RULE MAKING ACTIVITIES

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

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

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

Banking Department

EMERGENCY RULE MAKING

Compliance with Community Reinvestment Act Requirements

I.D. No. BNK-50-05-00003-E
Filing No. 1407
Filing date: Nov. 29, 2005
Effective date: Dec. 1, 2005

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

Action taken: Amendment of Part 76 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 10, 14(1) and 28-b

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

Specific reasons underlying the finding of necessity: The purpose of the Community Reinvestment Act ("CRA") is to encourage banking institutions to help meet the credit needs of their local communities, including low- and moderate-income neighborhoods, consistent with safe and sound operations. Every New York State-chartered bank must comply with both the State and federal CRA laws and regulations and is examined by State and federal regulators with respect to CRA.

Effective September 1, 2005, State chartered banks will have to comply with the amended federal CRA regulations recently adopted jointly by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

When Part 76 was first adopted, and for the subsequent amendments made thereto, the State CRA regulation was designed to create compatibility with the federal CRA regulations so that banks chartered under the New York Banking Law would not have to satisfy conflicting sets of CRA regulations, thus substantially reducing their regulatory burden. Consequently, the recently adopted CRA federal amendments which become effective September 1, 2005, necessitate the emergency adoption of the amendments to Part 76 of the General Regulations of the Banking Board to make the State CRA regulations compatible with the federal CRA regulation.

Subject: Compliance with Community Reinvestment Act requirements.

Purpose: To encourage banking institutions to help meet the credit needs of their local communities, including low- and moderate-income neighborhoods, consistent with safe and sound operations.

Substance of emergency rule: Section 76.2(b) is amended to include references to "metropolitan divisions" in determining an area's median family income.

Section 76.2(f) is amended to revise the definition of "community development" to include activities that revitalize or stabilize disaster areas and distressed or underserved middle-income nonmetropolitan geographies.

Section 76.2(q) is amended to add a definition of "metropolitan division".

Sections 76.2(q) to 76.2(w) are renumbered to account for the added definition in Section 76.2(q), as noted above.

Section 76.2(t) is amended to raise the asset threshold for a "small banking institution" to $1 billion, to introduce the new concept of an "intermediate small banking institution," and to add provisions for adjusting the asset thresholds for small and intermediate small banking institutions.

Section 76.2(u) is amended to reflect the aforementioned renumbering, and to update references to the Banking Department's address.

Section 76.2(v) is amended to reflect the aforementioned renumbering, to clarify a reference to Federal Reserve Regulation BB and to update references to the Banking Department's address.

Section 76.5(a) is amended to replace the requirement for biennial CRA examinations with more flexible CRA examination scheduling criteria and to clarify the connection between the numerical ratings specified in Part 76 and the words commonly used to describe the rating.

Section 76.5(b) is amended to provide examples of laws, rules and regulations that, when violated, could lead to reduced CRA performance ratings.

Section 76.6(b) is amended to include references to metropolitan divisions.

Section 76.6(c)(1) is amended to include references to metropolitan divisions.

Section 76.8(a)(1) is amended to identify the specific data an institution must maintain if it elects to have regulators consider certain optional types of lending as part of the institution's CRA performance evaluation. The Section also is amended to include references to the locations of various offices where an individual can obtain copies of a specified document.

Section 76.8(b)(2) is amended to eliminate a reference to loan renewals.

Section 76.8(c)(1) is amended to identify the specific data an institution must maintain if it elects to have regulators consider certain optional types of lending by an affiliate of the institution as part of the institution's CRA

performance evaluation. The Section also is amended to include references to the locations of various offices where an individual can obtain copies of a specified document.

Section 76.8(d) is amended to clarify that the loans being discussed in the Section are community development loans.

Section 76.8(d)(1) is amended to identify the specific data an institution must maintain if it elects to have regulators consider certain optional types of lending by an affiliate of the institution as part of the institution's CRA performance evaluation. The Section also is amended to include references to the locations of various offices where an individual can obtain copies of a specified document.

Section 76.10(d)(1) is amended to clarify the circumstances under which additional consideration will be given for branches located outside low- or moderate-income areas.

Section 76.10(d)(2) is amended to clarify the criteria for evaluating an institution's record of opening new branches and closing existing branches.

Section 76.10(f) is amended to add a provision specifying that the Banking Department will look favorably upon an institution's efforts to establish a Banking Development District.

Section 76.12(a)(1) is added to identify which performance criteria apply to small banking institutions that are not intermediate small banking institutions.

Section 76.12(a)(2) is added to identify the performance criteria that apply to intermediate small banking institutions.

Section 76.12(b) is added to delineate the Lending Test criteria that apply to all small banking institutions.

Section 76.12(c) is added to identify the Community Development Test performance criteria that apply only to intermediate small banking institutions.

Section 76.13(g)(1) is amended to correct an inaccurate cross-reference.

In addition, various technical amendments have been made to Part 76 to correct punctuation, renumber sub-paragraphs, and make similar minor adjustments.

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 February 26, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Banking Law Sections 10, 14(1) and 28-b authorize the Banking Board to promulgate rules and regulations effectuating the provisions of the Community Reinvestment Act (CRA).

2. Legislative objectives:

The purpose of CRA is to encourage banking institutions to help meet the credit needs of their local communities, including low- and moderate-income neighborhoods, consistent with safe and sound operations. The amendments to Part 76 make compatible the New York State CRA regulations to the changes made to the federal CRA regulations, recently adopted jointly by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation (the Federal Agencies) that became effective on September 1, 2005. As a result, the amendments establish a CRA framework paralleling that in the federal CRA regulation, by which the State of New York Banking Department (Banking Department) can assess a banking institution's record of helping to meet the credit needs of its local community.

3. Needs and benefits:

Every New York State-chartered bank must comply with both the State and federal CRA laws and regulations. Thus, each State-chartered bank is examined by the State and a federal regulator to measure how well it meets the credit needs of its local communities. This rulemaking primarily involves amendments to Part 76 with respect to certain provisions of the State CRA regulation to create compatibility with the federal CRA regulation so that banks chartered under the New York Banking Law do not have to satisfy conflicting sets of CRA regulations, thus substantially reducing their regulatory burden.

Specifically, the rule includes amendments that reduce the regulatory burden imposed on banks with an asset size between $250 million and $1 billion, now referred to as intermediate small banking institutions, without regard to holding company affiliation, by exempting them from CRA loan data collection and reporting obligations. The intermediate small banking institutions will not be subject to the lending, investment, and service CRA performance tests. Instead, their CRA performance will be evaluated under the small bank lending test combined with a flexible new community development CRA performance test. This has the effect of reducing regulatory burden on institutions that fall within this category because they are relieved from their obligation to collect and report information about small business, small farm, and community development loans.

As mentioned above, the rule includes the implementation of a community development test for intermediate small banking institutions that provides a more appropriate framework for assessing community reinvestment performance by these banks. The number and amount of community development loans, the number of qualified investments, and the provision of community development services by an intermediate small banking institution, and the bank's responsiveness through such activities to community development lending, investment, and service needs, are evaluated in the context of the individual bank's capacities, business strategy, the bank's assessment area(s), and the number and types of opportunities for community development activities.

The rule also revises the definition of community development to increase the number and kinds of tracts in which bank activities are eligible for community development consideration. Specifically, the category of community development with respect to activities that revitalize or stabilize is revised to provide that activities that revitalize or stabilize areas designated by the federal agencies as distressed or underserved nonmetropolitan middle-income geographies will qualify as community development activities. In addition, the rule extends the definition of community development to cover efforts made by banks to revitalize or stabilize designated disaster areas.

Further, the rule amends Part 76 to reflect certain technical changes to the regulation implementing the CRA to conform to changes made by the Office of Management and Budget (OMB) regarding the standards for defining Metropolitan Statistical Areas, and changes related to census tracts adopted by the U.S. Bureau of the Census (Census). OMB standards for defining statistical areas provide nationally consistent definitions to use when collecting, tabulating and publishing federal statistics by geographic area. The CRA regulation relies on OMB standards for defining metropolitan areas for purposes of CRA data collection and reporting and for delineating institutions assessment areas.

The CRA definition of geography affects CRA assessment area delineation, data collection and reporting. The CRA regulation defined the term geography as a census tract or a block-numbering area delineated by the United States Bureau of the Census in the most recent decennial census. Beginning with the 2000 Census, the Census only assigns tracts and no longer assigns block-numbering areas. Accordingly, the regulation amends the definition of geography to delete the term block-numbering area.

Amendments to Part 76 also establish a CRA examination schedule for State chartered banks that will more closely align, to the extent feasible, the State CRA examination schedule with that of the bank's federal regulator, thereby eliminating, when possible, non-concurrent CRA examinations.

In addition, the rule includes certain amendments that clarify the existing CRA regulations to assist regulated entities whose CRA performance is being assessed. In particular, Part 76 is amended to clarify, by way of examples, actions that evidence discrimination, or evidence credit practices that violate an applicable law, rule, or regulation. Such evidence will adversely affect the evaluation of a bank's CRA performance.

Also included in the rule are clarifying amendments that: (a) describe the level of CRA performance associated with the CRA numerical performance ratings currently referred to throughout the regulation, (b) explain the criteria currently considered for evaluating a bank's CRA performance with respect to branch distribution, (c) specify the data referred to that must be maintained with respect to additional lending activity if banks elect to have additional lending activity considered in assessing their CRA performance, (d) make explicit the Banking Department's already existing practice to consider a bank's efforts to establish a Banking Development District in evaluating the bank's service test CRA performance criteria, and (e) state the Department's existing practice to apply the CRA performance criteria uniformly.

In addition to the foregoing, there are other small amendments to Part 76 in the form of corrections and updates that make current references to the location of the New York City office of the Department, re-number sections of the rule as needed, remove redundant terminology, insert proper cross-referencing and correct typographical errors.

4. Costs:

Costs to State Government: None.

It is expected that there will not be an increase in the amount of examiner hours needed to conduct CRA examinations of State-chartered banks by amending the State's CRA regulations to create compatibility with the federal CRA regulations, and establishing a CRA examination schedule for State-chartered banks that will be more closely aligned, to the extent feasible, with the CRA examination schedule of the bank's federal regulator.

Costs to Local Government: None.

Costs to the Regulated Entities: The Banking Department expects that because every New York State-chartered bank must comply with both the State and federal CRA laws and regulations, and the rule primarily seeks amendments to the State's CRA regulation to create compatibility with the federal CRA regulations, there will be no additional costs to the regulated entities due to the amendments to Part 76.

It is expected that the changes in Part 76, overall, will result in cost-savings to the regulated entities. Specifically, because the amendments to Part 76 primarily create compatibility with the federal CRA regulations, New York State-chartered banks that are subject to both the State and federal CRA laws and regulations will not incur the additional costs that would likely result if the regulated entities were required to satisfy two conflicting sets of CRA regulations. The estimated savings to the regulated entities in this regard can not be quantified by the Banking Department because there are a number of factors affecting a bank's CRA compliance costs, including the institution's asset size, the scope and type of its CRA programs, and the personnel involved in administering the programs and compliance with CRA.

Additionally, because the rule establishes a CRA examination schedule for State-chartered banks that will be more closely aligned, to the extent feasible, with the CRA examination schedule of the bank's federal regulator, eliminating the regulatory burden of non-concurrent examinations, when possible, in this area will eliminate additional costs to the regulated entities for CRA examinations. The Banking Department is unable to estimate the savings to the regulated entities in this respect because the costs to an institution for an on-site CRA examination can vary greatly according to the institution's asset size, the scope and type of its CRA programs, and the number of personnel needed to assist in connection with the examination.

5. Local government mandates:

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

6. Paperwork:

The rule will provide regulatory relief for State-chartered banks with an asset size between $250 million and $1 billion (intermediate small banking institutions) because it exempts these banks from CRA loan data collection and reporting obligations. As a result, such intermediate small banking institutions will be relieved of their obligation to collect and report information to the State and federal regulators about small business, small farm, and community development loans.

Additionally, since the rule establishes a CRA examination schedule for State-chartered banks that will be more closely aligned, to the extent feasible, with the CRA examination schedule of the bank's federal regulator, a reduction in paperwork will result since the banks will have to produce the necessary paperwork only once per CRA evaluation period for concurrent examinations.

7. Duplication:

Every New York State-chartered bank must comply with both the State and federal CRA laws and regulations. Consequently, each State-chartered bank is examined by the State and a federal regulator to measure how well it meets the credit needs of its local communities. The rule seeks amendments to Part 76 of the State CRA regulation to create compatibility with the federal CRA regulation so that banks chartered under the New York Banking Law do not have to satisfy conflicting sets of CRA regulations.

8. Alternative approaches:

Proposal — New York State-chartered banks must comply with both the State and federal CRA laws and regulations. Therefore, each State-chartered bank is examined by the State and a federal regulator to measure how well it meets the credit needs of its local communities. As previously discussed in the Needs and Benefits section contained herein, the rule is necessary because it primarily amends Part 76 in various ways so that the State CRA regulation is compatible with the federal CRA regulation and establishes a CRA examination schedule for State-chartered banks that will be more closely aligned, to the extent feasible, with the CRA examination schedule of the bank's federal regulator.

Due to the fact that State-chartered banks are required to comply with State and federal laws and regulations with respect to CRA, the Banking Department reasoned when Part 76 was first established, and during subsequent amendments thereto, that the State CRA regulation should be compatible with the federal CRA regulation. This approach to CRA has provided the regulated institutions with a consistent set of performance criteria with respect to their CRA activity. Accordingly, the rule contains amendments to Part 76 that will again provide a consistent approach to CRA compliance for the regulated entities so that they will not have to satisfy conflicting sets of CRA regulations. To the extent possible, it will also enable them to be examined concurrently by the State and federal regulator for CRA purposes, thereby eliminating the regulatory burden of non-concurrent CRA examinations. In the past, preventing regulated institutions from having to satisfy two different sets of CRA regulations has reduced their CRA regulatory burden. For that reason, it is expected that the current amendments will have a similar effect.

Do not propose the rule – If this alternative were considered, regulated entities would be faced with CRA compliance requirements under the State and federal regulations that would be substantially different.

The regulated entities also would be required to submit to non-concurrent CRA examinations by the State and federal regulators. As explained in the Needs and Benefits section, this approach was not considered because the Banking Department believes that it is unnecessary to increase the regulatory burden placed on State-chartered banks by having them comply with conflicting sets of CRA regulations and subjecting them to non-concurrent CRA examinations.

9. Federal standards:

Federal CRA regulations recently adopted by the Federal Agencies become effective on September 1, 2005. The rule amends the State CRA regulation to make it compatible with the federal CRA regulations.

10. Compliance schedule:

Compliance with the rule is required upon its becoming effective.

Regulatory Flexibility Analysis

The rule makes amendments to Part 76, the State's CRA regulation, primarily to make it compatible with the recently amended federal CRA regulations, which become effective September 1, 2005. All New York State-chartered banks must comply with both the State and federal CRA laws and regulations.

Effect of the rule:

With respect to asset size of the State-chartered banks, the rule specifically includes amendments to Part 76 similar to the changes recently adopted in the federal CRA regulations, that reduce the regulatory burden imposed on banks with an asset size between $250 million and $1 billion (referred to as intermediate small banking institutions), without regard to holding company affiliation. These amendments exempt intermediate small banking institutions from CRA loan data collection and reporting requirements. Also, the intermediate small banking institutions will not be subject to the lending, investment, and service CRA performance tests. Instead, their CRA performance will be evaluated under the small bank lending test combined with a flexible new community development CRA performance test. This has the effect of reducing regulatory burden on institutions that fall within this category because they are relieved from their obligation to collect and report information about small business, small farm, and community development loans.

The implementation of a new community development test for the intermediate small banking institutions will provide a more appropriate framework for assessing community reinvestment performance by these banks. The number and amount of community development loans, the number of qualified investments, and the provision of community development services by an intermediate small bank, and the bank's responsiveness through such activities to community development lending, investment, and service needs is evaluated in the context of the individual bank's capacities, business strategy, the bank's assessment area(s), and the number and types of opportunities for community development activities. Accordingly, because the performance standards for the intermediate small banking institutions will have the effect of reducing regulatory burden on these institutions, it is apparent that the amendments will not impose any appreciable or substantial adverse impact on State-chartered banks licensed under New York Law.

The rule affects State-chartered banks. It will have no effect on local governments because there are no local governments that are State-chartered banks.

Rural Area Flexibility Analysis

A Rural Area Flexibility analysis is not submitted because the rule does not result in any hardship to a regulated party in a rural area. As is more fully described in the Regulatory Impact Statement, the rule contains amendments to Part 76 to make various changes with respect to the ways in which the CRA performance is assessed for banks with a certain asset size to make the State CRA rules compatible with the recently adopted amendments to the federal CRA regulation. The amendments to Part 76 also establish a CRA examination schedule for State-chartered banks that will be more closely aligned, to the extent feasible, with the CRA examination schedule of the bank's federal regulator. Additionally, amendments to Part 76 seek to clarify certain provisions of the existing State CRA regulation to assist the regulated entities whose CRA performance is being assessed. Finally, there are certain amendments to Part 76 in the form of corrections and updates that make current references to the location of the New York City office of the Department, re-number sections of the rule as needed, remove redundant terminology, insert proper cross-referencing and correct typographical errors.

Consequently, there is nothing about the character and nature of the rule that would make it difficult for, or prevent State-chartered banks from complying with the rule based on a particular office location. Accordingly, it is unlikely that the rule would cause regulated parties to seek flexibility with respect to any part, or parts thereof, even if the regulated parties were located in a designated rural area as defined in New York State Executive Law Section 481(7).

Job Impact Statement

The purpose of CRA is to encourage banking institutions to help meet the credit needs of their local communities, including low and moderate income neighborhoods, consistent with safe and sound operations. Every New York State-chartered bank must comply with both the State and federal CRA laws and regulations and is examined by State and federal regulators with respect to CRA. Recent amendments to the federal CRA regulation that apply to federal as well as State-chartered banks were adopted and will become effective September 1, 2005. Accordingly, the amendments to Part 76, the State's CRA regulations, are intended primarily to create compatibility with the federal CRA regulation so that banks chartered under the New York Banking Law will not have to satisfy conflicting sets of CRA regulations, thus substantially reducing their regulatory burden.

As is more fully described in the Regulatory Impact Statement, the rule contains amendments to Part 76 to make various changes with respect to the ways in which certain bank's CRA performance is assessed to make the State CRA rules compatible with the recently adopted amendments to the federal CRA regulation. Furthermore, amendments to Part 76 establish a CRA examination schedule for State-chartered banks that will be more closely aligned, to the extent feasible, with the CRA examination schedule of the bank's federal regulator. Additionally, amendments to Part 76 seek to clarify certain provisions of the existing State CRA regulation to assist the regulated entities whose CRA performance is being assessed. Finally, there are certain amendments to Part 76 in the form of corrections and updates that make current references to the location of the New York City office of the Department, re-number sections of the rule as needed, remove redundant terminology, insert proper cross-referencing and correct typographical errors.

Accordingly, based on the nature and purpose of the rule, it will have no impact on jobs in New York State.

Capital District Transportation Authority

NOTICE OF ADOPTION

Conduct and Safety of the Public

I.D. No. CDT-35-05-00004-A
Filing No. 1409
Filing date: Nov. 23, 2005
Effective date: Dec. 14, 2005

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

Action taken: Addition of Part 5300 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 1307(4)

Subject: Rules and regulations governing the conduct and safety of the public.

Purpose: To promote the safety and welfare of the public by articulating rules of conduct and safety in the use of the facilities of the Capital District Transportation Authority, improve police officer enforcement capability, enhance customer safety and security, clearly communicate the rules applicable to transit customers, and conform rules to certain provisions of the Americans with Disability Act.

Text or summary was published in the notice of proposed rule making, I.D. No. CDT-35-05-00004-P, Issue of August 31, 2005.

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

Text of rule and any required statements and analyses may be obtained from: David E. Winans, General Counsel, Capital District Transportation Authority, 110 Watervliet Ave., Albany, NY 12206, (518) 437-8315, e-mail: davidw@cdta.org

Assessment of Public Comment

The agency received no public comment.

State Consumer Protection Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Face to Face Meeting Exception in the Do Not Call Legislation

I.D. No. CPR-50-05-00009-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 4603.2(a) of Title 21 NYCRR.

Statutory authority: Executive Law, section 553

Subject: Amendment of rules regarding the face to face meeting exception in the Do Not Call legislation.

Purpose: To bring the rules into parity with recently amended General Business Law, section 399-z(1)(j).

Text of proposed rule: § 4603.2 Exceptions.

(a) "Unsolicited telemarketing sales call" means any telemarketing sales call other than a call made: (1) in response to an express written or verbal request of the specific customer called; (2) in connection with an established business relationship, which has not been terminated by either party[;],*unless such customer has stated to the telemarketer or the telemarketer's agent that such customer no longer wishes to receive the telemarketing sales calls of such telemarketer;* (3) to an existing customer, unless such customer has stated to the telemarketer or the telemarketer's agent that such customer no longer wishes to receive the telemarketing sales calls of such telemarketer[;] [or (4) in which the sale of goods and services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the telemarketer or a meeting between the telemarketer and the customer].

Text of proposed rule and any required statements and analyses may be obtained from: Lisa R. Harris, General Counsel, Five Empire State Plaza, Corning Tower, Suite 2101, Albany, NY 12223, (518) 474-2348, e-mail: Lisa.Harris@consumer.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

Consensus Rule Statement for amendment of Section 4603.2(a) of Title 21 NYCRR dealing with Executive Law § 553 and General Business Law § 399-z (Do Not Call legislation.) The proposed amendment is a consensus rule because this change is being made to bring the rules in parity with existing New York State General Business Law Section 399-z(j). The Federal Communications Commission (FCC) issued amended rules to the Telephone Consumer Protection Act (TCPA) of 1991, in July

2003 that explicitly advised states that "face to face meeting" telemarketing calls are not exempt from the TCPA to further protect consumers from unwanted telemarketing calls. Therefore, any state law that is less restrictive is preempted by the TCPA.

General Business Law Section 399-z(j) no longer contains the face to face exception and these rules need to comply with the law. The CPB expects no objection, as the FCC has had the authority to pursue face to face telemarketing calls since 1991 and that their explicit advisement that state law must comport with the FCC rules has been in effect for two years.

Job Impact Statement

1. JOB IMPACT EXEMPTION (JIE):

The proposed regulations should not have a substantial adverse impact, defined as a decrease of 100 jobs (SAPA § 201-a(6)(c)). The Board estimates that telemarketing firms should be able to comply with the proposed amendments using existing resources. Because it is evident from the nature of these amendments that they would have little impact on the number of jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required.

2. JOB IMPACT STATEMENT (JIS):

This requirement is not applicable. See the Job Impact Exemption section.

3. JOB IMPACT REQUEST FOR ASSISTANCE (JIRA):

This requirement is not applicable. See the Job Impact Exemption section.

Department of Correctional Services

EMERGENCY RULE MAKING

Packages and Articles Sent or Brought to Institutions

I.D. No. COR-50-05-00001-E
Filing No. 1405
Filing date: Nov. 28, 2005
Effective date: Nov. 28, 2005

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

Action taken: Repeal of Part 724 and addition of new Part 724 to Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Finding of necessity for emergency rule: Preservation of public safety.

Specific reasons underlying the finding of necessity: Packages have represented a window through which inmates and their external sources have attempted to transmit contraband items such as drugs, money and articles which can be used as or converted to weapons. Because of technological advances, seemingly innocuous consumer items may conceal sinister capabilities, and advances in packaging have sometimes aided in disguising and concealing dangerous products. When such items are successfully smuggled into a correctional facility, they become an instant threat to the safety and security of staff, inmates, visitors, volunteers and the public at large.

Accordingly, the Department has concluded that it must have the capability of making immediate changes to the list of items allowed to be received via packages. For this reason, the listing, previously presented at section 724.4 of this regulation, has been removed. The listing, which has always been printed as part of the Department's internal directive #4911, "Packages and Articles Sent or Brought to Institutions," will henceforth be viewable on the Department's website and, as before, posted in facilities and available to inmates at facility libraries. The department will be able, thereby, to quickly alter the list whenever it becomes evident that an item presents a security risk. Likewise, public access to the up-to-date list will help to minimize the likelihood that someone might purchase and send to an inmate an article that would not be allowed.

Concurrently, the remainder of Part 724 is amended to reflect procedures designed to enhance security, guard against abuse of package privileges and prevent importation of contraband into correctional facilities.

In view of the potential harm to public safety which may arise from abuse of inmate package privileges, the Department has concluded that this rule should be implemented on an emergency basis.

Subject: Packages and articles sent or brought to institutions.

Purpose: To update procedures consistent with security needs.

Substance of emergency rule:

PACKAGES AND ARTICLES SENT OR BROUGHT TO INSTITUTIONS

This Part formerly consisted of four sections, 724.1 through 724.4. It now consists of five sections with the addition of a new section 724.2 on applicability, identifying which inmates and facilities may receive packages in accordance with this Part.

Section 724.3, "Policy" (formerly 724.2), has been greatly expanded. New material is summarized as follows:

Subdivision (a).

- Paragraph (3) restricts received articles to those which will be for the inmate's personal use and will not cause the inmate to exceed in-cell limits;

- Paragraph (4) defines the value of an article as the actual purchase price, excluding tax, shipping or handling costs;

- Paragraphs (5) and (6) clarify procedures for disposition of previously received package items which subsequently become disallowed;

- Paragraph (7) specifies that the department is not responsible for articles damaged in shipping or received in spoiled condition;

- Paragraph (8) provides for a record of return-to-sender transactions.

Subdivision (b).

- Paragraphs (1) through (4) specify search procedures, including a procedure for handling items of religious significance;

- Paragraphs (5) and (6) define contraband and articles not permitted and include procedures for disposition;

- Paragraph (7) prohibits alteration of items once received;

- Paragraph (8) provides for review and disposition of items withheld by staff because of non-conformance with specifications.

Subdivision (d).

- Paragraph (1) adds procedures for disposition of packages not having return addresses;

- Paragraph (2) expands procedures for sending a package out of a facility at an inmate's request.

Subdivision (e) – limits receipt of art and handicraft supplies.

Subdivision (f) – explains procedures for handling packages brought by visitors.

Subdivision (g).

- Paragraph (2) requires that a received article valued at over $20 must be accompanied by a receipt or bill;

- Paragraph (4) establishes special watch procedures to guard against importation of contraband in packages addressed to inmates who have been identified with contraband or drug-related misbehavior;

Subdivision (h).

- Paragraph (2) specifies that an inmate who orders a package while under a "loss of package" disciplinary disposition must pay to have it returned to sender.

Subdivision (i) provides for disposition of packages received for inmates in SHU.

Subdivision (j) provides for processing and forwarding or disposition of packages received for inmates who have been transferred or are temporarily away from a facility.

Section 724.4, "Local permits" (formerly 724.3), has not changed except for the following addition at paragraph (5): "If a permit is revoked, the article will be confiscated and disposed of at the inmate's expense in accordance with the departmental directive on inmate personal property limits."

Section 724.5, "Listing of approved items" (formerly 724.4, "Allowable Items") is completely changed. The department will no longer list items in this regulation because of the necessity of making changes as security needs require and on an expeditious basis. The new section is printed here in its entirety.

§ 724.5 Listing of approved items.

(a) The department shall promulgate a detailed listing of items approved for receipt by inmates through facility package rooms. This listing shall be appended to the departmental directive #4911, "Packages and Articles Sent or Brought to Institutions," made available to inmates in all facility libraries, posted in all facility package rooms and visiting rooms,

and posted on the department's website at www.docs.state.ny.us/directives/4911.pdf

(b) This listing only identifies items which may be received through the package room and sets forth the conditions and restrictions for receipt of those items; this listing is not a comprehensive list of all items that an inmate may be authorized to possess.

(c) This list will be periodically updated and amended, consistent with the needs of the department.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 25, 2006.

Text of emergency 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) 457-4951

Regulatory Impact Statement

Statutory Authority:

Section 112 of the Correction Law assigns to the commissioner of correction the powers and duties of management and control of correctional facilities and inmates, and the responsibility to make rules and regulations for the government of correctional facilities and discipline of inmates.

Legislative Objectives:

By vesting the commissioner with this rulemaking authority, the legislature intended the commissioner to determine if inmates may receive packages from family members and other outside sources and, if allowed, to implement procedures to ensure that the privilege is not abused.

Needs and Benefits:

Inmates have long enjoyed the privileges of receiving packages from family and visitors and of ordering consumer goods from a list of approved articles. Packages, however, have represented a window through which inmates and their external sources have attempted to obtain contraband items such as drugs, money and articles which can be used or converted to weapons. Needless to say, when such items are successfully smuggled in, they become an instant threat to the safety and security of staff, inmates, visitors, volunteers and the public at large.

The Department has preserved these privileges despite the increasing sophistication of those who would attempt to smuggle contraband via packages. Because of technological advances, seemingly innocuous consumer items may conceal sinister capabilities, and advances in packaging have sometimes aided in disguising and concealing dangerous products.

Accordingly, the Department has concluded that it must have the capability of making immediate changes to the list of items allowed to be received via packages. For this reason, the listing, which has always been presented at section 724.4, has been removed and is being published in more rapidly changeable venues, including posting at the Department's website. The department will be able, thereby, to quickly alter the list whenever it becomes evident that an item presents a security risk. Likewise, public access to the up-to-date list will help to minimize the likelihood that someone might purchase and send to an inmate an article that would not be allowed.

The remaining text has been thoroughly overhauled to ensure that package privileges are maintained for most inmates and that all related procedures serve the department's security interests. These detailed policies and procedures are currently implemented at department facilities and are posted and available to inmates.

Significant changes from the repealed text include: addition of a section on applicability, clarifying which inmates and facilities may receive packages in accordance with this Part; restriction of received articles to those which will be for the inmate's personal use and will not cause the inmate to exceed in-cell limits; clarification of procedures for disposition of disallowed items; enhanced package-related recordkeeping; clarification of package and item search procedures; definitions of contraband and articles not permitted; a procedure for review of items withheld by staff because of non-conformance with specifications; procedures for sending packages out of a facility; procedures for handling packages brought with visitors; special watch procedures to guard against importation of contraband; procedures for handling packages for inmates in special housing units and for inmates who have been transferred or are temporarily away from a facility.

Costs:

a. To State government: None.

b. To local governments: None. The proposed amendment does not apply to local governments.

c. Costs to private regulated parties: None. The proposed amendment does not apply to private regulated parties.

d. Costs to the regulating agency for implementation and continued administration of the rule:

(i) Initial expenses: None.

(ii) Annual cost: None.

Paperwork:

a. New reporting or application forms: None.

b. Additions to existing reporting or application forms: None.

c. New or addition recordkeeping that will be required of the regulated party to comply with the rule or prove compliance with the rule: None.

Local Government Mandates:

There are no new mandates imposed upon local governments by this proposal. The proposed amendment does not apply to local governments.

Duplication:

This proposed amendment does not duplicate any existing State or Federal requirement.

Alternatives:

The department has considered eliminating package privileges or severely restricting the number and circumstances under which packages may be received by inmates. It has concluded that such privileges represent a significant connection between inmates and their families and friends and, as such, have rehabilitative and quality-of-life value. As explained under "Needs and Benefits," the chosen course of action intends to maintain package privileges for most inmates while strengthening the procedures designed to ensure that these privileges are not abused and do not compromise security.

No other alternatives have been proposed or considered.

Federal Standards:

There are no minimum standards of the Federal government for this of a similar subject area.

Compliance Schedule:

The Department of Correctional Services is in compliance with this proposed rule.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This merely updates policy and procedures for receiving, handling, searching and disposing of packages and articles received by inmates correctional facilities.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This merely updates policy and procedures for receiving, handling, searching and disposing of packages and articles received by inmates correctional facilities.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This merely updates policy and procedures for receiving, handling, searching and disposing of packages and articles received by inmates correctional facilities.

Office of General Services

NOTICE OF ADOPTION

Freedom of Information Law and Access to Records

I.D. No. GNS-40-05-00023-A
Filing No. 1406
Filing date: Nov. 28, 2005
Effective date: Dec. 14, 2005

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

Action taken: Amendment of sections 330–1.5, 330–1.7 and 330–1.8 of Title 9 NYCRR.

Statutory authority: Executive Law, section 200; Public Officers Law, sections 87 and 89; L. 2003, ch. 403; and L. 2005, ch. 22

Subject: Freedom of Information Law and access to records.

Purpose: To bring the regulation into conformity with the Public Officers Law regarding agency response to requests for records and with respect to records containing information on critical infrastructure.

Text or summary was published in the notice of proposed rule making, I.D. No. GNS-40-05-00023-P, Issue of October 5, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Paula Hanlon, Office of General Services, Empire State Plaza, Corning Tower, 41st Fl., Albany, NY 12242, (518) 474−0571, e-mail: paula.hanlon@ogs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Nursing Home Pharmacy Regulations

I.D. No. HLT-50-05-00004-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 415.18 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803

Subject: Nursing home pharmacy regulations.

Purpose: To make available in nursing home emergency medication kits, a wider variety of medications to respond to the needs of residents; and allow verbal orders from a legally authorized practitioner.

Text of proposed rule: Subdivisions (g) and (i) of Section 415.18 are amended to read as follows:

Section 415.18 Pharmacy Services.

* * *

(g) Emergency medications. The facility shall ensure the provision of (an) emergency medication kit(s) as follows:

(1) The contents of each kit shall be approved by the medical director, pharmacist and director of nursing.

(2) [Controlled Substances shall be prohibited in emergency kits.] *Limited supplies of controlled substances for use in emergency situations may be stocked in sealed emergency medication kits.*

(i) Each such kit may contain up to a 24 hour supply of a maximum of ten different controlled substances in unit dose packaging, three of which may be injectable drugs.

(ii) Controlled substances contained in emergency medication kits may be administered by authorized personnel pursuant to an order of an authorized practitioner to meet the immediate need of a resident. Personnel authorized to administer controlled substances shall include registered professional nurses, licensed practical nurses or other practitioners, licensed/registered under Title VIII of the Education Law and authorized to administer controlled substances.

(iii) The facility shall maintain all records of controlled substances furnished or transferred from the pharmacy and the disposition of all controlled substances in emergency kits, as required by article 33 of the Public Health Law and corresponding regulations.

(3) For medications other than controlled substances [The] the medication contents of each kit shall be limited to injectables except that the kit may also include:

(i) sublingual nitroglycerine; and

(ii) up to five noninjectable, prepackaged medications not to exceed a 24-hour supply; [which are the same noninjectable, prepackaged medications in all emergency kits throughout the facility.] *The total number of noninjectables may not exceed 25 medications for the entire facility;*

(4) Each kit shall be kept and secured within or near the nurses' station.

* * *

(i) Verbal orders. All medications administered to residents shall be ordered in writing by a legally authorized practitioner unless unusual circumstances justify a verbal order, in which case the verbal order shall be given to a licensed nurse, or to a licensed pharmacist, immediately reduced to writing, authenticated by the nurse or registered pharmacist and countersigned by the prescriber within 48 hours. In the event a verbal order is not signed by the prescriber or a *legally* designated alternate [physician] *practitioner* within 48 hours, the order shall be terminated and the facility shall ensure that the resident's medication needs are promptly evaluated by the medical director or another legally authorized prescribing practitioner.

Text of proposed rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.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.

Regulatory Impact Statement

Statutory Authority:

These regulation revisions of 10 NYCRR Section 415.18, Pharmacy Services, in nursing homes, are proposed under the authority granted to the Commissioner of Health under PHL Section 2803. The PHL outlines the responsibility to conduct inspections of health care facilities to determine compliance with statutes and regulations promulgated under the provisions of those statutes and authorizes the commissioner to propose rules, regulations and amendments thereto for consideration by the State Hospital Review and Planning Council "the Council". The Council, by a majority vote of its members, shall amend rules and regulations, subject to the approval of the commissioner, to effectuate the provisions and purposes as stated in the PHL.

Legislative Objectives:

The Department of Health possesses the comprehensive responsibility for the development and administration of programs, standards and methods of operation, and all other matters of policy with respect to nursing home services. Furthermore, through the Social Security Act, the federal government authorizes the State to administer programs and services through Medical Assistance (*i.e.*, Medicaid). This includes responsibility for standards of care within those settings, in order to ensure the health needs of recipients are met. These amended regulations will enable nursing homes to respond more quickly and efficiently to the health care needs of residents requiring emergency medications. The regulation will ensure the protection of the nursing home resident and promote the highest quality of care.

Needs and Benefits:

This proposal to amend 10 NYCRR sections 415.18(g) and 415.18(i) responds to the fact that current regulations for nursing home emergency medication kits and verbal orders are outdated and not in keeping with actual practice.

The State's nursing homes provide a variety of clinical services which were not anticipated when the current pharmacy services regulations were promulgated. The Rug-II case mix reimbursement methodology which began in 1986, has allowed nursing homes to open their doors to residents who require resources which were previously unavailable. Currently, nursing homes accept residents whose clinical needs at one time were met in a hospital. In addition, some nursing homes have units that address the unique needs of special populations such as HIV, traumatic brain injury (TBI), or ventilator residents.

The present regulation, section 415.18(g), provides for emergency medication kits but limits the contents to injectables. It also provides for the kit to contain sublingual nitroglycerine and up to five noninjectable prepackaged medications. At the time this regulation was promulgated, the extensive array of oral medications currently available did not exist and emergency medications were primarily viewed in terms of injectable medications. With the greater complexity of clinical conditions often seen in today's nursing home, resident issues of pain management have taken on greater significance. The availability of oral medications for pain and the wide range of antibiotics that did not exist at the time the regulations were written would significantly affect how nursing homes could respond to an emergency need of a resident.

The present regulations call for the contents of the emergency medication kits to be identical on every unit throughout the facility. At a time when the needs of residents were similar in terms of clinical management, this made sense. However, with nursing homes providing care to special populations including HIV, TBI and ventilator care, this requirement inhibits the most efficient use of emergency medications kits to best meet the unique clinical needs of special populations. When promulgated, these

regulations were seeking to address concerns that facilities would establish "mini" pharmacies by having a wide range of noninjectables in the emergency medication kit and that the presence of a high number of medications may result in administration errors. With safe product packaging that is present today, safety concerns have been significantly reduced. In addition, the proposed regulation changes would limit the total number of noninjectables that would be available in emergency kits to no more than twenty-five. This would further ensure resident safety and eliminate the concern that nursing homes might stock an unlimited amount of noninjectables in the emergency kits. The proposed revisions would also allow for the presence of controlled substances in nursing home emergency kits. This would allow for the nursing home to respond quickly to pain management concerns that are a major issue for some residents.

Regulations at 415.18(i) provide that all medications administered to residents shall be ordered in writing by a legally authorized practitioner unless unusual circumstances justify a verbal order. At the time the original regulations were promulgated only physicians could order medications. The proposed changes would insert the phrase designated alternate practitioner in place of designated alternate physician. This change would be reflective of current practices in which other prescribers, such as a nurse practitioner can order medications.

Costs:

Costs to Regulated Parties:

There will be no additional costs to regulated parties.

Costs to State and Local Government:

There will be no additional costs to State or local governments.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

The proposed regulation imposes no program, duty, service, or other responsibility upon any city, town, village, school, fire or other special district.

Paperwork:

The regulation imposes no additional reporting requirements, forms or other paperwork.

Duplication:

The regulation does not duplicate any federal or state regulation.

Alternative Approaches:

No alternative approaches were considered, since all nursing homes would be allowed flexibility in determining the contents of the emergency medication kit in their facility.

Federal Standards:

This regulatory amendment does not exceed any minimum standards of the federal government.

Compliance Schedule:

The proposed regulation will be effective upon publication in the New York *State Register*.

Regulatory Flexibility Analysis

Effect on Small Business and Local Government:

For the purposes of this Regulatory Flexibility Analysis, small businesses are considered any nursing home within New York State which is independently owned and operated, and employs 100 individuals or less. Approximately 100 nursing homes would therefore be considered "small businesses".

Compliance Requirements:

The regulation would impose no additional recordkeeping or other affirmative acts.

Professional Services:

The regulation would impose no additional professional services.

Compliance Costs:

The regulation would impose no additional costs.

Economic and Technical Feasibility Assessment:

The proposed regulation would impose no compliance requirements which would raise technological or feasibility issues.

Minimizing Adverse Impact:

The agency considered the approaches listed in section 202-b(1) of SAPA and found them inapplicable. The regulation would impose no adverse impact on small businesses or local governments.

Small Business and Local Government Input:

The regulation would have no impact on small businesses and local governments. The regulation is supported by provider and consumer groups and feedback from these groups have been gathered. The proposed revisions have been sent to the Codes and Regulations Committee of the Council and have appeared on the agenda of the Codes and Regulations Committee which is made up of representatives of groups that have as their members representatives of small business and local government.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with a population less that 200,000 and for counties with a population greater than 200,000, which include towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene	Saratoga	

The following nine counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

The regulation would impose no additional reporting, recordkeeping or other affirmative acts.

Professional Services:

The regulation would not require additional professional services.

Compliance Costs:

The regulation would not impose additional costs.

Minimizing Adverse Impact:

The regulation would not result in any adverse economic impact on providers. The agency considered the approaches listed in section 202-bb(2) of SAPA and found them inapplicable.

Opportunity for Rural Area Participation:

The following groups are in support of the modification of 10 NYCRR 415.18:

New York Association of Homes and Services for the Aging
Nursing Home Community Coalition
New York State Health Facilities Association
New York State Office for Aging Long Term Care Ombudsman
Health Facility Association of New York
New York State Board of Pharmacy
New York Chapter of the American Society of Consulting Pharmacists

The proposed revisions will be sent to the Code Committee of the Council and appear on the agenda of the Code Committee which is made up of representatives of groups that have as their members representatives of rural areas.

Job Impact Statement

A Job Impact Statement is not necessary because it is apparent from the nature and purpose of the proposed regulation that it will not have a substantial adverse impact on jobs or employment opportunities. The proposal simply clarifies what drugs can be stocked in emergency medication kits, as well as who may sign verbal orders.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Controlled Substances in Emergency Kits

I.D. No. HLT-50-05-00005-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 80.11, 80.47, 80.49 and 80.50 of Title 10 NYCRR.

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

Subject: Controlled substances in emergency kits.

Purpose: To allow class 3A facilities to obtain, possess and administer controlled substances in emergency kits.

Text of proposed rule: Paragraph (6) of subdivision (b) of Section 80.11 is amended to read as follows:

(6) [be] not *be*, and not have been, a habitual user of narcotics or any other habit-forming drugs.

Paragraph (6) of subdivision (c), of Section 80.11 is amended to read as follows:

(6) [be] not *be*, and not have been, an habitual user of narcotics or other habit-forming drugs; and

Subdivision (f) of Section 80.11 is amended to read as follows:

(f) Persons conducting distributing activities of controlled substances within the State of New York shall obtain a class 2 license from the department, *except that;*

(1) Except in an adult care facility subject to the provisions of Title 18 NYCRR Parts 487, 488, and 490, a pharmacy may distribute a controlled substance to a practitioner in a Class 3a institutional dispenser limited solely for stocking in sealed emergency medication kits. Such distribution shall be pursuant only to a written request by the Class 3a facility indicating the name and address of the facility, the name and address of the pharmacy, the date of the request, the type and quantity of the drug requested and the signature of the authorized person making the request. With each distribution, the pharmacy shall provide the Class 3a facility with an itemized list indicating the name and address of the pharmacy, the name and address of the Class 3a facility, the date of the distribution, the type and quantity of the drug distributed, and the signature of the pharmacist.

Section 80.47 is amended by creating subdivisions (a), (b) and (c) and new subdivision (b) is amended to read as follows:

Section 80.47 Institutional dispenser, limited. *(a)* Nursing homes, convalescent homes, health-related facilities, *adult care facilities subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490* [homes for the aged], dispensaries or clinics not qualifying as institutional dispensers in license class 3 shall apply for an institutional dispenser, limited license. Such institutional dispensers qualifying for controlled substances privileges shall obtain a class 3a license from the department.

(b) An institutional dispenser licensed in class 3a may administer controlled substances to patients only pursuant to a prescription issued by an authorized physician or other authorized practitioner and filled by a registered pharmacy; except that [an] *controlled substances in emergency medication kits may be administered to patients as provided in Section 80.49(d) of this Part, except in an adult care facility subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490.*

(c) An institutional dispenser, limited, licensed in class 3a, which is operated as an integral and physical part of a facility licensed as a class 3 institutional dispenser may be provided with bulk stocks of controlled substances obtained pursuant to such class 3 institutional dispenser license. Records of distribution and administration of such bulk stocks of controlled substances shall be kept as provided in section 80.48(a) of this Part.

Subdivision (c) of section 80.49 is amended and a new subdivision (d) is added to read as follows:

(c) A separate record shall be maintained of the administration of *prescribed* controlled substances indicating the date and hour of administration, name and quantity of controlled substances, name of the prescriber, patient's name, signature of person administering and the balance of the controlled substances on hand after such administration.

(d) In an emergency situation, a controlled substance from a sealed emergency medication kit may be administered to a patient by an order of an authorized practitioner. An oral order for such controlled substance shall be immediately reduced to writing and a notation made of the condition which required the administration of the drug. Such oral order shall be signed by the practitioner within 48 hours.

(1) For purposes of this subdivision, emergency means that the immediate administration of the drug is necessary and that no alternative treatment is available.

(2) A separate record shall be maintained of the administration of controlled substances from an emergency medication kit. Such record shall indicate the date and hour of administration, name and quantity of controlled substances, name of the practitioner ordering the administration of the controlled substance, patient's name, signature of the person administering and the balance of the controlled substances in the emergency medication kit after such administration.

(3) The institutional dispenser limited shall notify the pharmacy furnishing controlled substances for the emergency medication kit within 24 hours of each time the emergency kit is unsealed, opened, or shows evidence of tampering.

Subdivision (e) of section 80.50 is amended and a new paragraph (1) is added to read as follows:

(e) *Except as provided in paragraph (1) of this subdivision,* [I]*institutional dispensers limited may only possess controlled substances prescribed for individual patient use, pursuant to prescriptions filled in a registered pharmacy. These controlled substances shall be safeguarded as provided in subdivision (d) of this section.*

(1) Except for adult care facilities subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490, institutional dispensers limited may possess limited supplies of controlled substances in sealed emergency medication kits for use as provided in section 80.49(d) of this Part. Each kit may contain up to a 24-hour supply of a maximum of ten different controlled substances in unit dose packaging, no more than three of which may be in an injectable form. Each kit shall be secured in a stationary, double-locked system or other secure method approved by the Department.

Text of proposed rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.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.

Regulatory Impact Statement

Statutory Authority:

Section 3308(2) of the Public Health Law authorizes and empowers the Commissioner to make any regulations necessary to supplement the provisions of Article 33 of the Public Health Law in order to effectuate its purposes and intent.

Section 3321(1)(b) authorizes the commissioner to make regulations that exempt a pharmacy from the licensing requirements of article 33 for the sale of controlled substances to a practitioner for the immediate needs of the practitioner receiving such substances.

Legislative Objectives:

Article 33 of the Public Health Law, officially known as the New York State Controlled Substances Act, was enacted in 1972 to govern and control the possession, prescribing, manufacturing, dispensing, administering, and distribution of licit controlled substances within New York. Section 3300-a expressly states that one of the statute's purposes is to allow the legitimate use of controlled substances in health care.

Needs and Benefits:

This regulation effectuates the above stated legislative purpose of section 3300-a of the New York State Controlled Substances Act. It will ensure timely access to controlled substances by practitioners and patients for emergency situations in extended care facilities and other health care facilities licensed by the Department as Class 3a, institutional dispenser limited. (See section 3302(18) of the Public Health Law for the definition of "institutional dispenser".) However, for the purpose of this impact statement, Class 3a institutional dispenser, Class 3a facility, and Class 3a healthcare facility shall not mean an adult care facility subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490.

Section 80.47 of Title 10 regulations requires that controlled substances be administered to patients in healthcare facilities licensed by the Department as Class 3a institutional dispensers limited (*i.e.;* nursing homes, convalescent homes, health-related facilities, adult homes, homes for the aged, correctional facilities) only pursuant to a prescription issued by an authorized practitioner. The regulation also requires that such prescriptions must be dispensed by a registered pharmacy.

Administrators, nursing personnel, and consultant pharmacists of Class 3a facilities have expressed their concern to the Department that the prescription requirements of Section 80.47 are a restriction to timely access to controlled substances by practitioners and patients when immediate administration is medically necessary. On urgent occasions such as a sudden seizure or onset of intractable pain, the severity of the situation may make it impossible for a practitioner to first issue a prescription for the drug in order to promptly treat the condition. Further, Class 3a facilities do not have onsite pharmacies. Even if a practitioner is able to first issue a prescription for a controlled substance to treat a patient in an emergency, that prescription may not immediately be dispensed by an outside pharmacy because the pharmacy may be too distant from the Class 3a facility or the emergency may have occurred during the pharmacy's non-business hours. These situations can, and do, result in needed medications not being

administered in a timely fashion to relieve a patient's severe symptoms or suffering.

The proposed amendment to Section 80.47 of the regulations authorizes the administration of a controlled substance from an emergency medication kit to a patient in an emergency situation in a Class 3a healthcare facility. Necessary complements to this amendment are the proposed amendments to Sections 80.11(f), 80.49 and 80.50(e) of Title 10 regulations. The proposed changed to Section 80.11(b)(6) is merely grammatical.

The amendment to Section 80.11(f) authorizes a licensed pharmacy to supply controlled substances to a practitioner in a Class 3a facility for stocking in emergency medication kits. The amendments to Section 80.50(e) authorize a Class 3a healthcare facility to possess a limited supply of controlled substances in an emergency medication kit and specify limitations on the quantities of such substances and requirements for their safeguarding. The amendment to Section 80.49 specifies recordkeeping requirements for controlled substances administered from emergency kits. When instituted together, these amendments will provide for timely access to controlled substances by practitioners and patients in the long-term care facility environment while simultaneously requiring adequate measures to ensure the security of such substances.

The federal Drug Enforcement Administration (DEA) also recognizes the need for storing controlled substances in emergency kits for administration to patients during urgent situations in long-term care facilities that are not eligible to hold a DEA registration. Since 1980, the DEA has issued a Statement of Policy containing guidelines for state regulatory agencies to follow when authorizing long-term care facilities to maintain such kits. Such guidelines have been incorporated in the proposed regulatory amendments.

The proposed regulatory amendments will enhance the quality of care of every patient in a long-term care facility licensed by the Department of Health. Such regulation will result in substantial benefit to the public health, which the Department has both a civic and legislative responsibility to ensure.

Costs:

Costs to Regulated Parties:

Healthcare facilities licensed as Class 3a institutional dispensers limited already possess required secure cabinets for safeguarding controlled substances. Such secure cabinets can also safeguard emergency kits containing controlled substances. Those facilities choosing to maintain such emergency kits will incur minimal costs to do so. These costs will be reflected in the purchase of the limited supplies of controlled substances and the sealable emergency kits required to secure and store them.

Costs to State and Local Government:

There will be no costs to state or local government.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

The proposed rule does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other specific district.

Paperwork:

Class 3a healthcare facilities are currently required by regulations to keep records of the receipt of all controlled substances prescribed for individual patients. Such facilities are also required to record all controlled substances dispensed and administered to such patients. These recordkeeping requirements would include the requisition and receipt of controlled substances for stocking in emergency medication kits.

Practitioners authorized to prescribe controlled substances are required by regulations to make a notation in a patient record of all controlled substances prescribed for that patient. The amendment to Section 80.47 requires that the administration of a controlled substance to a patient from an emergency kit in a Class 3a facility be pursuant to the written or oral medical order of a practitioner.

The Department anticipates a minimal increase in paperwork documenting the requisition, distribution, medical order, and administration of controlled substances contained in emergency medication kits. Such increase will be more than offset by the enhancement of healthcare for patients in the long term care environment.

Duplication:

The requirements of this proposed regulation do not duplicate any other state or federal requirement.

Alternatives:

The intent of the proposed regulation is to ensure access to controlled substance medications when urgently needed. The department believes it is in the best interest of the public health to authorize such accessibility to relieve pain or suffering. There are no alternatives that would ensure accessibility to controlled substances by practitioners and patients for emergency situations in long term care facilities and other health care facilities licensed as Class 3a, institutional dispenser limited.

Federal Standards:

The regulatory amendment does not exceed any minimum standards of the federal government. This amendment achieves consistency with existing federal and New York State laws and regulations promulgated to authorize the legitimate use of controlled substances in health care.

Compliance Schedule:

These regulations will become effective immediately upon publication of a Notice of Adoption in the *State Register*. At that time, in order that the public health derive maximum benefit from this regulatory amendment, all Class 3a license holders will be authorized to possess and administer controlled substances in an emergency medication kit to meet the immediate, legitimate need of a patient.

Regulatory Flexibility Analysis

Effect of Rule on Small Business and Local Government:

This proposed rule will affect practitioners, pharmacists, retail pharmacies, and nursing homes, and other healthcare facilities licensed by the Department as Class 3a institutional dispensers limited. Local government will only be affected if it operates one of the above facilities.

According to the New York State Department of Education, Office of the Professions, as of April, 2003, there were 113,666 licensed and registered practitioners authorized to prescribe and order the administration of controlled substances. However, this rule will affect only those practitioners who prescribe or order the administration of controlled substances for patients and residents of long term care facilities or supply such facilities with controlled substances for emergency medication kits.

According to the New York State Board of Pharmacy, as of June 30, 2003, there were a total of 4,521 pharmacies in New York State. Of these, 60 are sole proprietorship, 297 are partnerships, 73 are small chains (fewer than 3 pharmacies per chain) and the rest are large chains or other corporations (some of which may be small businesses) or located in public institutions. According to the New York State Education Department's Office of the Professions, as of April 1, 2003, there were 18,950 licensed and registered pharmacists in New York. However, this rule will affect only those pharmacies and pharmacists that dispense prescriptions for controlled substances to patients and residents of long term care facilities or supply such facilities with controlled substances for emergency medication kits.

Of the 1,282 healthcare facilities licensed by the department as Class 3a institutional dispensers limited, the rule will affect only those facilities that choose to maintain controlled substances in emergency medication kits. However, for the purpose of this impact statement, Class 3a institutional dispenser, Class 3a facility, and Class 3a healthcare facility shall not mean an adult care facility subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490.

Compliance Requirements:

There are no compliance requirements. While the proposed amendment authorizes Class 3a facilities to possess and administer controlled substances from emergency medication kits, the regulation does not require such facilities to do so.

Professional Services:

No additional professional services are necessary.

Compliance Costs:

Other than the cost of the controlled substances and sealable emergency medication kits for those Class 3a facilities choosing to possess such kits, there are no compliance costs associated with the proposed regulation.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. Class 3a healthcare facilities that choose to possess and administer controlled substances from emergency medication kits will use existing equipment for security and recordkeeping requirements.

The Department anticipates that these facilities will incur minimal expenditures for limited supplies of controlled substances and the sealable emergency kits in which to store them. Such expenditures will be more than offset by the enhancement of medical care for patients in Class 3a healthcare facilities.

Minimize Adverse Impact:

The agency considered the approaches in Section 202-b(1) of SAPA and found them inapplicable. The proposed regulation minimizes any adverse impact by not requiring pharmacies to supply controlled substances to Class 3a facilities for emergency medication kits. Pharmacies are authorized to engage in such activity strictly on a voluntary basis.

Small Business and Local Government Participation:

To ensure that small businesses were given the opportunity to participate in this rule making, the Department met with the pharmacy societies representing independent pharmacies. Local governments are not affected.

During the drafting of this regulation, the Department met with the Pharmaceutical Society of the State of New York (PSSNY), the Chain Pharmacy Association of New York State, the New York Council of Health Systems Pharmacists, and the New York State Chapter of American Society of Consultant Pharmacists.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

The proposed rule will apply to participating pharmacies and Class 3a healthcare facilities located in all rural areas of the state. Outside of major cities and metropolitan population centers, the majority of counties in New York contain widespread rural areas. These can range in extent from small towns and villages, and their surrounding areas, to locations that are very sparsely populated.

Compliance Requirements:

There are no compliance requirements. The proposed amendment authorizes pharmacies to distribute limited supplies of controlled substances to Class 3a facilities for maintaining in emergency medication kits. The regulation also authorizes those healthcare facilities to possess and administer controlled substances to patients from such kits in an emergency situation. However, these actions are undertaken on a voluntary basis by both pharmacy and healthcare facility. The regulation does not require either party to participate.

Present regulations require pharmacies and Class 3a facilities to maintain specified records of dispensing, receipt, and administration of controlled substances. The proposed regulation requires a minimum of additional recordkeeping to ensure limited access to emergency medication kits and safeguarding of the controlled substances contained therein. However, for the purpose of this impact statement, Class 3a institutional dispenser, Class 3a facility, and Class 3a healthcare facility shall not mean an adult care facility subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490.

Professional Services:

Pharmacies already employ the professional services of licensed and registered pharmacists. Class 3a healthcare facilities employ the services of practitioners, nurses, and consultant pharmacists. The proposed regulation would require no additional professional services, either public or private, in rural areas.

Compliance Costs:

Compliance costs to pharmacies opting to distribute limited supplies of controlled substances to Class 3a facilities will be negligible, since these pharmacies already maintain an existing inventory of such controlled substances. Other than the cost of the controlled substances and the sealable medication kits in which to store them, the compliance cost to Class 3a facilities choosing to possess such kits will be minimal.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. Class 3a healthcare facilities that choose to possess and administer controlled substances from emergency medication kits will use existing equipment for security and recordkeeping requirements.

The Department anticipates that these facilities will incur minimal expenditures for limited supplies of controlled substances and the sealable emergency kits in which to store them. Such expenditures will be more than offset by the enhancement of medical care for patients in Class 3a healthcare facilities.

Minimizing Adverse Impact:

The agency considered the approaches in Section 202-bb(2) of SAPA and found them inapplicable.

In ensuring access to controlled substances for legitimate medical treatment by practitioners and patients in Class 3a healthcare facilities, the proposed amendment does not impose any adverse impact upon rural areas. In fact, because in a rural setting pharmacies supplying prescriptions for controlled substances may be located at increased distances from long term care facilities, it is anticipated that these healthcare facilities would derive maximum benefit for their patients by being authorized to maintain limited supplies of controlled substances in sealed medication kits for use in emergency situations.

Rural Area Participation:

During the drafting of this regulation, the Agency met with and solicited comment from consultant pharmacists to Class 3a facilities, many of which are located in rural areas. It was the overwhelming consensus that pharmacists could better meet and greatly enhance the healthcare of the patients they serve in such facilities by being authorized to supply controlled substances for emergency medication kits. Administrative and nursing personnel in such facilities have also voiced to the Agency their need for emergency access to controlled substances for administration to patients to alleviate suffering in urgent situations. The agency addressed many of these concerns in the proposed regulation.

Job Impact Statement

Nature of Impact:

This proposal will not have a negative impact on jobs and employment opportunities. In benefiting the public health by ensuring access to controlled substances for legitimate healthcare needs, the proposed amendment is not expected to either increase or decrease jobs overall.

Power Authority of the State of New York

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

I.D. No. PAS-40-05-00025-A
Filing date: Nov. 29, 2005
Effective date: Nov. 29, 2005

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

Action taken: Revision in rates for the Village of Fairport.

Statutory authority: Public Authorities Law, section 1005(5)

Subject: Rates for the sale of power and energy.

Purpose: To maintain the system's fiscal integrity; this increase in rates is not the result of a Power Authority rate increase to the village.

Text or summary was published in the notice of proposed rule making, I.D. No. PAS-40-05-00025-P, Issue of October 5, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Angela D. Graves, Power Authority of the State of New York, 123 Main St., 15-M, White Plains, NY 10601, (914) 287-3092, e-mail: angela.graves@nypa.gov

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.

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

Rates for the Sale of Power and Energy

I.D. No. PAS-50-05-00002-P

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

Proposed action: Revision in rates for the Village of Lake Placid.

Statutory authority: Public Authorities Law, section 1005(5)

Subject: Rates for the sale of power and energy.

Purpose: To maintain the system's fiscal integrity. This increase in rates is not the result of a Power Authority rate increase to the village.

Text of proposed rule:

VILLAGE OF LAKE PLACID
Proposed Monthly Rates

	Proposed Rates[1]
Residential S.C.1	
Customer Charge	$ 5.05
	Non-Winter (May-October)
Energy Charge, per kWh	
	Winter (November-April)
Energy Charge, per kWh	
First 1,500 kWh.	$ .03389
1,501 - 4,999 kWh	$ .05638
Over 5,000 kWh.	$ .12558
Small Commercial S.C. 2	
Customer Charge	$ 5.00
	Non-Winter (May-October)
Energy Charge, per kWh	$ .04563
	Winter (November-April)
Energy Charge, per kWh	$ .05765
L. Commercial S.C. 3	
Demand Charge, per kW	$ 6.00
Energy Charge, per kW	$ .02084
Olympic Arena S.C. 4	
Demand Charge, per kW	$ 5.50
Energy Charge, per kWh	$ .02930
Outdoor Lighting S.C. 5	
(Charge per lamp, per month)	
175 Mercury Vapor	$ 9.73
400 Mercury Vapor	$21.39
150 High Pressure Sodium	$ 8.75
250 High Pressure Sodium	$15.23
400 High Pressure Sodium	$23.12
Street Lighting S.C. 6	
Facilities Charge, per lamp, per month	$ 4.09
Energy Charge, per kWh, per month	$ .02279

[1] Purchased Power Adjustment reflected in proposed rates.

Village of Lake Placid
Expense and Revenue Summary

	Five-Year Average	Proposed[1]
Purchase Power Expense (NYPA hydro and incremental)	$2,963,242	$4,421,541
Distribution Expense (Village-owned facilities)	752,057	881,000
Transmission Expenses	20,900	17,080
Depreciation Expense (on all capital facilities and equipment)	361,403	576,254
General and Administrative Expenses (salaries, insurance, management services and administrative expenses)	656,826	871,000
Net Rate of Return – (average 6.1%, proposed 7.3%) (includes debt service on current and planned debt and cash reserves for contingencies)	698,309	843,631
Total Cost of Service	$5,452,737	$7,610,506
Revenue at Present Rates		7,161,877
Deficiency at Current Rates		448,629
Revenue at Proposed Rates		$7,610,506
Increase % at Proposed Rates		6.3%

[1] Based on five years of historical and projected data.

Text of proposed rule and any required statements and analyses may be obtained from: Angela D. Graves, Power Authority of the State of New York, 123 Main St., 15-M, White Plains, NY 10601, (914) 287-3092, e-mail: angela.graves@nypa.gov

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

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

Regulatory Impact Statement, 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.

Public Service Commission

NOTICE OF ADOPTION

Non-Core Transportation Service for Electric Generation by The Brooklyn Union Gas Company

I.D. No. PSC-42-03-00006-A
Filing date: Nov. 23, 2005
Effective date: Nov. 23, 2005

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

Action taken: The commission, on Nov. 22, 2005, allowed The Brooklyn Union Gas Company, d/b/a KeySpan Energy Delivery New York to revise its tariff schedule, P.S.C. No. 12—Gas.

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

Subject: Service Classification No. 20—non-core transportation service for electric generation.

Purpose: To revise the methodology used for calculating the value added charge for Service Classification No. 20 customers.

Substance of final rule: The Commission adopted an order approving a request by The Brooklyn Union Gas Company, d/b/a KeySpan Energy Delivery New York to revise its Schedule for Gas Service—P.S.C. No. 12 to simplify the method of calculating the value added charge for S.C. No. 20—Non-Core Transportation Service for Electric Generation, 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.

(03-G-1392SA1)

NOTICE OF ADOPTION

Non-Core Transportation Service for Electric Generation by KeySpan Gas East Corporation

I.D. No. PSC-42-03-00007-A
Filing date: Nov. 23, 2005
Effective date: Nov. 23, 2005

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

Action taken: The commission, on Nov. 22, 2005, allowed KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island to revise its tariff schedule, P.S.C. No. 1—Gas.

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

Subject: Service Classification No. 14—non-core transportation service for electric generation.

Purpose: To revise the methodology used for calculating the value added charge for Service Classification No. 14 customers.

Substance of final rule: The Commission adopted an order approving a request by KeySpan Gas East Corporation, d/b/a KeySpan Energy Delivery Long Island to revise its Schedule for Gas Service—P.S.C. No. 1 to simplify the method of calculating the value added charge for S.C. No.

14—Non-Core Transportation Service for Electric Generation, 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.

(03-G-1395SA1)

NOTICE OF ADOPTION

Initial Tariff Schedule—Electronic Filing by Corbin Hill Water Corp.

I.D. No. PSC-08-04-00015-A
Filing date: Nov. 29, 2005
Effective date: Nov. 29, 2005

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

Action taken: The commission, on Nov. 22, 2005, allowed Corbin Hill Water Corporation to file an initial tariff schedule P.S.C. No. 1—Water.

Statutory authority: Public Service Law, section 89-e(2)

Subject: Initial tariff schedule—electronic filing.

Purpose: To approve Corbin Hill Water Corporation's tariff schedule, P.S.C. No. 1—Water which sets forth the initial rates, charges, rules and regulations under which the company will operate.

Substance of final rule: The Commission approved the electronic tariff schedule of Corbin Hill Water Corporation (Corbin Hill) which sets forth the initial rates, charges, rules and regulations under which the company will operate and directed Corbin Hill to file the necessary amendments and to notify its customers in writing no later than December 15, 2005, 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.

(04-W-0115SA1)

NOTICE OF ADOPTION

Request for Waivers by Long Island Power Authority

I.D. No. PSC-03-05-00027-A
Filing date: Nov. 23, 2005
Effective date: Nov. 23, 2005

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

Action taken: The commission, on Nov. 22, 2005, adopted an order in Case 04-T-1687 granting the Long Island Power Authority (LIPA) a waiver of the application requirements of 16 NYCRR section 86.3(a)(1)(iii) and (b)(2).

Statutory authority: Public Service Law, sections 4(1) and 122(1)

Subject: Filing requirements for article VII proceedings.

Purpose: To grant LIPA a waiver of certain filing requirements.

Substance of final rule: The Commission granted the Long Island Power Authority a waiver of the requirements of 16 NYCRR Sections 86.3(a)(1)(iii) and 86.3(b)(2) in its application for a Certificate of Environmental Compatibility and Public Need for the construction and operation of the Newbridge Road connector project, 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.

(04-T-1687SA1)

NOTICE OF ADOPTION

Methodology to Calculate the Value Added Charge

I.D. No. PSC-28-05-00021-A
Filing date: Nov. 23, 2005
Effective date: Nov. 23, 2005

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

Action taken: The commission, on Nov. 22, 2005, adopted an order in Case 98-G-0122 regarding the methodology used to calculate the value added charge applicable to non-core transportation service provided to electric generators by gas distribution utilities.

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

Subject: Methodology used to calculate the value added charge which is applicable to non-core transportation service for electric generators.

Purpose: To clarify the methodology for electric generators.

Substance of final rule: The Commission adopted an order to clarify the method of calculating the value added charge applicable to non-core transportation service provided to electric generators by gas distribution utilities, 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.

(98-G-0122SA3)

NOTICE OF ADOPTION

Issuance of Promissory Notes by National Fuel Gas Distribution Corporation

I.D. No. PSC-31-05-00011-A
Filing date: Nov. 23, 2005
Effective date: Nov. 23, 2005

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

Action taken: The commission, on Nov. 22, 2005, adopted an order in Case 05-G-0778 approving the petition of National Fuel Gas Distribution Corporation for authority to issue and sell securities.

Statutory authority: Public Service Law, section 69

Subject: Issuance of indebtedness.

Purpose: To issue and sell notes and securities.

Substance of final rule: The Commission authorized National Fuel Gas Distribution Corporation to issue and sell, not later than December 31, 2008, up to $150 million of promissory notes, and to enter into up to $350 million of derivative transactions, not later than December 31, 2008, 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.
(05-G-0778SA1)

NOTICE OF ADOPTION

Automated Meter Recording Equipment by Central Hudson Gas & Electric Corporation

I.D. No. PSC-35-05-00010-A
Filing date: Nov. 29, 2005
Effective date: Nov. 29, 2005

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

Action taken: The commission, on Nov. 22, 2005, authorized Central Hudson Gas & Electric Corporation to revise its tariff schedule P.S.C. No. 12—Gas.

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

Subject: Automated meter reading (AMR) equipment for interruptible customers.

Purpose: To require the installation of automated meter recording equipment for large customers taking service under S.C. Nos. 8, 9 and 11 and to implement daily balancing and monthly cashout procedures for interruptible and firm transportation customers taking service under S.C. Nos. 9 and 11.

Substance of final rule: The Commission approved Central Hudson Gas & Electric Corporation's (Central Hudson) request for the installation of Automated Meter Recording Equipment for large customers taking service under S.C. Nos. 8, 9 and 11 and to implement daily balancing and monthly cashout procedures for interruptible and firm transportation customers taking service under S.C. Nos. 9 and 11, and directed Central Hudson to file a supplement, on not less than one day's notice, to become effective on December 1, 2005, canceling the tariff leaves, listed in the order and to file revised tariff leaves on one day's notice, to become effective on a temporary basis, subject to refund or reparations, on January 1, 2006, 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.
(04-G-0463SA3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Ownership Interests between Central New York Oil and Gas Company, LLC and Electric Transmission Facilities Located in the Town of Owego, Tioga County

I.D. No. PSC-50-05-00006-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 petition from Central New York Oil and Gas Company, LLC, requesting approval of the transfer of ownership interests in electric transmission facilities located in the Town of Owego, Tioga County.

Statutory authority: Public Service Law, section 70

Subject: Transfer of ownership interests in electric facilities.

Purpose: To approve the transfer of ownership interests in electric facilities.

Substance of proposed rule: The Public Service Commission is considering a petition from Central New York Oil and Gas Company, LLC, requesting approval of the transfer of ownership interests in electric transmission facilities located in the Town of Owego, Tioga County. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

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. Brilling, 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.
(05-E-1392SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Recovery of Net Lost Revenues by National Fuel Gas Distribution Corporation

I.D. No. PSC-50-05-00007-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 is whether to approve, modify or reject, in whole or in part, a petition filed by National Fuel Gas Distribution Corporation for permission to recover net lost revenues resulting from the billing back out credit to energy service companies.

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

Subject: Petition filed by National Fuel Gas Distribution Corporation to recover net lost revenues.

Purpose: To recover net lost revenues resulting from the billing back out credit to energy service companies.

Substance of proposed rule: National Fuel Gas Distribution Corporation (NFG) filed a petition requesting permission to recover net lost revenues resulting from the billing back out credit to Energy Service Companies, pursuant to the terms of NFG's rate plan for achieving a comprehensive restructuring of its rates and services, which was approved by the Commission on April 22, 2002 in Case 00-G-1858 and thereafter extended by the Commission on September 18, 2003 in Case 00-G-1858. The Commission may approve, modify or reject, in whole or in part, the company's request.

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. Brilling, 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.
(05-G-1492SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Long-Term Debt by Saratoga Glen Hollow Water Supply Corp.

I.D. No. PSC-50-05-00008-P

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

Proposed action: The Public Service Commission is considering the petition of Saratoga Glen Hollow Water Supply Corp. (Saratoga Glen) for

authority for financing from the New York State Environmental Facilities Corporation.

Statutory authority: Public Service Law, section 89-f

Subject: Issues of stock, bonds and other forms of indebtedness.

Purpose: To allow Saratoga Glen to obtain long-term debt.

Substance of proposed rule: The Commission is considering whether to approve, reject or modify the petition of Saratoga Glen Hollow Water Supply Corp. (Saratoga Glen) for approval to obtain long-term debt with the New York State Environmental Facilities Corporation. Saratoga Glen is expanding its service territory and the proposed debt is needed to pay for the main extensions and other water facilities to serve new customers.

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. Brilling, 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.

(05-W-0833SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Debt Financing by NRG Energy, Inc.

I.D. No. PSC-50-05-00010-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 petition from NRG Energy, Inc. requesting approval of debt financing, including second lien financing, in the amount of no more than $10 billion, to support corporate financing arrangements.

Statutory authority: Public Service Law, section 69

Subject: Financing of no more than $10 billion.

Purpose: To approve financing of no more than $10 billion to support corporate financial arrangements.

Substance of proposed rule: The Commission is considering a petition from NRG Energy, Inc. requesting approval of debt financing, including second lien financing, in the amount of no more than $10 billion, to support corporate financing arrangements. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

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. Brilling, 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.

(05-E-1528SA1)