

RULE REVIEW

Department of Agriculture and Markets

Pursuant to Section 207 of the State Administrative Procedure Act, notice is hereby provided of the following rules, adopted during calendar years 1997, 1998, 2003, and 2008 which the Department of Agriculture and Markets intends to review in 2013. Public comment on the continuation or modification of these regulations will be accepted until May 24, 2013. 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.

The continuation of this regulation is necessary to require that milk distributors maintain their vehicles so milk is held at the proper temperature and under sanitary conditions.

Part 139 Control of Asian Long Horned Beetle.

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

The continuation of this regulation 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.

Sections 201.1, Apple Market Order.

201.4, 201.5, 201.10 and 201.11

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.

The continuation of these amendments to Parts 201 and 204 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.

Sections 220.2 Administrative and General Requirements.
and 220.5.

Section 221.11 Commodities.

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

The continuation of these amendments to parts 220 and 221 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 2012 by adopting the 2012 edition

and the reference to NIST Handbook 133 in section 221.11 was updated in 2013 by adopting the 2011 edition.

Regulations adopted in 1998

Section 380.1 Farm Product Dealer license period.

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

The continuation of this regulation 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.

Regulations adopted in 2003

Sections 139.2 and 139.3

Control of the Asian Long Horned Beetle.

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

The continuation of this regulation 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.

Section 221.13(18)(19)

Method of sale, delicatessen products.

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

The continuation of this regulation 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 consumers of the price of these products offered for retail sale.

Part 45 Avian Influenza.

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

The continuation of this regulation 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.

Regulations adopted in 2008

Part 53.3 Importation of Cattle.

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

The continuation of this regulation 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.

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 continuation of this regulation 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.

Part 140 Various Trees and Plants of the Prunus Species.

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

The continuation of this regulation 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.

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