

RULE REVIEW

Department of Agriculture and Markets Review of Existing Regulations

Pursuant to Section 207 of the State Administrative Procedure Act, notice is hereby provided of the continuation without modification of the following rules which the Department of Agriculture and Markets has reviewed in 2013. Notice that a review of these regulations would be conducted and public comment on that continuation or modification accepted until May 24, 2013 was published in the February 20, 2013 State Register. All Section and Part references are to Title 1 of the New York Code of Rules and Regulations.

Regulations adopted in 1997

Part 41

Requirements for the Transportation and Storage of Pasteurized Milk.

Statutory Authority: Agriculture and Markets Law sections 18, 255 and 257-a.

Justification: The Department has determined that the continuation of this regulation without modification is necessary to require that milk distributors maintain their vehicles so milk is held at the proper temperature and under sanitary conditions.

Assessment of Public Comment: None received.

Part 139

Control of Asian Long Horned Beetle.

Statutory Authority: Agriculture and Markets Law sections 18, 164 and 167.

Justification: The Department has determined that the continuation of this regulation without modification is necessary to control the spread of Asian Long Horned Beetle by maintaining the quarantine in certain areas of New York. The quarantine area has been repeatedly changed in an effort to control the spread of the beetle, most recently in 2012.

Assessment of Public Comment: None received.

Sections 201.1, 201.4, 201.5, 201.10 and 201.11

Apple Market Order.

Section 204.10

New York State Apple Research and Development Program.

Statutory Authority: Agriculture and Markets Law sections 16(1), 18(6), 294, and 295.

Justification: The Department has determined that the continuation of these amendments to Parts 201 and 204 without modification are necessary to maintain the lower maximum assessment rate on apples sold in direct market sales, which rate more equitably reflects the return to such growers from the Apple Market Order programs; to maintain the district demarcations which conform to the structure of the apple industry; and to maintain the quarterly reporting and payment schedule for processors.

Assessment of Public Comment: None received.

Sections 220.2 and 220.5

Administrative and General Requirements.

Section 221.11

Commodities.

Statutory Authority: Agriculture and Markets Law sections 16, 18 and 179.

Justification: The Department has determined that the continuation of these amendments to parts 220 and 221 without modification are necessary to require that municipal directors of weights and measures inspect and test commercial weighing and measuring devices once rather than twice a year, and to correctly reference certain supplements to National Institute of Standards and Technology (NIST) Handbook 133 which contain the procedures for determining the weight of packaged commodities. The reference to NIST Handbook 44 in section 220.2 was updated in 2014 by adopting the 2013 edition and the reference to NIST Handbook 133 in section 221.11 was updated in 2013 by adopting the 2011 edition.

Assessment of Public Comment: None received.

Regulations adopted in 1998

Section 380.1

Farm Product Dealer license period.

Statutory Authority: Agriculture Markets Law sections 16, 18, 248 and 250-i.

Justification: The Department has determined that the continuation of this regulation without modification is necessary to establish the license year for Farm Product Dealers as required by section 248 of the Agriculture and Markets Law. The regulation was amended in 2003 to remove obsolete proration language.

Assessment of Public Comment: None received.

Regulations adopted in 2003

Sections 139.2 & 139.3

Control of the Asian Long Horned Beetle

Statutory authority: Agriculture and Markets Law sections 18, 164 and 167.

Justification: The Department has determined that the continuation of this regulation without modification is necessary to preserve the Asian Long Horned Beetle quarantine in certain areas of Brooklyn, Queens and Manhattan, New York and to maintain the current list of regulated host material. The quarantine area has been repeatedly changed in an effort to control the spread of the beetle, most recently in 2012. The rule added four new host materials and deleted eight hosts based on USDA tests. The movement of host materials is regulated as part of the Department's control efforts.

Assessment of Public Comment: None received.

Section 221.13(18), (19)

Method of sale, delicatessen products.

Statutory authority: Agriculture and Markets Law Sections 16(1), 179(2), and 189.

Justification: The Department has determined that the continuation of this regulation without modification is necessary to maintain the

smaller price label size for delicatessen products. The regulation dictates the size of the information required to be posted for delicatessen products and commodities in bulk. The smaller size allows groceries and delicatessens with limited space to post all the required information and promotes the objective of adequately informing retail sale.

Assessment of Public Comment: None received.

Part 45

Avian Influenza.

Statutory authority: Agriculture and Markets Law sections 16 and 72.

Justification: The Department has determined that the continuation of this regulation without modification is necessary to maintain requirements for the movement of live poultry. Although the definition of a poultry distributor was later deleted, the restriction on movement of live poultry from a poultry market is still in effect. The restriction is necessary to help prevent the spread of avian influenza through the live poultry markets in the New York City metropolitan area.

Assessment of Public Comment: None received.

Regulations adopted in 2008

Part 53.3

Importation of Cattle.

Statutory authority: Agriculture and Markets Law, sections 18(6) 72, 74, and 76.

Justification: The Department has determined that the continuation of this regulation without modification is necessary to allow, under certain circumstances, the importation of cattle without a certificate of veterinary inspection, provided that they are moved directly to a specifically approved stockyard or recognized slaughtering establishment. The regulation also allows the Department to monitor compliance with the regulation by inspecting shipments of cattle. This regulation provides New York dairy and beef producers with greater access to replacement animals for their herds and New York livestock markets with additional business from increased consignment of out-of-state cattle.

Assessment of Public Comment: None received.

Part 53.5 and Part 62

Requirements for Cattle, Sheep, Goats, Llamas and Deer.

Statutory authority: Agriculture and Markets Law sections 18, 72, 74, and 76.

The Department has determined that the continuation of this regulation without modification is necessary to allow the importation of certain ruminants without testing for blue tongue, tuberculosis, brucellosis and anaplasmosis and to allow the importation of sheep and goats without a certification of veterinary inspection under certain circumstances. The regulations facilitate the importation of these animals into New York, thereby improving the economic standing of the importers of the animals. The elimination of the testing and certificate requirements also allows the Department to focus on more pressing areas of disease control.

Assessment of Public Comment: None received.

Part 140

Various Trees and Plants of the Prunus Species.

Statutory Authority: Agriculture and Markets Law, sections 18, 164, and 167.

Justification: The Department has determined that the continuation of this regulation without modification is necessary to maintain the plum pox virus quarantine in Orleans County and the expansion of the quarantine in Niagara County in order to prevent the further spread of the viral infection within the State. The failure to control the spread of the disease would result in damage to the natural resources of the State and could result in the imposition of a federal quarantine or quarantine by other States. The quarantine has been repeatedly changed in an effort to control the spread of the virus, most recently in 2013.

Assessment of Public Comment: None received.

Comments should be addressed to: Diane B. Smith, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-6468, Email: diane.smith@agriculture.ny.gov

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 1999, 2004 and 2009.

Contained below is a brief description of each rule, including the statutory authority therefor; a statement setting forth the justification for the ongoing need for each rule; and the Department's recommendations for continuation without modification.

1999

Amendments to Chapter II 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:

The resolutions added new sections and amended existing sections of the Attendance Rules for non-managerial/confidential (Part 21 of 4 NYCRR) and managerial/confidential (Part 28 of 4 NYCRR) employees in New York State Departments and Institutions.

Sections 21.16 and 28-1.18 of the Attendance Rules were adopted to permit appointing authorities to grant overtime ineligible employees who have exhausted military leave with pay provided pursuant to the New York State Military Law, further leave with pay without charge to accruals for any period[s] of less than a workweek during which such employees are ordered to temporary military duty.

Section 21.9 and 28-1.9 of the Attendance Rules were amended to permit agencies to grant overtime ineligible employees leave with pay without charge to accruals for any absence[s] of less than a workweek during which such employees are required to appear as a witness pursuant to a subpoena or other order of court, regardless of whether an employee is a party to the action.

These rules ensure that the Attendance Rules will be applied to employees serving in overtime ineligible positions consistent with relevant provisions of the federal Fair Labor Standards Act (FLSA).

Action: The rules have functioned consistent with the purposes underlying their adoption and the Department recommends continuation without modification.

Amendments to Chapter V of 4 NYCRR (Regulations of the Department of Civil Service [President's Regulations])

Statutory Authority: Chapter 534 of the Laws of 1998, amending section 167(2) of the Civil Service Law.

Description of the Regulations:

Chapter 534 of the Laws of 1998 amended section 167(2) of the Civil Service Law to provide that unpaid board members of public authorities shall be eligible to participate in the New York State Employee Health Insurance Program (NYSHIP) after six months of service.

The regulation added a new subparagraph (iv) to section 73.1(c)(1) and a new paragraph (5) to section 73.1(e) of the President's Regulations providing that unpaid board members of public authorities may participate in NYSHIP after six months of service and may also continue their NYSHIP enrollment upon leaving public service with 20 years or more of service in such positions.

Action: The regulations have functioned consistent with the purposes underlying their adoption and the Department recommends continuation without modification.

Amendment to Chapter V of 4 NYCRR (Regulations of the Department of Civil Service [President's Regulations])

Statutory Authority: Civil Service Law, Article XI

Description of the Regulation:

Section 73.3(b)(1) of the President's Regulations was amended to enable participating agencies (PAs) and participating employers (PEs) in the New York State Health Insurance Program (NYSHIP) to contribute towards health insurance premiums on behalf of employees on leave without pay, provided such benefit is accorded to all employees

within a class or category. The amendment provides that upon (60) days prior notice to the Department of Civil Service, PAs and PEs may provide such benefit to an eligible employee for a period of two years. This authorization may be extended for one additional two year period by the State Civil Service Commission for good cause shown and where the interests of government would be served. The amendment further provides that where contributions have been made on behalf of an employee on leave without pay for a two year period, or a four year period where authorized by the State Civil Service Commission, no further extensions may be granted unless the employee returns to his or her position and serves continuously therein for the six month period immediately preceding a subsequent leave of absence.

This regulation extends an additional potential benefit to eligible employees and forms a part of the overall "benefit package" that employers may consider when electing to adopt NYSHIP as a health insurance offering.

Action: The regulation has functioned consistent with the purposes underlying its adoption and the Department recommends continuation without modification.

2004

Amendment to Chapter IV of 4 NYCRR (Regulations of the Regulations of the State Civil Service Commission [Commission's Regulations])

Statutory Authority: Civil Service Law section 6

Description of the Regulation:

The resolution amended Part 55.2 to provide that a committee on appeals of the State Civil Service Commission shall not consider an examination appeal from a candidate whose score at time of establishment of the eligible list is immediately reachable for appointment as provided in section 61 of the Civil Service Law. However, a committee on appeals will consider timely appeals where a candidate's reachability for appointment is affected by the committee's determination of another appeal.

This resolution eliminates the need to consider examination appeals from candidates who are already eligible for immediate appointment pursuant to the Civil Service Law "rule of three." Based upon public comments received before adoption of the resolution, the rule provides for continued consideration of timely appeals if candidates' reachability could be impacted by other pending examination appeals.

Action: The regulation has functioned consistent with the purposes underlying its adoption and the Department recommends continuation without modification.

2009

No current amendments to 4 NYCRR were adopted during 2009.

Various amendments to the Appendices to the Rules for the Classified Service (1999 and 2004)

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 former Governor's Office for Regulatory Reform (GORR), upon a finding by GORR that review of such rules lacked substantial benefit. Based upon this determination, and pursuant to SAPA section 207(5), a recitation of amendments to Appendices 1 and 2 to Title 4 of NYCRR adopted during calendar years 1999, 2004 and 2009 is hereby omitted.

Public Comments

There will be a forty-five (45) day public comment period following publication of this notice. *Requests for information and public comments regarding the foregoing may be directed to:* J. Marc Hannibal, Special Counsel, Department of Civil Service, Empire State Plaza, Albany, NY 12239, (518) 473-2624, E-mail address: marc.hannibal@cs.state.ny.us

Public Service Commission

Pursuant to 207 of the State Administrative Procedure Act: Review of Existing Rules, notice is hereby provided that the Public Service Commission wishes to continue the following rules adopted in 1999, 2004, and 2009 without modification or as revised. Comments are welcome on proposed continuation of the rules. Five copies of comments should be sent to: Kathleen Burgess, Secretary, 3 Empire State Plaza, Albany, New York 12223-1350, on or before April 25, 2014. Information about the rules may be obtained from: John C. Graham, Assistant Counsel, 3 Empire State Plaza, Albany, New York 12223-1350; (518) 474-7687.

1. 16 NYCRR § 650 (Case No. 96-C-1174 and 93-C-0142).

a. Description of rules:

These amendments to NYCRR Part 650 revise customer owned coin operated telephone (COCOT) rules to address and implement the FCC's revisions to the Telecommunications Act of 1996 related to payphone regulations.

b. Statutory Authority: Public Service Law (PSL) §§ 90(3), 92-c and 94(2).

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need and legal basis for the rules:

Amendments to 16 NYCRR § 650 reflect changes in The Telecommunications Act of 1996 which deregulated payphone rates and eliminated the distinction between COCOTs and local exchange company (LEC) pay-phones. The rules change the term "COCOT" to "payphone" to reflect that change. The rules detail what information must be posted on payphone placards and reword enforcement provisions for violations of the payphone rules.

2. 16 NYCRR § 262 (Case No. 97-G-0230).

a. Description of rules:

This part requires operators of pipeline facilities subject to Parts 192, 193 or 195 of Title 49 of the Code of Federal Regulations (49 CFR) to test employees for the presence of prohibited drugs and to provide an employee assistance program.

b. Statutory Authority: Public Service Law Sections 65(1), 66(1).

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need and legal basis for the rules:

The intent of the amendments are to bring the State's pipeline safety regulations into conformance with the counterpart Federal Department of Transportation regulations, which have been amended several times over the last few years. The most significant revision is the addition of regulations pertaining to alcohol testing. The New York State Department of Public Service (DPS or Commission) is certified under section 60105 (a) of the Accountable Pipeline Safety and Partnership Act of 1996 to act as a representative for the Administrator of the Research and Special Programs Administration (RSPA) in enforcing pipeline safety regulations within New York State. A requirement of that certification is that state regulations be at least as stringent as federal regulations.

3. 16 NYCRR §§ 150-152, 165-172, 290-292, 310-317, 440-441, 541-542 and Appendix 4A (repealed); §§ 10.2b, 165-167, 310, 312 and 731-733 (added); § 663.1 (amended) (Case No. 98-M-0756).

a. Description of Rules:

These changes reduced the rules and reporting requirements applicable to the utilities DPS regulates.

b. Statutory Authority: PSL §§ 66 (4) (10), 80 (3) (8), 89-c (3) (8), 95 (2).

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need and legal basis for the rules:

The rule changes bring DPS into compliance with federal regulations, 18 CFR Part 101, and 18 CFR 201, pertaining to Uniform System of Accounts for public utilities and natural gas companies.

4. 16 NYCRR § 92 (Case No. 02-E-0255).

a. Description of rules:

The revisions to 16 NYCRR § 92 streamline and simplify the existing rules for meter testing and reporting. These changes were made to recognize advances in technology and to promote and encourage competitive metering.

b. Statutory authority: PSL § 67 (4).

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need and legal basis for the rules:

Meter accuracy is important for all utility customers in New York, including customers served by competitive metering providers and local distribution companies. The Commission will continue to depend on a variety of methods to ensure the accuracy of the electric meter population in the state including meter acceptance testing and certification of utility meter testing facilities.

5. 16 NYCRR §§ 11 and 12 (Case No. 03-M-0117).

a. Description of rules:

Amended the Home Energy Fair Practices (HEFPA) rules.

b. Statutory authority: PSL §§ 30-53, 4 (1), 66, 80 (1).

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need and legal basis for the rules:

The amendments provide clarification of the rules via the consistent use of terminology and set forth termination and disconnection procedures. The amendments clarify the procedures for ESCOs seeking suspension by clearly directing the utilities to apply both sections 11.4 and 11.4-a, and amend the contents of the notice of termination from an ESCO.