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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Security Measures at Automatic Teller Machine (ATM) Facilities

I.D. No. BNK-49-04-00001-P

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

Proposed action: Amendment of section 301.5 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 75-c and 75-n

Subject: Security measures at automatic teller machine (ATM) facilities.

Purpose: To increase time for which banking institutions are required to retain ATM surveillance image records from 30 to 45 days and contemplate that such records may be kept in digital form.

Text of proposed rule: § 301.5 Type and frequency of videotapes *or digital recording media* for ATM surveillance systems

(a) Any *analog* surveillance [camera] *system* operated by a banking institution within an automated teller machine facility under its dominion and control as required by section 75c(1) of the Banking Law must use a [T-120 (]commercial/industrial[)] grade video tape, or a tape of better quality. Such tape shall be used no more than one time (or cycle), from beginning to end, in any 30-day period. Such videotapes shall not be used more than 12 times in total and must be replaced not later than 365 days from the date of its first use. Once such videotape is used, it must be retained for at least a [30] *45*-day period prior to reuse.

(b) Any digital surveillance system operated by a banking institution within an automated teller machine facility under its dominion and control as required by section 75c(1) of the Banking Law, must retain the digitally recorded images for at least 45 days.

(c) The intent of this regulation is that a banking institution's video recording method produce a clear and undistorted picture image. A banking institution may request from the Superintendent of Banks approval of an alternative method of producing images which is at least as effective in meeting this objective as the measures set forth in this regulation.

Text of proposed rule and any required statements and analyses may be obtained from: Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., 6th Fl., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.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

1. Statutory Authority

Section 75-c of the Banking Law requires a banking institution to maintain certain security measures for automated teller machine facilities (ATMs) within its dominion and control. Subsection 1 thereof sets forth the requirements with respect to surveillance cameras, including the requirements for retention of recordings made by such cameras. In 2003, the Legislature amended Section 75-c(1) to increase the length of time for which such recordings are required to be maintained from 30 to 45 days. Section 75-n of the Banking Law authorizes the Superintendent of Banks to promulgate regulations as necessary to define and implement the provisions of Banking Law Article 2-AA, the ATM Safety Act, which includes Section 75-c.

2. Legislative Objectives

The Legislature extended the retention period for ATM surveillance camera recordings from 30 to 45 days in order to better combat ATM fraud and improve customers' financial safety. In authorizing the Superintendent of Banks to promulgate regulations to implement the provisions of the ATM Safety Act, the Legislature presumably contemplated that the Superintendent would use such authority to, among other things, modernize the regulations to take account of advances in technology.

3. Needs and Benefits

On May 5, 2003, the Legislature amended Banking Law Section 75-c to increase from 30 to 45 days the period of time for which banking institutions are required to retain recordings made by surveillance cameras at their ATM facilities. This extension of time was intended to take account of the fact that customers generally receive their monthly bank statements some days after the conclusion of a 30 day statement cycle. Under the former 30 day retention period, the customer might not become aware of an ATM fraud problem until after the video evidence of fraudulent activity had been discarded. The proposed amendment conforms the retention period specified in Part 301.5 to the change in the law.

Presently, subsection (a) of Part 301.5 effectively requires that a banking institution surveillance camera within an ATM facility use videotape, while subsection (c) permits a banking institution to seek approval from the Superintendent for an alternative method of producing images. Digital surveillance systems for ATM facilities are becoming increasingly common, and a number of banking institutions have obtained approval from the Superintendent to use them. The proposal adds a new subsection (b) to Part 301.5 which would effectively give a banking institution the option of using a digital surveillance system without requiring the approval of the Superintendent in each individual case.

4. Costs

Banking institutions are not expected to incur any significant additional cost as the result of having to retain ATM surveillance system recordings for 45 days, rather than the 30 days currently required. In any event, the longer retention period has been mandated by statute.

Since the regulation simply gives banking institutions the option of using digital rather than analog ATM surveillance systems, it does not impose any additional costs. Such institutions will presumably exercise the option only if they believe that doing so would be in their best economic interest.

5. Local Government Mandates

The proposed rule making 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 amendment to Part 301.5 will not require any new reporting or other paperwork by banking institutions.

7. Duplication

The amendment to Part 301.5 will not result in duplication, overlap or conflict with any rules or other legal requirements of the state and federal governments.

8. Alternative Approaches

Consideration was given to leaving Part 301.5 unchanged. However, as noted in "Needs and Benefits" above, it was determined that a change in the regulation was necessary in order to conform to the change in the Banking Law and eliminate the need for applications pursuant to Part 301.5(c) to utilize a digital surveillance system, since such applications are routinely granted.

9. Federal Standards

No minimum standards of the federal government for the same or similar subject areas will be exceeded by the amendments to Part 301.5.

10. Compliance Schedule

The change in Banking Law Section 75-c extending the retention period for ATM surveillance recordings to 45 days has already become effective. No additional time will be required for banking institutions to comply with the amendments to Part 301.5.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not attached because the amendments to Part 301.5 will not impose any adverse economic or technological impact upon small businesses or local governments. The regulation facilitates the optional use of digital rather than analog surveillance systems. Extension of the required time period for retention of automatic teller machine surveillance system records from 30 to 45 days is mandated by statute.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not attached because the amendments to Part 301.5 will not impose any reporting, compliance, recordkeeping or other compliance requirements on public or private entities in rural areas. Extension of the required time period for retention of automatic teller machine surveillance system records from 30 to 45 days is mandated by statute.

Job Impact Statement

A Job Impact Statement is not attached because the amendments to Part 301.5 will not have any appreciable and/or substantial adverse impact on jobs and employment opportunities.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-31-04-00001-A
Filing No. 1320
Filing date: Nov. 19, 2004
Effective date: Dec. 8, 2004

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Department of Law.

Text was published in the notice of proposed rule making, I.D. No. CVS-31-04-00001-P, Issue of August 4, 2004.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-31-04-00002-A
Filing No. 1324
Filing date: Nov. 19, 2004
Effective date: Dec. 8, 2004

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the exempt class in the Executive Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-31-04-00002-P, Issue of August 4, 2004.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-31-04-00003-A
Filing No. 1323
Filing date: Nov. 19, 2004
Effective date: Dec. 8, 2004

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the State University of New York.

Text was published in the notice of proposed rule making, I.D. No. CVS-31-04-00003-P, Issue of August 4, 2004.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-31-04-00004-A
Filing No. 1325
Filing date: Nov. 19, 2004
Effective date: Dec. 8, 2004

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.
Purpose: To classify a position in the non-competitive class in the Department of Family Assistance.
Text was published in the notice of proposed rule making, I.D. No. CVS-31-04-00004-P, Issue of August 4, 2004.
Final rule compared with proposed rule: No changes.
Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-31-04-00005-A
Filing No. 1321
Filing date: Nov. 19, 2004
Effective date: Dec. 8, 2004

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional classification.
Purpose: To delete positions from and classify positions in the non-competitive class in the State Department Service and the Executive Department.
Text was published in the notice of proposed rule making, I.D. No. CVS-31-04-00005-P, Issue of August 4, 2004.
Final rule compared with proposed rule: No changes.
Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-31-04-00006-A
Filing No. 1322
Filing date: Nov. 19, 2004
Effective date: Dec. 8, 2004

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional classification.
Purpose: To delete positions from and classify positions in the non-competitive class in the Executive Department.
Text was published in the notice of proposed rule making, I.D. No. CVS-31-04-00006-P, Issue of August 4, 2004.
Final rule compared with proposed rule: No changes.
Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-35-04-00004-A
Filing No. 1328
Filing date: Nov. 19, 2004
Effective date: Dec. 8, 2004

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional classification.
Purpose: To classify a position in the exempt class in the New York State Thruway Authority.
Text was published in the notice of proposed rule making, I.D. No. CVS-35-04-00004-P, Issue of September 1, 2004.
Final rule compared with proposed rule: No changes.
Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-35-04-00005-A
Filing No. 1330
Filing date: Nov. 19, 2004
Effective date: Dec. 8, 2004

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional classification.
Purpose: To classify a position in the exempt class in the State University of New York.
Text was published in the notice of proposed rule making, I.D. No. CVS-35-04-00005-P, Issue of September 1, 2004.
Final rule compared with proposed rule: No changes.
Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-35-04-00006-A
Filing No. 1331
Filing date: Nov. 19, 2004
Effective date: Dec. 8, 2004

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional classification.
Purpose: To classify a position in the exempt class in the Department of Civil Service.
Text was published in the notice of proposed rule making, I.D. No. CVS-35-04-00006-P, Issue of September 1, 2004.
Final rule compared with proposed rule: No changes.
Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-35-04-00007-A
Filing No. 1327
Filing date: Nov. 19, 2004
Effective date: Dec. 8, 2004

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the exempt class in the Executive Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-35-04-00007-P, Issue of September 1, 2004.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-35-04-00008-A

Filing No. 1329

Filing date: Nov. 19, 2004

Effective date: Dec. 8, 2004

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of Mental Hygiene.

Text was published in the notice of proposed rule making, I.D. No. CVS-35-04-00008-P, Issue of September 1, 2004.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-35-04-00009-A

Filing No. 1326

Filing date: Nov. 19, 2004

Effective date: Dec. 8, 2004

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To delete positions from and classify positions in the non-competitive class in the Department of Mental Hygiene and the Executive Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-35-04-00009-P, Issue of September 1, 2004.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Law

NOTICE OF ADOPTION

Senior Residential Communities

I.D. No. LAW-07-04-00012-A
Filing No. 1332
Filing date: Nov. 23, 2004
Effective date: Dec. 8, 2004

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

Action taken: Amendment of Part 25 of Title 13 NYCRR.

Statutory authority: General Business Law, section 352-e(6)(a) and (b)

Subject: Senior residential communities.

Purpose: To require disclosure of the material terms of public offers of entry into senior residential communities.

Substance of final rule: The proposed regulations will govern mandatory disclosures in offerings of occupancy in Senior Residential Communities ("Residences"). These Residences are generally characterized by (1) restrictions limiting occupancy to senior citizens in good health, (2) payment of a substantial entrance fee as a prerequisite for admission in the Residence, and (3) execution of a residency agreement which enumerates the terms and conditions of occupancy in the Residence. Residents generally do not acquire an ownership interest in the Residence despite the payment of entrance fees, making this type of residential organization significantly different from cooperative, condominium or homeowners association organization. Where ownership is not offered, a resident's interest in the Residence most closely resembles a leasehold interest, although a significant distinguishing factor is that residents often may select an entrance fee option that offers a substantial percentage refund of the entrance fee upon termination of occupancy. Residents are generally required to pay a monthly service fee in addition to the entrance fee.

Some Residences provide some health-care services, contract with an outside vendor for such services, or assist residents in acquiring such services. Some residences are not licensed to provide the level of care provided at nursing homes or assisted living communities. Thus, residents are generally required to pass an entrance physical examination or otherwise satisfy management that they are able to provide for their own health care needs on a day-to-day basis. In many instances, a residency agreement may be terminated by the Residence if a resident's physical or mental health requires a higher level of care.

The regulation will be enacted to insure that prospective residents of Senior Residential Communities receive material disclosures prior to executing residency agreements, making deposits or paying entrance fees, or taking occupancy. The disclosures must be presented in the form of an Offering Prospectus, which must conform to format and content requirements set forth in the regulation, and must be submitted according to the procedure described in the regulation. The structure of the regulation follows those regulations governing condominiums, cooperatives, and homeowners associations, and has analogous requirements for the submission of amendments, certifications, and descriptions of property specifications and/or building condition. However, if the Residence is organized as a coop, condominium, or homeowner's association, it must comply with the respective regulations for those Parts and those sections of Part 25 not addressed by Part 20, 21, or 22. Additionally, the regulation defines specific terms such as "Senior Residential Community", "entrance fee", and "residency agreement".

Sponsors of Senior Residential Communities must disclose, among other things, the following:

- the amount and uses of entrance fees, the amount of deposits, monthly fees, and various entrance fee options, including refund options.
- annual budgets for the operation, annual certified financial statements, a statement of the tax implications of living in a Residence.
- the procedure to reserve units and establish residency, including the proper procedure for maintaining deposits in escrow as well as all alternatives to the use of escrow accounts (*e.g.,* surety bonds or letters of credit).
- the specific residential services and amenities provided, including food service and meal plans, housekeeping and laundry services, etc. The disclosure must indicate which services are covered by the entrance or monthly service fees, and which are available at extra cost.

● the specific health care services provided, if any, contracts with outside vendors or related parties for such services, or assistance in the procurement of such services, including whether a health care facility is available on premises, whether assistance with the administration of medication is provided, whether assistance with activities of daily living is provided, etc. If such services are offered and the sponsor has obtained a license or operating certificate from the Department of Health, copies of such licenses or certificates can be provided as a substitute for disclosure.

● general information on the qualifications of key staff.

● the procedure for termination of a residency agreement and all restrictions, requirements, circumstances of default, etc.

● evidence of zoning and site plan approvals.

● all relevant rights and obligations of both residents and Sponsor.

In addition, all pertinent documents must be included with the offering prospectus, including copies of the residency agreement, floor plans, asbestos reports, "house rules", and sponsor's engineering or architectural reports.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 25.1(a), (c), (d)(1), (j)(1), 25.2(c), 25.3(a)(2), (b), (h), (j), (l), (n), (o), (p), 25.4(a), and 25.5(a), (c) and (e)(6).

Text of rule and any required statements and analyses may be obtained from: Kenneth E. Demario, Department of Law, Investment Protection Bureau, 120 Broadway, 23rd Fl., New York, NY 10271, (212) 416-8134, e-mail: Kenneth.Demario@oag.state.ny.us

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

Non-substantive revisions have been made to the text of Part 25 published as a proposed rule in the *State Register* on February 18th, 2004. The changes made to the proposed rule do not necessitate revision of the published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, or Job Impact Statement.

Assessment of Public Comment

Part 25 of 13 NYCRR was published for comment in the *State Register* on February 18, 2004. It sets forth a comprehensive set of disclosure requirements for the offer and sale of interests in Senior Residential Communities in the State of New York, pursuant to the authority granted the Attorney General under section 352-e(6)(a) and (b) of the General Business Law.

In response to publication of the notice of proposed regulation 13 NYCRR Part 25, the Department of Law (DOL) received twenty comments of which eighteen are from parties connected to the management or development of senior communities. The bulk of the comments are from representatives of individual senior facilities and a management and development firm specializing in senior housing. The most comprehensive comments came from the Albany law firm Tobin & Grifferty, the New York Association of Homes and Services for the Aging (NYAHSA), and the State Department of Health (DOH). DOH's comments focused on the perceived overlap of the health care aspects of Part 25 with DOH jurisdiction. A comment from a member of the New York State Bar Estate Planning Sub-committee applauds the thrust of the regulations and calls for greater consumer protections.

The senior community representatives, NYAHSA and Tobin & Grifferty made several general criticisms: (1) the regulations will have a negative impact on the development of entrance fee senior communities in New York because of their complexity, the number of required unnecessary disclosures and the cost of compliance; (2) there should be no disclosure requirements concerning health care services because such services fall within the exclusive jurisdiction of DOH and because entrance fee communities do not provide such services; and (3) the personal disclosures required by and responsibilities imposed on board members of senior residences will hinder the ability to attract good candidates, especially when the sponsor's board is composed of volunteers, as is common with non-profit entrance fee communities. These arguments are addressed as follows:

1) Negative Impact on the Industry

Some comments contend that the regulations failed to take into account industry practices and standards and the criteria applied by lending institutions in financing the development of entrance fee communities. The comments assert one such practice, that financing be committed only after a prescribed threshold of pre-sales, such as 65%, has been reached, conflicted with Part 25's required early disclosure of financing. If Part 25 requires information that can only be obtained at a later stage of the development process, the plan would not be accepted and sales activity could not commence.

Investment banking representatives with experience in financing senior residences and industry representatives agreed that, generally, a sponsor must obtain 65% pre-sales before closing on construction financing. They also noted that financing institutions and development firms require an extensive level of planning including marketability and feasibility studies and zoning and site plan approvals before sales activity can commence.

After reviewing the concerns voiced in the comments and analyzing industry practices and standards, DOL has made revisions to the following:

A) Section 25.2(c)(5)(ii)(B-12) and 25.3(h)(4)(xiv) - Language has been added to clarify that a copy of any construction financing commitment letter should be included if it has been obtained, and otherwise should be disclosed as soon as a commitment is secured, which should always occur far in advance of prospective residents' taking occupancy.

B) Section 25.2(c)(5)(iii)(C-4) - Approved building plans and building permits need not be submitted with the initial plan. Evidence of zoning and site plan approval, however, will be required since without such approvals there is insufficient certainty that the project will proceed to permit marketing. If the facility is to be built in a location that is already zoned to permit a senior residence of the kind proposed, evidence of that zoning designation can be submitted. Approved building plans and permits are to be submitted as soon as they are obtained.

2) Disclosure of Health Care Services

Nine comments question the authority of DOL to require the disclosure of health care services. They argue that DOH has exclusive authority to regulate health care services. They also argue that such disclosures are unnecessary because entrance fee communities do not offer such services. Eight respondents, including DOH, are concerned that Part 25 can be construed to cover continuing care retirement communities (CCRCs), which are already subject to the requirements of Articles 46 and 46-A of the Public Health Law.

Representatives of the Attorney General's Office are advised that some entrance fee senior communities provide health care services, contract with outside vendors or related parties for such services, or assist residents in procuring them. One purpose of the regulation is to provide the consumer with full disclosure as to the services offered, the identity of the provider of such services and their costs. The availability of health care services, or lack thereof, is a legitimate matter of disclosure for senior citizens considering residential options.

The comments regarding possible duplication with DOH requirements are well taken. Therefore, the following revisions have been made:

A) Section 25.3(o)(3) - The language has been revised to clarify that disclosure is required only if the sponsor provides health care services, contracts with an outside vendor for such services, or assists residents in procuring such services. Language has been added to avoid duplication with any relevant requirements of DOH. A sponsor, who provides services under a license or operating certificate from DOH, can attach copies of such licenses or certificates. In addition, the requirement that a Residence obtain the proper license or operating certificate from DOH has been eliminated and disclosure of services requiring DOH licenses or operating certificates substituted. Sections 25.3(o)(3)(i), (ii), and (iii) now require a special risk if the Residence has not obtained the proper license or operating certificate at the time of submission.

B) Section 25.1(a)(3) - Language has been added to clarify that CCRCs subject to Articles 46 and 46-A of the Public Health Law are exempted from filing under Part 25.

It is noteworthy that since the initial publication of Part 25 for comment, Article 46-B of the New York State Public Health Law, entitled "Assisted Living Reform Act", has been enacted into law. The act provides for the licensing of Assisted Living Facilities by DOH, sets forth particular disclosure requirements for Assisted Living Facilities and authorizes DOH to promulgate regulations to further detail the statute's requirements. The Department of Law will review the disclosure requirements of Article 46-B and Part 25 to mitigate unnecessary duplication in complying with Part 25.

3) Provisions Concerning Board Members

Six comments object to holding senior residence board members personally liable for compliance with the requirements of Part 25. The parties argue that the regulations will increase the difficulty of not-for-profit entities in recruiting uncompensated board members. The comments also note that board members have no financial interest in the community and conclude that disclosure of personal finances is unnecessary. An alternative suggestion is to exclude uncompensated board members of not-for-profit facilities from the disclosure requirements.

To address this concern, the following has been added to the definition of "principal" in section 25.1(c)(2): "A director of a profit or not for profit

corporate sponsoring entity, who does not actively participate in the planning or consummation of the offering, is not deemed to be a principal." As a result, a board member who is not a principal will not have to sign the certification form described in section 25.4(b) and required as an exhibit pursuant to section 25.2(c)(5)(i)(A-1). The regulations have been modified to provide that uncompensated directors of not-for-profit corporations need only supply their names and a contact address in executing an M-10 form pursuant to section 25.2(c)(5)(iv)(D-2).

4) Other Comments

A) Section 25.1(a)(2)

Comment: One comment notes that limiting the community to 55 or older conflicts with sections of the Public Authorities Law and General Municipal Law, which require a minimum age of 60 in order to receive tax exempt funding. The comment also points out possible conflicts with the Fair Housing Amendments Act. The draft language also appears to make the age minimum an affirmative requirement.

Response: This provision was intended to define the type of Residence that Part 25 covers. The language has been revised so that it merely describes the prevailing age requirements of senior residences without mandating a minimum age. This resolves any conflicts with existing law that may have previously existed.

B) Section 25.1(a)(3)

Comments: Since Part 25 includes senior Residences set up as a condominiums, cooperatives, or homeowner's associations, a comment suggested that Part 25 will duplicate requirements in Parts 20, 21, and 22.

Response: To avoid duplication, the following language has been added, "If the plan is submitted pursuant to Part 20, 21, or 22, it must comply with those Parts and those sections of Part 25 not addressed by Part 20, 21, or 22, such as 25.3(o) "Terms of Residency Agreement".

C) Section 25.1(c)(2)

Comments: The assisted living definition should not be included.

Response: Since the original publication of Part 25 for comment, Article 46-B of the New York State Public Health Law, entitled "Assisted Living Reform Act", which defines assisted living, has been enacted into law. Therefore, the definition has been deleted from these regulations.

D) Section 25.1(j)(1)

Comments: A comment notes that existing plans should not be subject to the new regulations.

Response: Sponsors of plans already filed with DOL will be required to comply with the regulations only in the filing of new amendments. They will not have to submit complete new plans.

E) Section 25.2(c)(2)

Comments: Commenting parties note that the regulations require an appraisal of the property for the senior residence, which is not required for condos or coops. Therefore, they conclude that it is an added cost without any benefit.

Response: The requirement, which is also set forth in Part 22, the Homeowner's Association regulations, was intended to provide a basis for estimating real estate taxes on commonly owned property and as the basis for calculating the filing fee due to DOL. The requirement of an appraisal has been removed from sections 25.2(c)(2), 25.2(c)(5)(ii)(B-19) and 25.3(a)(2), as the residents are not purchasing an equity interest in entrance fee residences and do not need a projection of real estate taxes. In addition, the filing fee described in section 25.2(c)(2) will be based on the number of units offered multiplied by the entrance fee per unit, the same formula used in coops and condos.

F) Section 25.2(c)(5)(ii)(B-16)

Comments: Four comments expressed concerns regarding the time limits on pre-sales advertising permitted pursuant to "testing the market" applications. Advertising to test the market, but not receive any down payments, is authorized pursuant to Cooperative Policy Statement #1 (CPS-1).

Response: The argument here is with CPS-1 policy, which permits only one 30 day extension of the test marketing period. The proposed Part 25 does not cover the period prior to the filing of a plan.

G) Section 25.3(h)(4)(x)

Comments: Several comments argue that residences will not be able to acquire insurance coverage of the scope required by the regulations or will be able to do so only at a prohibitive cost. They also question DOL's authority to mandate insurance coverage at all.

Response: The language has been altered to clarify that the regulations require only disclosure of any insurance to be provided by Sponsor.

H) Section 25.3(k)

Comments: Some comments question the need for certified financial statements and argue that they add additional costs to the filing process.

Response: Certified financial statements showing sponsor's assets and liabilities are relevant to sponsor's ability to carry out its obligations under the offering plan. Certification establishes the accuracy of such statements. No compelling reason to revise this requirement was found.

I) Section 25.3(o)(1)(i)(d - i)

Comments: One comment urged that all the disclosure requirements about the use of entrance fees and interest be deleted. No specific reasoning was given.

Response: This is a major aspect of the regulations. The entrance fees are a substantial investment, and the consumer has a right to know how the money will be used and/or secured, especially where refunds are offered. The relevant provisions require material disclosure and have not been deleted.

J) Section 25.3(o)(4)

Comments: Some comments argue that the disclosure requirements about staffing are burdensome, due to the number of people employed by a facility and the breadth of information requested.

Response: The purpose of the disclosure is to obtain information on the qualifications of key staff while avoiding cumbersome and overly detailed information. The provisions have been revised in accordance with the stated purpose.

K) Section 25.3(r)

Comments: Two comments contend that the sponsor should not be required to disclose the tax consequences of refundable entrance fees, given that the opinions of Internal Revenue Service views on the subject "vary widely and are subject to controversy."

Response: The tax implications of the potentially refundable entrance fee are significant because of the substantial amount of money that could be involved. Disclosure of the potential tax implications of a refundable entrance fee is appropriate. The regulations ask for an explanation of alternative possibilities and not a definitive statement.

Office of Mental Health

NOTICE OF ADOPTION

Audits of Office of Mental Health Licensed or Operated Facilities, Programs or Units

I.D. No. OMH-35-04-00010-A
Filing No. 1319
Filing date: Nov. 17, 2004
Effective date: Dec. 8, 2004

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

Action taken: Addition of section 552.2(c), (d), (e) and (f); and amendment of section 552.5(e) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), 31.04(a), 31.07, 31.09, 31.11 and 43.02; and Social Services Law, sections 364(3) and 364-a(1)

Subject: Audits of Office of Mental Health licensed or operated facilities, programs or units.

Purpose: To clarify authority to require financial reports and audits.

Text or summary was published in the notice of proposed rule making, I.D. No. OMH-35-04-00010-P, Issue of September 1, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Dan Odell, Bureau of Policy, Legislation and Regulation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 473-6945, e-mail: dodell@omh.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF WITHDRAWAL

Waiver of the Commission's Regulations Governing Gas Cost Adjustment Clauses by Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York, *et al.*

I.D. No. PSC-37-04-00018-W

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

Action taken: Notice of proposed rule making, I.D. No. PSC-37-04-00018-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on September 15, 2004.

Subject: Waiver of the commission's regulations governing gas cost adjustment clauses.

(04-G-1010SA1)

NOTICE OF ADOPTION

Deferral Request by United Water New Rochelle Inc.

I.D. No. PSC-40-03-00016-A
Filing date: Nov. 18, 2004
Effective date: Nov. 18, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 03-W-1260 approving a request by United Water New Rochelle (UWNR) to defer increases in purchased water expense.

Statutory authority: Public Service Law, section 89

Subject: Deferred accounting treatment.

Purpose: To defer the increase in purchased water prices.

Substance of final rule: The Commission authorized United Water New Rochelle Inc. to defer the increase in purchased water expenses until such time that the higher costs are recovered in rates and directed UWNR to file a petition to implement a surcharge to begin recovering the current cost of purchased water, 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-W-1260SA1)

NOTICE OF ADOPTION

Standardized Interconnection Requirements

I.D. No. PSC-51-03-00003-A
Filing date: Nov. 17, 2004
Effective date: Nov. 17, 2004

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

Action taken: The commission, on Nov. 10, 2004, adopted an order in Case 02-E-1282 approving revisions to the New York State standardized interconnection requirements and directing utilities to revise their tariffs.

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

Subject: New York State standardized interconnection requirements (SIR).

Purpose: To adopt modifications to the SIR.

Substance of final rule: The Commission approved amendments to the New York State Standardized Interconnection Requirements (SIR) to expand the SIR to include network distribution systems, increase the upper threshold applicability capacity to 2MW and revise the equipment certification process. Furthermore, the Commission directed utilities to revise their tariffs accordingly, subject to the terms and conditions of 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.

(02-E-1282SA2)

NOTICE OF ADOPTION

Property Tax Refunds by United Water New Rochelle, Inc.

I.D. No. PSC-05-04-00008-A
Filing date: Nov. 18, 2004
Effective date: Nov. 18, 2004

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

Action taken: The commission, on Oct. 20, 2004, adopted an order in Case 04-W-0001 requiring United Water New Rochelle Inc. (United Water) to offset the over-refund against the property tax reconciliation balance due customers.

Statutory authority: Public Service Law, section 113(1)

Subject: Excess property tax refunds.

Purpose: To resolve the ratemaking treatment.

Substance of final rule: The Commission directed United Water New Rochelle Inc. (United Water) to offset the over-refund against the property tax reconciliation balance owed to customers for the period June 30, 2002, and United Water shall not accrue carrying charges on the over-refunded balance, 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-0001SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Brooklyn Law School

I.D. No. PSC-49-04-00002-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 whether to approve or reject, in whole or in part, the petition filed by Brooklyn Law School to submeter electricity at 205 State St., New York, NY (205 State Street).

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (5), (12) and (14)

Subject: Request for the submetering of electricity.

Purpose: To grant Brooklyn Law School permission to submeter electricity at 205 State Street.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Brooklyn Law School to submeter electricity at 205 State Street, New York, New York.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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.

(04-E-1344SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Main Mill Investments, LLC

I.D. No. PSC-49-04-00003-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 whether to approve or reject, in whole or in part, the petition filed by Main Mill Investments, LLC to submeter electricity at 94 Main Mill St., Plattsburgh, NY (Main Mill).

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1) and 67(1)

Subject: Request for the submetering of electricity.

Purpose: To allow Main Mill Investments, LLC to submeter electricity at Main Mill.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Main Mill Investments, LLC to submeter electricity at 94 Main Mill Street, Plattsburgh, New York.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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.

(04-E-1436SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Economic Development by Orange and Rockland Utilities, Inc.

I.D. No. PSC-49-04-00004-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 whether to approve or reject, in whole or in part, a proposal filed by Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 2—Electricity to become effective Feb. 13, 2005.

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

Subject: Economic development.

Purpose: To add a new provision, revenue test for facility extensions, to rider H.

Substance of proposed rule: On November 15, 2004, Orange and Rockland Utilities, Inc. (O&R or the Company) filed proposed tariff revisions to modify its Rider H (Economic Development Rider) to add a new provision "Revenue Test for Facility Extensions". The proposed changes will provide an additional incentive for certain qualifying customers, whose buildings require an expansion of the company's facilities, to locate or expand in the company's service territory. The Commission may approve, modify, or reject, in whole or in part, the company's filing.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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.

(04-E-1449SA1)