The amendment does not duplicate any existing State or Federal requirement.

8. Alternatives –

a. The only alternative would be to maintain the current wording which is outdated and does not reflect the current community oriented principles outlined in OMRDD's HCBS Waiver agreement.

9. Federal Standards –

a. The amendment does not exceed any minimum standard of the federal government for the same or similar subject area.

10. Compliance Schedule –

a. OMRDD intends to finalize and file the proposed amendment within and according to the timeframes provided by the State Administrative Procedure Act (SAPA).

Regulatory Flexibility Analysis

1. Types and number of small businesses and local governments rule applies -

a. The proposed regulatory amendment will apply to voluntary not-for-profit corporations that provide Home and Community based (HCBS) Waiver Services. New York State currently funds authorized agencies which provide HCBS Waiver residential habilitation and day habilitation which are subject to the proposed amendments. OMRDD has determined that some of these agencies employ fewer than 100 employees and would therefore be classified as small businesses. OMRDD has determined that these amendments will not have any negative effects on these small businesses.

There are no additional costs associated with the proposed amendments for local governments.

2. Reporting, recordkeeping, compliance requirements -

a. There are no additional compliance requirements for small businesses and local governments that would result from implementation of these amendments. There are also no additional reporting or recordkeeping requirements resulting from these amendments. Paperwork utilized by providers of services associated with the delivery of residential habilitation and day habilitation has been required by OMRDD through regulation and various policy memorandums for several years now. Current regulatory requirements specify that a Habilitation Plan and Individualized Service Plan be written. These proposed regulations merely expand the specific types of services that may be listed as a part of these plans to include additional person-centered activities focused on choice and community inclusion. In addition, current administrative requirements specify that service delivery be documented in order to claim reimbursement, in the same manner as would be specified by this regulation.

b. No additional professional services are required as a result of these amendments. The amendments will not add to the professional service needs of local governments or provider agencies.

3. Cost to implement and comply with this rule -

a. There are no additional costs to small business regulated parties or local governments associated with the implementation of and continued compliance with these amendments.

4. Assessment of the economic and technological feasibility of compliance -

a. There is no new technology required by the rule.

5. How the rule is designed to minimize economic impact -

a. As stated in the Regulatory Impact Statement, the amendments will have no fiscal effect on State or local governments, or on regulated parties. OMRDD has reviewed and considered the approaches for minimizing economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. There are, however, no adverse economic impacts attributable to these proposed amendments.

6. Small business and local government participation -

a. OMRDD requested input and comments from various provider associations across New York State on these amendments through a mailing in 2006. None of the associations asked for any modifications based on their review.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for the proposed amendment is not being submitted because the amendment will not impose any adverse economic impact on rural areas or on reporting, record keeping or other compliance requirements on public or private entities in rural areas. The amendment simply updates the definitions of residential habilitation to parallel the wording in the federal HCBS Waiver Agreement. The amendment also includes the billing requirement of a face-to-face contact for At-Home Residential Habilitation and for Family Care Residential Habilitation.

Job Impact Statement

A JIS for these amendments was not submitted because it is apparent from the nature and purpose of the amendments that they will not have an impact on jobs and/or employment opportunities. The finding is based on the fact that the proposed rule making only revises and updates regulatory definitions pertaining to habilitation services which have not been updated since originally written in 1991. The proposed rule making also includes the billing requirement of a face-to-face contact for At-Home Residential Habilitation and for Family Care services. The proposed revisions will not have any effect on jobs or employment opportunities in New York State.

Public Service Commission

NOTICE OF ADOPTION

Lightened Regulation and Financing Approval by Canandaigua Power Partners, LLC

I.D. No. PSC-10-07-00009-A

Filing date: Aug. 16, 2007

Effective date: Aug. 16, 2007

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

Action taken: The commission, on Aug. 15, 2007, adopted an order approving the petition of Canandaigua Power Partners, LLC (CPP) for an original certificate of public convenience and necessity approving financing and approving a lightened regulatory regime.

Statutory authority: Public Service Law, sections 4(1), 66(1), 69, 70 and 110

Subject: CCP's request for lightened regulation and financing approval.

Purpose: To approve the request of CCP for lightened regulation and financing approval.

Substance of final rule: The Commission adopted an order approving the Petition of Canandaigua Power Partners, LLC for an original Certificate of Public Convenience and Necessity approving financing, and approving a lightened regulatory regime, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(07-E-0138SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Acquisition of Energy East Corporation, et al. by Iberdrola, S.A.

I.D. No. PSC-36-07-00007-P

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

Proposed action: The Public Service Commission is considering a joint petition from Iberdrola, S.A. (Iberdrola), Energy East Corporation (Energy East), RGS Energy Group, Inc., Green Acquisition Capital, Inc., New York State Electric & Gas Corporation (NYSEG), and Rochester Gas and Electric Corporation (RG&E), requesting approval of Iberdrola's acquisition of Energy East, which is the parent of NYSEG and RG&E.

Statutory authority: Public Service Law, section 70

Subject: Approval of Iberdrola's acquisition of Energy East, which is the parent of NYSEG and RG&E.

Purpose: To consider approval of Iberdrola's acquisition of Energy East, which is the parent of NYSEG and RG&E.

Substance of proposed rule: The Public Service Commission is considering a joint petition from Iberdrola, S.A. (Iberdrola), Energy East Corporation (Energy East), RGS Energy Group, Inc., Green Acquisition Capital, Inc., New York State Electric & Gas Corporation (NYSEG), and Rochester Gas and Electric Corporation (RG&E), requesting approval of Iberdrola's acquisition of Energy East, which is the parent of NYSEG and RG&E. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:

Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(07-M-0906SA1)

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

Wireless Attachments by Orange and Rockland Utilities and Sprint Spectrum L.P.

I.D. No. PSC-36-07-00008-P

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

Proposed action: The commission is considering whether to approve or reject, in whole or in part, a joint petition filed by Orange and Rockland Utilities (O&R) and Sprint Spectrum L.P. for approval under Public Service Law, section 70 for wireless attachments to O&R's transmission facilities in the Town of Orangetown, Rockland County, for approval of O&R's procedure for existing and future wireless attachments, and for waiver of 16 NYCRR section 31.1(f) through (l).

Statutory authority: Public Service Law, section 70

Subject: Wireless attachments to O&R's transmission facilities and procedures for future attachments.

Purpose: To consider wireless attachments to O&R's transmission facilities.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, a joint petition filed by Orange and Rockland Utilities (O&R) and Sprint Spectrum L.P. for approval under Public Service Law § 70 for wireless attachments to O&R's transmission facilities in the Town of Orangetown, Rockland County, for approval of O&R's procedure for existing and future wireless attachments, and for waiver of 16 NYCRR Sections 31.3(f) through (l).

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:

Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(07-M-0954SA1)

hearing, the Commission will consider the approval of certain water resources projects and the rescission of one docket approval. Details concerning the projects to be addressed at the public hearing, as well as other matters on the business meeting agenda, are contained in the Supplementary Information section of this notice.

DATE: September 12, 2007.

ADDRESS: Grande Royale Hotel, 80 State Street, Binghamton, New York. See Supplementary Information section for mailing and electronic mailing addresses for submission of written comments.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423; ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net or Deborah J. Dickey, Secretary to the Commission, telephone: (717) 238-0423, ext. 301; fax: (717) 238-2436; e-mail: dddickey@srbc.net.

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the business meeting also includes the following items on the agenda: 1) a panel session regarding New York State's involvement in the Chesapeake Bay Program; 2) a report on the present hydrologic conditions of the basin; 3) approval of a proposed rule making action to amend certain provisions of 18 CFR Part 806 related to agricultural consumptive water use; and 4) various contract and grant approvals.

Public Hearing – Projects Scheduled for Action:

1. Project Sponsor and Facility: Town of Erwin (Wells 2 and 3, and ID Well 1), Steuben County, N.Y. Modification of groundwater approval (Docket No. 20070602).

2. Project Sponsor: South Slope Development Corporation. Project Facility: Song Mountain Ski Resort, Town of Preble, Cortland County, N.Y. Applications for surface water withdrawal of 3.705 mgd, groundwater withdrawal of 0.960 mgd, and consumptive water use of up to 0.815 mgd.

3. Project Sponsor: AES Westover, LLC. Project Facility: AES Westover Generating Station, Town of Union, Broome County, N.Y. Applications for surface water withdrawal of 97.300 mgd and consumptive water use of up to 2.067 mgd.

4. Project Sponsor and Facility: Town of Cohocton (Well 3), Village of Cohocton, Steuben County, N.Y. Modification of groundwater withdrawal approval (Docket No. 19990703).

5. Project Sponsor: Northampton Fuel Supply Company, Inc. Project Facility: Loomis Bank Operation, Hanover Township, Luzerne County, Pa. Modification of consumptive water use approval (Docket No. 20040904).

6. Project Sponsor: PPL Susquehanna, LLC. Project Facility: Susquehanna Steam Electric Station, Salem Township, Luzerne County, Pa. Approval of groundwater and surface water withdrawals of 66.000 mgd, and modification of consumptive water use approval (Docket No. 19950301).

7. Project Sponsor: Bionol Clearfield LLC. Project Facility: Bionol-Clearfield, Clearfield Borough, Clearfield County, Pa. Applications for surface water withdrawal of 2.505 mgd and consumptive water use of up to 2.000 mgd.

8. Project Sponsor and Facility: Walker Township Water Association (Snydertown Well 3), Walker Township, Centre County, Pa. Application for groundwater withdrawal of 0.860 mgd.

9. Project Sponsor and Facility: Bedford Township Municipal Authority (Bowman Tract Wells 1 and 2), Bedford Township, Bedford County, Pa. Modification of groundwater withdrawal approval (Docket No. 19990502).

10. Project Sponsor: Charles Header. Project Facility: Laurel Springs Development, Barry Township, Schuylkill County, Pa. Applications for groundwater withdrawal of 0.099 mgd and consumptive water use of up to 0.099 mgd.

11. Project Sponsor and Facility: Dillsburg Area Authority (Well 7), Carroll Township, York County, Pa. Application for groundwater withdrawal of 0.360 mgd.

12. Project Sponsor: PPL Brunner Island, LLC. Project Facility: Brunner Island Steam Electric Station, East Manchester Township, York County, Pa. Applications for surface water withdrawal of 835.000 mgd and consumptive water use of up to 12.100 mgd.

Public Hearing – Project Scheduled for Rescission Action:

1. Project Sponsor: Northampton Fuel Supply Company, Inc. (Docket No. 20040903). Project Facility: Prospect Bank Operation, Plains Township, Luzerne County, Pa.

Opportunity to Appear and Comment:

Interested parties may appear at the above hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or

Susquehanna River Basin Commission

Notice of Public Hearing and Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Public Hearing and Commission Meeting.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing as part of its regular business meeting beginning at 8:30 a.m. on September 12, 2007 in Binghamton, New York. At the public

at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102-2391, or submitted electronically to Richard A. Cairo, General Counsel, e-mail: rcairo@srbc.net or Deborah J. Dickey, Secretary to the Commission, e-mail: dddickey@srbc.net. Comments mailed or electronically submitted must be received prior to September 12, 2007 to be considered.

AUTHORITY: P.L. 91-575, 84 Stat. 1509 *et seq.*, 18 CFR Parts 806, 807, and 808

Dated: August 15, 2007.
Thomas W. Beauduy,
Deputy Director.

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax

I.D. No. TAF-22-07-00007-A
Filing No. 874
Filing date: Aug. 21, 2007
Effective date: Aug. 21, 2007

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon of the fuel use tax on motor fuel and diesel motor fuel for the calendar quarter beginning July 1, 2007, and ending Sept. 30, 2007, and reflect the aggregate rate per gallon on such fuels for such calendar quarter for purposes of the joint administration of the fuel use tax and the art. 13-A carrier tax.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-22-07-00007-P, Issue of May 30, 2007.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: tax_regulations@tax.state.ny.us

Assessment of Public Comment:

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax

I.D. No. TAF-36-07-00004-P

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

Proposed action: Amendment of section 492.1(b)(1) of Title 20 NYCRR

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon of the fuel use tax on motor fuel and diesel motor fuel for the calendar quarter beginning Oct. 1, 2007, and ending Dec. 31, 2007, and reflect the aggregate rate per gallon on such fuels for such calendar quarter for purposes of the joint administration of the fuel use tax and the art. 13-A carrier tax.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (xlviii) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
14.0	22.0	38.6	14.0	22.0	36.85
(xlvii) July - September 2007					
14.0	22.0	38.6	14.0	22.0	36.85
(xlviii) October - December 2007					

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: tax_regulations@tax.state.ny.us

Data, views or arguments may be submitted to: Marilyn Kaltenborn, Director, Taxpayer Guidance Division, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-1153, e-mail: tax_regulations@tax.state.ny.us

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

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

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