

RULE REVIEW

Civil Service Commission Five Year Review of Existing Regulations

Pursuant to section 207 of the State Administrative Procedure Act (SAPA), notice is hereby provided of rules adopted by the New York State Civil Service Commission and the President of the New York State Civil Service Commission for the calendar years 1997 and 2002.

Below is contained a brief description of each rule, including the statutory authority therefor, and a statement setting forth the justification for the ongoing need for each rule and its continuation without further modification and/or notification that the subject rule is no longer in effect.

Amendment to Part 4 of Title 4 NYCRR (Appointment and Promotion)

Statutory Authority: Civil Service Law, sections 6 and 63
1997

Description of the regulation:

4 NYCRR 4.5(b)(2) was amended so as to provide State agencies with the authority to waive probationary terms for non-competitive class employees who have successfully served probationary terms in their current title and are appointed to different non-competitive class positions in the same or different titles, at the same or a lower salary grade. Further, section 4.5(b)(2) was amended to broaden the definition of "promotion," for purposes of the section, to include appointment of an individual serving in the non-competitive class to a higher-graded position in the competitive class, consistent with Civil Service Law section 52(11) and departmental policy.

To avert layoffs, State agencies sought the ability to waive probation upon the appointment of certain non-competitive class employees to different non-competitive class positions, either in the same title or another title, at the same or lower salary grade. Thus, subject employees would be protected from potential reductions in force occasioned by their probationary service in other non-competitive positions. Eligibility under this provision is restricted to employees who have successfully completed probation in their previous non-competitive class positions, prior to receipt of another qualifying non-competitive class appointment. For such appointments, probation can only be waived upon consent of both the appointing authority and the employee.

Section 52(11) of the Civil Service Law authorizes the State Department of Civil Service to extend to non-competitive class incumbents the same opportunity to take promotion examinations as competitive class employees, if such examinations are to be held in conjunction with open competitive examinations. The regulation refined the definition of "promotion," for purposes of 4 NYCRR 4.5(b)(2), to include the appointment of a non-competitive class employee to a higher-graded position in the competitive class, provided such appointment was made from an eligible list established as a result of a competitive examination, and said employee was admitted to such examination in accordance with law. The term "probation" in 4

NYCRR 4.5(b)(2) now properly reflects current law and Department of Civil Service practice.

4 NYCRR 4.5(b)(2)(ii) was amended to remove the probationary term of one year for the position of Vocational Instructor IV (now, Vocational Instructor 4) for incumbents who have completed three years' probation in the Vocational Instructor title series in the same appointing authority.

2002

4 NYCRR 4.5(b)(2)(v) was amended to provide that positions of Highway Maintenance Supervisor 1 be subject to a probationary term of not less than 26 weeks nor more than 52 weeks.

4 NYCRR 4.5(b)(3) was amended to provide that every appointment and training advancement for positions in the non-competitive class designated to be in the Professional, Scientific and Technical Services negotiating unit in the job titles of Assistant Research Scientist (all specialties), Research Physician 1-3 (all specialties), Psychiatrist 1-2, and Research Scientist 1-8 (all specialties) shall have probationary terms of 3 years.

These technical amendments were promulgated to conform the designated probationary periods with revisions to the State Title and Salary Plan by deleting references to obsolete titles and incorporating revised title nomenclature (i.e. the replacement of Roman with Arabic numerals to indicate promotional levels within titles series).

All of the rules have functioned consistent with the purposes underlying their adoption and will be continued without modification.

Adoption of a new section to Part 5 of Title 4 NYCRR (Personnel Changes)

1997

Statutory Authority: Civil Service Law, sections 6 and 79.

Description of the Regulation:

The resolution added a new section 4 NYCRR 5.10 regarding the creation of redeployment lists for classified service employees serving in positions designated managerial or confidential.

Section 79 of the Civil Service Law provides, that to the extent authorized by an agreement between the State and an employee union, the Department of Civil Service shall create a redeployment list upon notice that one or more employees in State service are to be suspended or demoted by reason of the State's exercise of its right to contract out for goods or services. However, since said agreements apply only to represented employees, subdivision 3 of section 79 grants authority to the State Civil Service Commission, with consent of the Director of the Budget, to extend the benefits of such agreement to employees excluded from collective negotiating units. Upon the Commission's receipt of approval from the Director of the Budget, this regulation implemented section 79 of the Civil Service Law with respect to redeployment lists, by extending the benefits of negotiated agreements between the State and the employees unions to employees who are excluded from collectively bargaining the terms and conditions of employment.

This rule has functioned consistent with the purposes underlying its adoption and parallels agreements between the State and represented employees. The rule will be continued without modification.

Amendments to Parts 21 and 28 Title 4 NYCRR (Attendance Rules for Employees in New York State Departments and Institutions) 2002

Statutory Authority: Civil Service Law, section 6; provisions relating to leave for non-Managerial/Confidential employees upon the request of the Director of the Governor's Office of Employee Relations to conform such Rules to Memoranda of Understanding executed with the employee unions.

Description of the Regulation:

4 NYCRR Section 21.15 (for non-Managerial/Confidential Employees) and Section 28-1.17 (for Managerial/Confidential Employees) were amended following the events of September 11, 2001 to provide for a supplemental grant of military leave with pay and make available military leave at reduced pay and training leave at reduced pay for NYS employees ordered to perform military duty in the service of the United States or New York State. Further amendments provided for the accrual and use of emergency vacation leave for employees who were deprived of the opportunity to utilize certain annual leave accruals due to such military service.

These amendments have been superseded by subsequent amendments providing for the continued availability and use of supplemental military leave, military leave at reduced pay and training leave at reduced pay. Provisions relating to the accrual and use of emergency vacation leave have expired.

Amendments to Part 72 of the Regulations of the Department of Civil Service (President's Regulations)

2002

Statutory Authority: Civil Service Law, sections 80 and 80-a

Description of the Regulations:

These regulations defined separate units for suspension, demotion or displacement ("layoff units") within the Division of Alcoholic Beverage Control and within the Office of Children and Family Services.

Upon agency request, and with due consultation with the employee unions and the Department of Civil Service, separate layoff units were established within these State-wide agencies to provide for the equitable and efficient administration of any potential reductions in force, in compliance with the Civil Service Law, Rules and Regulations.

The rules have functioned consistent with the purposes underlying their adoption and will be continued without modification.

Various amendments to the Appendices to the Rules for the Classified Service

Appendix 1 (Exempt Class)

Appendix 2 (Non-Competitive Class)

Statutory Authority:

Appendix 1: Civil Service Law, sections 6 and 41; 4 NYCRR 2.1

Appendix 2: Civil Service Law, sections 6 and 42; 4 NYCRR 2.2

Description of the regulations:

Civil Service Commission rules relating to the jurisdictional classification of positions were specifically exempted from review under Executive Order 20 by the Governor's Office for Regulatory Reform (GORR), upon a finding by GORR that review of such rules lacked substantial benefit. Based upon this determination by GORR and pursuant to SAPA section 207, subdivision 5, a complete recitation of all amendments to the Appendices to Title 4 of NYCRR for the calendar years 1997 and 2002 is hereby omitted.

Requests for information and public comments regarding the foregoing may be directed to:

Brian S. Reichenbach, Counsel
NYS Department of Civil Service
80 South Swan St., Room 833
Albany, NY 12239
Telephone: (518) 473-2624
E-mail address: brian.reichenbach@cs.state.ny.us

State Commission of Correction Five Year Review of Rules

As required by Chapter 262 of the Laws of 1996, the following is a list of rules which were adopted by the State Commission of Correction in calendar years 1997 and 2002 which must be reviewed in calendar year 2007. Public comment on the continuation or modification of these rules is invited. Comments should be received by April 1, 2007. Comments may be directed to: Brian Callahan, Office of Counsel, 80 Wolf Road, 4th Floor, Albany, New York 12205-2670.

CMC-20-97-00023 Amendment of subdivision (f) of section 7002.4 of Title 9 NYCRR

Analysis of the need for the rule: The rule is needed to provide that money seized from prisoners upon admission to a local correctional facility be placed in the prisoner's facility account.

Legal basis for the rule: Correction Law section 45(6).

CMC-06-97-00098 Amendment of sections 7003.2(a)(2); 7003.2(c)(2); 7003.3(b); 7003.3(d through 1); 7003.3(i); 7003.3(J)(5)(i) (iii).

Analysis of the need for the rule: This rule is needed to eliminate unnecessary record keeping; to provide greater discretion regarding supervision of trustee prisoners; and to facilitate greater interaction between correctional staff and prisoners.

Legal basis for the rule: Correction Law section 45(6).

CMC-20-97-00024 Amendment of subdivision (a) of section 7005.4, section 7005.5 and subdivision (a) of section 7005.9 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to provide greater flexibility to facility administrators regarding hair styles and to streamline provisions.

Legal basis for the rule: Correction Law section 45(6).

CMC-10-97-00024 Amendment of subdivision (a) of section 7006.5 and subdivision (b) of section 7006.11 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to modify unnecessary and burdensome procedures.

Legal basis for the rule: Correction Law section 45(6).

CMC-20-97-00025 Amendment of subdivision (b) of section 7010.2 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to allow local correctional facilities to utilize the results of a physical examination conducted upon a prisoner within six months of his or her admission to the facility.

Legal basis for the rule: Correction Law section 45(6).

CMC-16-97-00005 Amendment of Part 7010.

Analysis of the need for the rule: This rule is needed to allow local correctional facilities to return unused medications.

Legal basis for the rule: Correction Law section 45(6).

CMC-53-96-00017 Amendment of subdivisions (b) and (f) and repeal of subdivision (g) of section 7013.8 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to extend the time period in which the classification of a prisoner must be completed and to eliminate unnecessary and burdensome paperwork.

Legal basis for the rule: Correction Law section 45(6).

CMC-20-97-00022 Repeal of sections 7015.2, 7015.3, 7015.4 and 7015.5; addition of a new 7015.2; renumbering of section 7015.6 as 7015.3; and amendment of the renumbered 7015.3.

Analysis of the need for the rule: This rule is needed to streamline the provisions and eliminate overly detailed requirements.

Legal basis for the rule: Correction Law section 45(6).

CMC-06-97-00097 Amendment of Part 7028 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to permit the restriction of an inmate's exercise period when it is determined that it would be a threat to the safety, security, or good order of the facility, or the safety, security or health of the prisoner or other prisoners.

Legal basis for the rule: Correction Law section 45(6).

CMC-29-97-0003 Amendment of Part 7032 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to curtail the submission of frivolous grievances.

Legal basis for the rule: Correction Law section 45(6).

CMC-10-97-00024 Amendment of Part 7605 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to simplify the requirements regarding development and review of policies and procedures.

Legal basis for the rule: Correction Law section 45(6).

CMC-27-97-00017 Amendment of Part 7621 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to authorize establishment of double occupancy housing units in the Department of Correctional Services' facilities.

Legal basis for the rule: Correction Law section 45(6).

CMC-39-96-00005 Amendment of sections 7634.5(c) and 7634.6 (c) and repeal of section 7634.8 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to eliminate an impractical requirement to review training; to eliminate an overly detailed reporting requirement; and to delete unneeded language regarding variances.

Legal basis for the rule: Correction Law section 45(6).

CMC-43-96-00005 Amendment of Part 7651 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to eliminate overly detailed and/or obsolete provisions.

Legal basis for the rule: Correction Law section 45(6).

CMC-05-97-00020 Amendment of subdivision (h) of section 7651.10.

Analysis of the need for the rule: This rule is needed to conform the provisions with Correction Law section 137.

Legal basis for the rule: Correction Law section 45(6).

CMC-52-96-00003 Amendment of section 7677.5 and repeal of subdivisions (b) and (c) of section 7677.3 and subdivisions (b), (c) and (d) of section 7677.11 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to simplify requirements regarding development of policies and procedures and recordkeeping.

Legal basis for the rule: Correction Law section 45(6).

Power Authority of the State of New York

The New York Power Authority by letter dated *December 19, 2006* indicated that no rules were enacted during 2002 that are subject to the "five-year review" requirements of SAPA §207. Therefore, the Authority will not be submitting a list of rules subject to the five-year review for publication in the New York *State Register*.

