

RULE REVIEW

Department of Civil Service 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 1998 and 2003.

Contained below is a brief description of each rule, including the statutory authority therefor; an assessment of public comment; and a statement setting forth the justification for the ongoing need for each rule and its continuation without further modification, and/or describing the prior repeal of such rule.

1998

Amendments to Part 4 of Title 4 of NYCRR (Appointment and Probation)

Statutory Authority: Civil Service Law sections 6 and 63

Description of the Regulations:

Resolutions refined and clarified the administration of probation for non-competitive class employees and modified the probationary term for positions in the classified service title of "Highway Maintenance Worker 2."

Section 63(1) of the Civil Service Law authorizes the State Civil Service Commission to promulgate regulations establishing the conditions and extent of probationary service. For purposes of section 4.5(b)(2), a "promotion" was defined to include the appointment of a non-competitive class employee to a higher salary grade position in the non-competitive class, as well as the appointment of a non-competitive class employee to a competitive class position in instances where such appointment was made from a promotional list established as a result of a competitive examination, and said employee was admitted to such examination in accordance with law. Further, the resolution permitted appointing authorities to waive probationary terms for non-competitive employees who have completed probation in their current titles and are appointed to different non-competitive titles at the same or lower salary grade. A subject employee must consent to have such probationary period waived upon appointment to a new, non-competitive class title.

Another resolution added a subparagraph (vi) to section 4.5(b), fixing a 26 to 52 week probationary term for the competitive class title, "Highway Maintenance Worker 2," salary grade 10.

Assessment of Public Comments: No public comments were received regarding these rules.

Action: These regulations have functioned consistent with the purposes underlying their adoption and shall be continued without modification.

Amendment to Part 5 of Title 4 of NYCRR (Personnel Changes)

Statutory Authority: Civil Service Law sections 6 and 79

Description of the Regulation:

This resolution added a new section 5.10 to 4 NYCRR regarding establishment of redeployment lists for classified service employees serving in positions designated managerial or confidential (m/c).

Section 79 of the Civil Service Law, as added by Chapter 315 of the Laws of 1995, provides that, consistent with an agreement between the

State and an employee organization, where the State exercises its right to contract out for goods and services, resulting in the suspension or demotion of any State employees, the Department of Civil Service shall place the names of such employees on a redeployment list. Subdivision (3) of section 79 grants the Civil Service Commission authority, upon the consent of the Director of the Budget, to extend equivalent benefits to employees who are excluded from collectively bargaining the terms and conditions of employment.

Upon the Commission's receipt of approval from the Director of the Budget, Section 5.10 of Title 4 of NYCRR implemented section 79 of the Civil Service Law providing for the establishment of redeployment lists for State employees serving in positions designated managerial or confidential (m/c).

Assessment of Public Comments: No public comments were received regarding this rule.

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

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

Statutory Authority: Civil Service Law section 6

Description of the Regulations:

A resolution amended sections 21.3 (f), 21.4(b), 21.4(c), 28-1.3(f), 28-1.4(b), 28-2.1(g), 28-2.2(a), 28-2.2(b) and 28-2.2(c) of 4 NYCRR to enable New York State departments and institutions to authorize eligible employees, as defined for purposes of these regulations, to use and/or be advanced sick leave to obtain and train a guide dog or service animal. Another resolution enabled qualifying employees, serving in positions designated managerial or confidential, to receive donated leave credits.

Chapter 232 of the Laws of 1995 amended section 6(1) of the Civil Service Law to expand the circumstances under which State employees may be entitled to use and/or be advanced sick leave. Civil Service Law section 6(1) requires the State Civil Service Commission to prescribe suitable rules and regulations providing individuals certified as benefiting from the use of a service animal in performing major life activities; individuals registered with the New York State Commission for the Blind and Visually Handicapped as legally blind or certified by an examining physician or licensed optometrist as legally blind (as manifested by visual acuity of 20/200 in the better eye with best correction or a visual field of 20 degrees or less); and individuals certified by an examining physician or licensed audiologist or otorhinolaryngologist as having a hearing impairment (manifested by a speech discrimination score of forty percent or less in the better ear with appropriate correction), the ability to charge against accumulated sick leave or sick leave credits not yet accrued for the purpose of obtaining and training a guide dog or other service animal, up to a maximum of 26 days in any one calendar year.

The subject amendments to Part 21 of the Attendance Rules implement section 6(1) of the Civil Service Law for non-managerial/confidential employees, while the amendments to Part 28 of the Rules extend analogous benefits to State employees serving in positions designated managerial/confidential (m/c).

Leave donation programs were established for certain union represented employees pursuant to negotiated memoranda of understanding. By resolution, the Commission amended section 28-3.2 for eligible employees, serving in positions designated managerial/confidential who have been absent due to a non-occupational personal illness or disability for which satisfactory medical documentation has been submitted as required, and have exhausted all available leave credits, and are expected to be absent for at least two additional bi-weekly pay periods following exhaustion of such leave credits or sick leave at half-pay. Such employees may receive donated leave credits from appropriate sources. An employee cannot receive donated credits if he/she has been subject to disciplinary action or received unsatisfactory performance evaluations within his/her last three years of State employment.

Assessment of Public Comments: No public comments were received regarding these rules.

Action: These regulations have functioned consistent with the purposes underlying their adoption and shall be continued without modification.

2003

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

Statutory Authority: Civil Service Law, section 6; provisions relating to leave for non-Manual/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 Regulations:

4 NYCRR Section 21.15 (for non-Manual/Confidential Employees) and Section 28-1.17 (for Managerial/Confidential Employees) were amended following the events of September 11, 2001 to provide for the continued availability of a single, supplemental grant of military leave with pay; military leave at reduced pay; and separate grants of training leave at reduced pay during calendar years 2003 and 2004 for NYS employees ordered to perform military duty in the service of the United States or New York State.

Assessment of Public Comments: No public comments were received regarding these rules.

Action: These rules have expired and have been superseded by new regulations providing for the continued availability of the benefits described therein.

Amendment to Part 75 of Title 4 NYCRR (Managerial/Confidential Group Term Life Insurance Plan)

Statutory Authority: Section 158(1) of the Civil Service Law

Description of the Regulations:

This rule replaced paragraph (2) of subdivision (e) of section 75.1 and added a new paragraph (3) to such subdivision to permit employees who leave public service after vesting in a retirement plan or system administered by the State of New York or a civil division thereof, and who defer receipt of their pension benefits, to continue their group term life insurance coverage.

Assessment of Public Comments: No public comments were received regarding these rules.

Action: These regulations have functioned consistent with the purposes underlying their adoption and shall be continued without modification.

Amendment to Part 82 of Title 4 NYCRR (Disclosure of Medical Records)

Statutory Authority: Section 94(2)(c) of the Public Officers Law

(Personal Privacy Protection Law)

Description of the Regulations:

This rule replaced paragraph (1) of subdivision (a) of section 82.3 and amended subdivision (b) of section 82.3 in order to provide for the authorized release of subject medical records upon the request of the data subject in conformance with the Personal Privacy Protection Law.

Assessment of Public Comments: No public comments were received regarding these rules.

Action: These regulations have functioned consistent with the purposes underlying their adoption and shall be continued without modification.

Amendments to Appendix 5 of the Regulations of the Department of Civil Service (President's Regulations)

Statutory Authority: Section 159-a of the Civil Service Law

Description of the Regulations:

The titles of the Director of the Office of Business Permits and Regulatory Assistance and Director of the Governor's Office of Regulatory Reform were designated for inclusion as special enrollees in the Income Protection Plan.

Assessment of Public Comments: No public comments were received regarding these rules.

Action: These regulations have functioned consistent with the purposes underlying their adoption and shall be continued without modification.

Various amendments to the Appendices to the Rules for the Classified Service (1998 and 2003)

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 recitation of amendments to Appendices 1 and 2 to Title 4 of NYCRR adopted during calendar years 1998 and 2003 is hereby omitted.

Requests for information and public comments regarding the foregoing may be directed to: Judith I Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Alfred E. Smith Building, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

State Commission of Correction

Five Year Review of Rules Adopted by the

State Commission of Correction in

Calendar Years 1998 and 2003

Required to be Reviewed in

Calendar Year 2008

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 1998 and 2003 which must be reviewed in calendar year 2008. Public comment on the continuation or modification of these rules is invited. Comments should be received by April 1, 2008. Comments may be directed to: Brian Callahan, Office of Counsel, 80 Wolf Road, 4th Floor, Albany, New York 12205-2670.

CMC-52-97-00006 Amendment of sections 7040.5 and 7621.6(c) of Title 9 NYCRR

Analysis of the need for the rule: The rule is needed to provide greater flexibility regarding the number of toilets, sinks, and showers that must be provided in multiple occupancy housing areas and conform minimum square footage requirements.

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

Public Service Commission

CASE 01-M-1806 – In the Matter of the Review of Existing Commission Rules and Regulations Pursuant to the State Administrative Procedure Act, §207.

NOTICE OF PROPOSED CONTINUATION OF RULES

(Issued December 19, 2007)

NOTICE is hereby given that the Commission is reviewing rules listed on the attached Rule Review, as required by State Administrative Procedure Act, §207. The rules were adopted in 1998 and 2003 and some of the rules are proposed to be continued without change. The rules include: 16 NYCRR §§11.3, 11.12, 11.13 and 11.14 implementing the Home Energy Fair Practices Act (HEFPA) (modified in 2004); 16 NYCRR Parts 10 and 262 relating to drug and alcohol testing rules for pipeline operators (modified in 2005); 16 NYCRR §§21.2(e), 21.2 (h), 603.16, 642.3 and 644.3, relating to telephone company exemption rules; 16 NYCRR §§1002.1 and 1002.4 relating to certification of major generating facilities; 16 NYCRR Parts 10 and 255 Transmission and Distribution of Gas (modified in 2004, 2005 and 2007).

Comments are welcome on the Rule Review. Any person wishing to comment should submit five copies to Jaclyn A. Brillling, Secretary, Public Service Commission, Three Empire State Plaza, Albany, New York 12223-1350 no later than February 18, 2008.

Pursuant to 207 of the State Administrative Procedure Act: Review of Existing Rules, notice is hereby provided of the following rules adopted in 1998 and 2003, which the Public Service Commission wishes to continue without modification or as revised. Comments are welcome on proposed continuation of the rules. Five copies of comments should be sent to: Jaclyn A. Brillling, Secretary, 3 Empire State Plaza, Albany, New York 12223-1350, within 30 days of the date of publication of this Notice. Information about the rules may be obtained from: Maureen E. Farley, Assistant Counsel, 3 Empire State Plaza, Albany, New York 12223-1350; (518) 474-1634.

1. 16 NYCRR §§11.3, 11.12, 11.13 and 11.14 (Case 96-M-0706) (modified in 2004)

a. Description of rules:

The rules are part of the Home Energy Fair Practices Act and Energy Consumer Protection Act rules. The rules implement Public Service Law §§30 through 51, related to residential utility service.

b. Statutory authority: PSL §§30 through 51, 66(1) and 80(1).

c. No hearings or public meetings are scheduled.

d. The rules, as revised, are in effect and will continue.

e. Need for and legal basis of rules:

The rules are needed for consumer protections for gas, electric and steam service customers, including applications for service, deposits, meter readings, and back billing. The legal basis of the rules is PSL §§30-51, 66(1) and 80(1).

2. 16 NYCRR Parts 10 and 262 (Case 97-G-0230) (modified in 2005).

a. Description of rules:

The rules provide for drug and alcohol testing for operators of pipeline facilities.

b. Statutory authority: PSL §§65(1) and 66(1).

c. No hearings or public meetings are scheduled.

d. The rules, as revised, are in effect and should continue.

e. Need for and legal basis of rules:

The rules conform the State's pipeline safety regulations to the counterpart federal regulations, in the areas of drug and alcohol

testing for pipeline operators. The most recent federal rules are incorporated in Part 10, as revised. The rules are needed for continued pipeline operation safety. The legal basis of the rules is PSL §§65(1) and 66(1).

3. 16 NYCRR §§21.2, 21.3, 642.3, and 644.3 (Case 97-C-0956).

a. Description of rules:

The rules exempt certain telephone corporations from requirements of 16 NYCRR §§21.2(e) (rules applicable to all petitions), 21.3(h) (evidence to be presented at hearings), 642.3 (retention of telephone corporation records at principal office), and 644.3 (capital program filing). The exempted companies are those that provide service primarily over their own or leased facilities and that do not provide local exchange service. It also applies to non-incumbent telephone corporations that provide local exchange service primarily over their own or leased facilities.

b. Statutory authority: PSL §§4(1), 92(2).

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need for and legal basis of rules:

The rules make it easier for competitors to enter the telephone market and should continue.

4. 16 NYCRR Chapter X, §§1002.1 and 1002.4 (Case 97-F-0809)

a. Description of rules:

The rules set out regulations and procedures of the Board on Electric Generation Siting and the Environment for certification of major electric generating facilities regarding state pollutant permits.

b. Statutory authority: PSL §§161, 164(6)(b), 165(5). These statutory provisions were in effect until January 1, 2003. Prior to that date, the siting of major electric generating facilities was approved.

c. The rules are in effect and will continue for projects previously approved under Article X.

d. Need for and legal basis of rules:

Although the PSL Article X statute was repealed, the Chapter X rules remain necessary for projects previously approved under Article X. Article X may be reenacted, in which case the rules would be needed for future projects.

5. 16 NYCRR Parts 10 and 255 (Case 02-G-0134) (modified in 2004, 2005, and 2007).

a. Description of rules:

The rules govern safety for the transmission and distribution of gas in conformance with federal regulations. Part 10, which incorporates federal regulations, has been revised to reflect amendments to the federal rules. Amendments have also been made to Part 255. Part 255 includes provisions for customer notification regarding excess gas flow. It also covers external corrosion control of pipes and abandonment of facilities.

b. Statutory authority: Public Service Law § 66(1).

c. No hearings or public meetings are scheduled.

d. The rules, as revised, are in effect and will continue.

e. Need for and legal basis of rules:

The rules are necessary for gas pipeline safety. The legal basis of the rules is PSL § 66(1).

