

RULE REVIEW

Department of Environmental Conservation

Introduction

Each year, pursuant to SAPA, the Department publishes a Review of Rules in the State Register and on its website. This is a review of Department rules adopted 3 years previous.

SAPA Section 207 -- 3-Year Rule Review

The following rules were adopted by the New York State Department of Environmental Conservation (Department) during 2016, and pursuant to SAPA Section 207 have been reviewed. Comments on the rules that are being amended this year should be directed to the contact person listed in the main body of the Regulatory Agenda. Comments on any rules that are not being changed at this time will be accepted for 45 days from the date of publication in the State Register and should be directed to the regulatory coordinator for the appropriate program, as listed below the rules.

Division of Air Resources

6 NYCRR Part 200, General Provisions. Statutory Authority: Environmental Conservation Law Sections 1-0101, 1-0303, 3-0301, 3-0303, 11-0303, 11-0305, 11-0535, 13-0105, 15-0109, 15-1903, 16-0111, 17-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 19-0306, 19-0311, 19-0319, 19-0323, 24-0103, 25-0102, 34-0108, 49-0309, 70-0109, 71-2103, 71-2105, 72-0303; Energy Law Sections 3-101, 3-103; Public Authorities Law Sections 1850, 1851, 1854, 1855; Federal Clean Air Act Sections 160-169, 171-193 [42 U.S.C. 7470-7479; 7501-7515]. Section 200.10 incorporates by reference federal air regulations. Doing so provides the Department with the legal authority to implement these regulations, thus effectuating the terms and provisions of the Clean Air Act and its associated regulations allowing the Department to implement and enforce the rules on behalf of the Environmental Protection Agency. Amendments to Section 200.10 are currently being evaluated.

6 NYCRR Part 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines. Statutory Authority: Environmental Conservation Law Sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 19-1101, 19-1103, 19-1105, 71-2103, 71-2105; Federal Clean Air Act, § 177. Part 218 was amended in 2012, 2015, and 2016 to incorporate California's low emission vehicle (LEV), zero emission vehicle (ZEV), and greenhouse gas (GHG) new vehicle emission standards, and environmental performance label, aftermarket catalytic converter, and warranty requirements. These changes were necessary to maintain the federal Clean Air Act Section 177 identity requirement, to achieve necessary emission reductions for the attainment and maintenance of ozone and carbon monoxide standards, and to realize greenhouse gas emission reductions. The Department may amend Part 218 to include future modification to ensure identity requirements and also to clarify aftermarket catalytic converter requirements under Subpart 218-7, Aftermarket Parts.

6 NYCRR Part 222, Distributed Generation Sources. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and

71-2105. In November of 2016 the Department adopted Part 222 to establish emission standards, monitoring requirements and record keeping requirements for certain distributed generation sources in New York State. Pursuant to an Order by the Supreme Court of the State of New York dated July 26, 2017, the Department will develop a new rule to replace the rule adopted on November 1, 2016.

Contact: Richard McAuley, Regulatory Coordinator for the Division of Air Resources, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3258. Telephone: 518-402-8438. E-mail: air.regs@dec.ny.gov

Division of Environmental Remediation

6 NYCRR Part 375, Environmental Remediation Programs; Statutory Authority: Environmental Conservation Law (ECL) Sections 1-0101, 3-0301, ECL Article 27, Title 14. Part 375 was amended to meet statutory mandates in Part BB of Chapter 56 of the Laws of 2015, which amended and added new language to ECL Article 27, Title 14 (Brownfield Cleanup Program, BCP) and certain other laws. The proposal of these regulations resulted in amendments to the BCP law becoming effective on July 1, 2015. The amendments to Part 375 were adopted on July 4, 2016 and effective on August 12, 2016. They included (1) the addition of two new definitions, "affordable housing project" and "underutilized" in 6 NYCRR Subpart 375-3; (2) revisions to the existing "brownfield site" definition at 6 NYCRR 375-1.2(b) to meet the definition in the 2015 BCP law; and (3) deletion of 6 NYCRR 375-3.3(a)(1) to conform to the revised 'brownfield site' definition. No amendments will be made at this time. See 2019 Division of Environmental Remediation Regulatory Agenda regarding the next rule making for amendments to 6 NYCRR Part 375.

Contact: Angela Chieco, Regulatory Coordinator for Division of Environmental Remediation, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7012. Telephone: 518-402-9764. E-mail: derweb@dec.ny.gov

Division of Fish and Wildlife

6 NYCRR Part 10, Sportfish and Associated Activities. To revise sportfishing regulations and associated activities including commercial collection, sale and use of baitfish. Statutory Authority: Environmental Conservation Law Sections 3-0301, 11-0303, 11-0305, 11-0317, 11-1301, 11-1303, 11-1316 and 11-1319. These amendments promote optimum fishing opportunity for public use consistent with resource conservation. The rule is effective as written and requires no amendment.

6 NYCRR Part 1.11, Deer hunting seasons, Part 1.18, Issuance and use of deer hunting tags, and Part 1.31, Hunting black bear. Statutory Authority: Environmental Conservation Law Sections 11-0303, 11-0903, and 11-0907. The amendments made in 2016 improved deer and bear management and are having the intended effect. Further amendments to deer hunting regulations (Parts 1.11 and 1.18) are currently being evaluated as part of revisions to the New York State White-tailed Deer Management Plan. In regards to Part 1.31, in 2018-19, we are proposing an amendment to this regulation to expand the bear hunting season in a Wildlife Management Unit in the Southern Zone to better manage the black bear population and minimize bear-human conflicts.

6 NYCRR Parts 6.2 and 6.3, Fisher trapping seasons and bag limits and general trapping regulations for furbearers. Statutory Authority: Environmental Conservation Law Sections 3-0301, 11-0303, 11-0917, 11-1101, 11-1103, and 11-1105. Amendments to Parts 6.2 and 6.3 were adopted in 2016 to implement portions of the New York State Fisher Management Plan and to update and clarify general trapping regulations. The regulations associated with fisher trapping seasons are currently being evaluated through research and surveys associated with fisher occupancy, reproduction, and survival. The minor modifications associated with general trapping regulations are having the intended effect and no further amendments are currently being evaluated.

6 NYCRR Part 183 License-Issuing Officers and 6 NYCRR Part 184 Wildlife Rehabilitators. Statutory Authority: 3-0301, 11-0305, and 11-0713; and 11-0303, 11-0305, and 11-0515, respectively. Amendments to Parts 1843 and 184 removed the prohibition against convicted criminals from serving as license-issuing officers and wildlife rehabilitators. These amendments implement the recommendations of the Governor's Task Force which has been charged with identifying department licenses and programs that may provide individuals who have previous felony or misdemeanor charges the ability to integrate back into the work force or "Re-entry". The new rule requires that applicants who have been found guilty of one or more criminal offenses, must be found eligible for license after balancing the factors set out in Article 23-A of Correction Law. These amendments were adopted in September 2016. No further amendments will be made at this time.

Contact: Lucretia Paulsen, Regulatory Coordinator for the Division of Fish and Wildlife, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4750. Telephone: (518) 402-8924. E-mail: lucretia.paulsen@dec.ny.gov

Division of Lands and Forests

6 NYCRR Section 190.35 Peekamoos Valley Riparian Corridor. Environmental Conservation Law sections, 1-0101(3)(b), 3-0301(1)(b), 3-0301(1)(d), 3-0301(2)(m), 9-0105(1) and 9-0105(3). This regulation was amended and adopted in June of 2018 to further protect the area by requiring a permit on week-ends and holidays between May 15 and October 15 of each year. No further regulatory action is anticipated.

Contact: Linda Kashdan-Schrom, Regulatory Coordinator for the Division of Lands and Forests, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4250. Telephone: 518-402-9417. Email: linda.kashdan-schrom@dec.ny.gov

Division of Marine Resources

6 NYCRR Part 40, Marine Fish. Statutory authority: Environmental Conservation Law, sections 11-0303, and 13-0340-f. Part 40 was amended to allow two fishers aboard a single vessel to possess and land the trip limit for black sea bass. This rulemaking was necessary to ensure the safety of black sea bass fishers. Amendments to Part 40 will be proposed as necessary for New York to remain in compliance with federal rules and interstate fishery management plans.

6 NYCRR Part 40, Marine Fish. Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105 and 13-0340-f. Part 40 was amended to reduce the recreational harvest for black sea bass. This rulemaking was necessary to ensure New York State maintained compliance with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan (FMP) for Black Sea Bass. Amendments to Part 40 will be proposed as necessary for New York to remain in compliance with federal rules and interstate fishery management plans.

6 NYCRR Part 40, Marine Fish. Statutory authority: Environmental Conservation Law, sections 13-0333. Part 40 was amended to add the species menhaden and the menhaden trip limits to 6 NYCRR subdivision 40.1(i) Table B – Commercial Fishing. This rulemaking corrected a technical error in the regulations. Amendments to Part 40 will be proposed as necessary for New York to remain in compliance with federal rules and interstate fishery management plans.

6 NYCRR Part 41, Sanitary Condition of Shellfish Lands. Statutory authority: Environmental Conservation Law, sections 11-0303, 13-

0307 and 13-0319. Part 41 was amended to designate as uncertified (closed to shellfish harvest) either year-round or seasonally shellfish growing areas in the Towns of Oyster Bay, Huntington, Brookhaven, Islip, Riverhead, Smithtown, Southold, Southampton, and East Hampton. Shellfish harvested from growing areas that fail to meet bacteriological water quality standards may cause illness in those individuals who consume them. Bacteriological water quality testing is an ongoing task; shellfish growing areas will be classified as necessary based on the results of the water quality studies. Amendments to Part 41 will be proposed as needed.

6 NYCRR Part 43, Surf Clam/Ocean Quahog Fishery Management. Statutory authority: Environmental Conservation Law, section 13-0309. Subparts 43-2 and 43-3 were amended to prevent a single vessel in the surf clam fishery from catching more than one individual fishing quota in a calendar year to be consistent with the management measures of the NY State Fishery Management Plan (FMP) for the Atlantic Ocean surf clam fishery. Amendments to Part 43 will be proposed as necessary for New York to remain in compliance with state laws and fishery management plans.

Contact: Carol Hoffman, Regulatory Coordinator for the Division of Marine Resources, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733. Telephone: 631-444-0476. E-mail: carol.hoffman@dec.ny.gov

Division of Water

6 NYCRR Part 750, State Pollutant Discharge Elimination System (SPDES) Permits. Amended the SPDES Regulations to fulfill the Department's statutory obligations under the Sewage Pollution Right to Know Act (SPRTK). SPRTK established new requirements for Publicly Owned Treatment Works (POTWs) and Publicly Owned Sewer Systems (POSSs) to report untreated and partially treated sewage discharges to: the Department; New York State Department of Health (DOH); local health departments; the chief elected official or their designee of the municipality in which the discharge occurred; the chief elected official or designee of adjoining municipalities that may be affected; and the general public. Statutory authority: Environmental Conservation Law § 17-0826-a. No further amendments are currently being considered.

Contact: Michelle Tompkins, Regulatory Coordinator for the Division of Water, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3500. Telephone: 518-402-8221. E-mail: michelle.tompkins@dec.ny.gov

Introduction

Each year, pursuant to SAPA, the Department publishes a Review of Rules in the State Register and on its website. This is a review of Department rules adopted 5 years previous.

SAPA Section 207 -- 5-Year Rule Review

The following rules were adopted by the New York State Department of Environmental Conservation (Department) during 2014, and pursuant to SAPA Section 207 have been reviewed. Comments on the rules that are being amended this year should be directed to the contact person listed in the main body of the Regulatory Agenda. Comments on any rules that are not being changed at this time will be accepted for 45 days from the date of publication in the State Register and should be directed to the regulatory coordinator for the appropriate program, as listed below the rules.

Division of Air Resources

6 NYCRR Section 201.1, Definition of "Nonattainment Area." Statutory authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0303, 19-0305, 71-2103 and 71-2105. In September of 2014, in response to a finding of attainment by EPA, removal of the areas designated as "nonattainment" for PM_{2.5} was required. The regulatory revisions to Section 201.1 revised the definition to remove all areas redesignated as attainment. No amendments to this definition are planned at this time.

6 NYCRR Part 212 Process Operations. Statutory Authority: Environmental Conservation Law Sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 19-1101, 19-1103, 19-1105, 71-2103, 71-2105. The June 14, 2015 rulemaking

established consistent terminology between Part 212 and 6 NYCRR Part 200 (Part 200) and 6 NYCRR Part 201 (Part 201); establish a Toxic- Best Available Control Technology (T-BACT) standard for toxic air contaminants; clarify the interaction between Part 212 and the National Emission Standards for Hazardous Air Pollutants (NESHAPs); and controlled High Toxicity Air Contaminants (HTACs) to the greatest extent possible. The 2015 revision of Part 212 did not address 212-4 "Control of Nitrogen Oxides for Hot Mix Asphalt Production Plants." DAR intends to repeal Part 212-4 and create a new hot mix asphalt regulation under 6 NYCRR Part 220-3.

6 NYCRR Subpart 227-3, Nitrogen Oxide Emissions Budget and Allowance Program; Part 237, Acid Deposition Reduction NOX Budget Trading Program and Part 238, Acid Deposition Reduction SO2 Budget Trading Program. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, and 19-0303. In September of 2014, the Department repealed Subpart 227-3, Part 237 and Part 238 because the regulations had become obsolete and had been replaced by other Parts under this Title. No further actions being undertaken.

6 NYCRR Part 242, CO2 Budget Trading Program. Statutory Authority: Environmental Conservation Law Sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103, and 71-2105. As part of the State's implementation of the Regional Greenhouse Gas Initiative (RGGI), Part 242 was amended in 2013 to reflect the proposed RGGI Program revisions following RGGI 2012 program review. This included changes to cap regional CO2 emissions at 91 million tons annually beginning in 2014, declining to 78 million tons in 2020. Following the conclusion of the RGGI 2016 Program review, further revisions to Part 242 will be proposed to further reduce the CO2 emissions cap and make other changes to the RGGI program.

Contact: Richard McAuley, Regulatory Coordinator for the Division of Air Resources, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3258. Telephone: 518-402-8438. E-mail: air.regs@dec.ny.gov

Division of Fish and Wildlife

6 NYCRR Part 1, Section 1.31, Hunting black bear. Hunting seasons for black bear. Statutory Authority: Environmental Conservation Law Section 11-0907. In 2014, this amendment expanded black bear hunting opportunities to help stabilize or reduce bear populations. In 2018-19, we are proposing an amendment to this regulation to expand bear hunting seasons to two Wildlife Management Units in the Southern Zone to better manage the black bear population and minimize bear-human conflicts.

6 NYCRR Part 180, Section 180.12, Taking of Free-Ranging Eurasian Boars and Interference with Department Authorized Eradication Efforts. Statutory authority: Environmental Conservation Law Sections 11-0514 and 11-0303. In 2014, Section 180.12 was added to prohibit the taking of Eurasian boars by hunting or trapping in order to support eradication efforts of USDA and DEC. This regulation has been an important component of a comprehensive effort to remove free-roaming Eurasian boar from New York's landscape and will not be amended at this time.

6 NYCRR Part 2, Section 2.3, Hunting with a crossbow. Statutory Authority: Environmental Conservation Law Sections 11-0303 and 11-1901. In 2014, this regulation amended section 2.3 to authorize use of a crossbow during certain big game and small game hunting seasons. This regulation will not be amended at this time.

6 NYCRR Part 1, Section 1.24, Special firearms deer season in Suffolk County. Statutory authority: Environmental Conservation Law Sections 11-0303, 11-0903, 11-0907, 11-0911, 11-0913, 11-0929 and 11-0931. In 2014, this regulation expanded and simplified deer hunting seasons and regulations in Suffolk County. We are considering establishing a youth deer hunt in Suffolk; however, this regulation will not be amended at this time.

Contact: Lucretia Paulsen, Regulatory Coordinator for the Division of Fish and Wildlife, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4750. Telephone: (518) 402-8924. E-mail: lucretia.paulsen@dec.ny.gov

Division of Lands and Forests

6 NYCRR Section 190.24, Boat Launching Sites and Other Sites from which a Watercraft may be Launched. Environmental Conservation Law section 9-0105(1) and section 9-1709. The purpose of this regulation is to prevent boats carrying visible invasive species from launching at department facilities or leaving these facilities. No revisions to this rulemaking are needed.

6 NYCRR Part 193, Trees and Plants, Ginseng in New York. Environmental Conservation Law sections 3-0301(2)(m), 9-0105(1), 9-1503(1), 9-1503(2), 9-1503(3) and 9-1503(4). The purpose of this regulation is to establish practices for the harvest and sale of American ginseng in New York State and to create a permitting system and certification procedures. The proposed revisions to this regulation would clarify terms and include a new license requirement. See the 2019 Regulatory Agenda.

6 NYCRR Part 575 Prohibited and Regulated Invasive Species. Environmental Conservation Law (ECL) Article 9, Title 17; ECL Section 1-0101; ECL Section 3-0301; ECL Section 9-0105; ECL Section 9-1303; ECL Section 9-1701; ECL Section 9-1705; ECL Section 9-1707; ECL Section 9-1709; ECL Section 11-0507; ECL Section 11-0509; ECL Section 11-0511; ECL Section 71-0703; and, Agriculture and Markets Law (AML) § 167(3-a), AML Article 9, Article 11 and Article 14. The purpose of this Part is to establish procedures to identify and classify invasive species and to establish a permit system. The proposed revisions to this regulation would update the existing lists of invasive species. See the 2019 Regulatory Agenda.

Contact: Linda Kashdan-Schrom, Regulatory Coordinator for the Division of Lands and Forests, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4250 Telephone: (518) 402-9405 E-mail: linda.kashdan-schrom@dec.ny.gov

Division of Marine Resources

6 NYCRR Parts 10,11,19, 36, 37, and 40, Sportfishing Regulations, More than One Species, Use of Bait, Fish for Bait, and Bait Fish, Gear and Operation of Gear, Sale of Certain Lake Ontario Fishes Prohibited, Marine Fish. Statutory authority: Environmental Conservation Law sections 3-0301, 11-0303,11-0305, 11-0306, 11-0317, 11-0319, 11-1301, 11-1303, 11-1305, 11-1319, 11-1501, 11-1503, 11-1505 and 13-0105, 13-0339-a, and 13-0371. Parts 10,11,19, 36, 37, and 40 were amended to change the size, catch limits, and gear requirements for American Eel for commercial, recreational, and bait fisheries in both inland and marine waters. This rule was necessary for New York State to reduce American eel fishing mortality, and to remain in compliance with the Atlantic States Marine Fisheries Commission Fishery Management Plan for American Eel. Amendments to Parts 10,11,19, 36, 37, and 40 will be proposed as necessary for New York to remain in compliance with federal rules and interstate fishery management plans.

6 NYCRR Part 40, Marine Fish. Statutory authority: Environmental Conservation Law sections 11-0303,13-0105, 13-0340-b, 13-0340-e and 13-0340-f. Part 40 was amended to adjust the summer flounder recreational season, change size and possession limits, and to shorten the black sea bass fishing season. This rule was necessary to maximize recreational angler opportunities while ensuring that New York State maintained compliance with the Atlantic States Marine Fisheries Commission Summer Flounder, Scup and Black Sea Bass Fishery Management Plan. Amendments to Part 40 will be proposed as necessary for New York to remain in compliance with federal rules and interstate management plans.

6 NYCRR Part 41, Sanitary Condition of Shellfish Lands. Statutory authority: Environmental Conservation Law, sections 13-0307 and 13-0319. Part 41 was amended to designate as uncertified (closed to shellfish harvest) either year round or seasonally shellfish growing areas in the Towns of Hempstead, Islip, Brookhaven, Smithtown, Huntington, Southampton, East Hampton and Southold. Part 41 was also amended to designate as certified (open to shellfish harvest) shellfish growing areas in the Town of Hempstead. Shellfish harvested from growing areas that fail to meet bacteriological water quality standards may cause illness in those individuals who consume them. Bacteriological water quality testing is an ongoing task; shellfish growing areas will be classified as necessary based on the results of

the water quality studies. Amendments to Part 41 will be proposed as needed.

6 NYCRR Part 41, Sanitary Condition of Shellfish Lands. Statutory authority: Environmental Conservation Law, sections 13-0307 and 13-0319. Part 41 was amended to designate as uncertified (closed to shellfish harvest) either year round or seasonally shellfish growing areas in the Towns of Babylon, East Hampton and Southold, and to clarify the description of an uncertified growing area in the Towns of Southampton and East Hampton. Shellfish harvested from growing areas that fail to meet bacteriological water quality standards may cause illness in those individuals who consume them. Bacteriological water quality testing is an ongoing task; shellfish growing areas will be classified as necessary based on the results of the water quality studies. Amendments to Part 41 will be proposed as needed.

Contact: Carol Hoffman, Regulatory Coordinator for the Division of Marine Resources, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733. Telephone: 631-444-0476. E-mail: carol.hoffman@dec.ny.gov

New York State Gaming Commission

As required by section 207(4) of the State Administrative Procedure Act, the New York State Gaming Commission ("Commission") gives notice of the following:

As part of the Commission's 2018 review of regulations that were adopted during 1998, 2003, 2008 and 2013, the Commission has reviewed several amendments that were made to the rules of the Commission (including rulemaking of its legacy agencies, the Division of Lottery and the Racing and Wagering Board) in these calendar years. The following amendments were reviewed:

1998

Limitations on use of whips. RWB-24-98-00006. Amendment to 9 NYCRR § 4117.8.

Increase apprentice weight allowances. RWB-22-98-00013. Amendments to 9 NYCRR §§ 4032.1 and 4032.4.

Games of chance regulations. RWB-23-98-00005. Amendments to 9 NYCRR §§ 5603.7, 5607.15, 5607.28, 5608.1, 5608.13, 5609.1, 5610.1, 5610.2, 5611.1, 5611.2, 5620.19, 5622.12, 5622.13, 5622.22, 5623.1, 5624.1, 5624.3, 5624.5 and 5624.21. (Part 5600 of 9 NYCRR has been renumbered Part 4608.)

2003

No rules for which a rule review was required.

2008

Lucky Sum game added. LTR-44-07-00002. New subdivisions (h) and (g) added to 21 NYCRR § 2828.3. (Since renumbered 9 NYCRR §§ 5009.2(h) and 5010.2(g).)

Lotto Extra game added. LTR-44-07-00003. New § 2817.12 added to 21 NYCRR. (Since renumbered 9 NYCRR § 5008.9.)

Licensing and standards for totalisator companies. RWB-32-07-00013. Part 5100 (since renumbered Part 4300) added to 9 NYCRR.

Internet and telephone account wagering on horse racing. RWB-33-07-00005. Part 5300 (since renumbered Part 4500; amended in July 2017) added to 9 NYCRR.

Disqualification of horse for interference. RWB-43-07-00011. Amended § 4035.2(d) of 9 NYCRR.

Harness claiming race procedures. RWB-34-08-00004. Amended subdivisions (a), (b), (d), (e) and (p) of 9 NYCRR § 4109.3.

Use of anabolic steroids in race horses. RWB-44-08-00008. Amended §§ 4043.2(e)(9) and 4120.2(e)(9) of 9 NYCRR and added new sections §§ 4043.15 and 4120.12.

2013

Mega Millions and Raffle Game added. SGC-30-13-00009. Added a new § 5007.14 to 9 NYCRR.

Video Lottery Gaming Advertising. SGC-35-13-00002. Added a new paragraph 3 to 9 NYCRR § 5116.6(b).

Establishment of Rules of New York State Gaming Commission. SGC-30-13-00010.

Restricting anabolic steroids in horse racing. RWB-08-13-00003. Amended §§ 4043.15 and 4120.12 of 9 NYCRR.

Claims voidable if horse is vanned off the track. RWB-08-13-00005. Added a new paragraph (3) to 9 NYCRR § 4038.5(a).

Clenbuterol and corticosteroid use in thoroughbred horse racing. RWB-08-13-00006. Amended §§ 4043.2(e)(9), (g) and (i) of 9 NYCRR and added a new § 4043.4(b).

A summary of the foregoing regulations was published in the Rule Review section of the October 27, 2018 issue of the State Register. The Commission did not receive any public comment regarding these regulations.

The Commission has determined that these regulations should be continued without modification because there have been no changes in public policy or regulatory circumstances that would warrant modification to these rules.

For further information contact: Kristen M. Buckley, Acting Secretary of the New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12301-7500.

Department of Law

Investor Protection Bureau

Pursuant to SAPA section 207, the Law Department submits the following list of its rules that were adopted during calendar year 2014 and invites public comment on the continuation or modification of such rules. Comments should be sent to the respective agency representative listed below for each particular rule, and must be received within 45 days of the date of publication of this Notice.

RULES ADOPTED IN 2014

(1) LAW-16-14-00008-A Registration and Conduct of Investment Advisers.

Amendment of sections 11.1(d), 11.14(a), 11.15; repeal of sections 11.7(a), 11.12(a)(6), 11.16 of Title 13 NYCRR.

Analysis of the need for the rule: To provide investors with information to reduce possibility of fraud; clarify current rules; and conform them with Federal law.

Legal basis for the rule: General Business Law, section 359-eee, art. 23-A.

Agency Representative: Written comments concerning the continuation or modification of the above rule may be submitted to: Kenneth Haim, Registration Section Director, 28 Liberty Street, New York, NY 10005, (212) 416-8206, Kenneth.Haim@ag.ny.gov.

Charities

Pursuant to SAPA section 207, the Law Department submits the following list of its rules that were adopted during calendar year 2014 and invites public comment on the continuation or modification of such rules. Comments should be sent to the respective agency representative listed below for each particular rule, and must be received within 45 days of the date of publication of this Notice.

RULES ADOPTED IN 2014

(1) LAW-01-14-00003-A Contents of Annual Financial Reports Filed with the Attorney General by Certain Nonprofits.

Repeal of section 91.5(f)(3); and addition of new section 91.5(f)(3) to Title 13 NYCRR.

Analysis of the need for the rule: To clarify and simplify procedures for requesting extensions of time to file charitable organizations' annual financial reports.

Legal basis for the rule: Executive Law, section 177(1); Estates, Powers and Trusts Law, section 8-1.4(h).

Agency Representative: Written comments concerning the continuation or modification of the above rule may be submitted to: Karin Kunstler Goldman, Deputy Bureau Chief, 28 Liberty Street, New York, NY 10005, (212) 416-8392, Karin.KunstlerGoldman@ag.ny.gov.

Department of Motor Vehicles

Five Year Review of Rules Adopted by the Department of Motor Vehicles in Calendar Years 1999, 2004, 2009 and 2014 Required to be Reviewed in Calendar Year 2019.

As required by section 207 of the State Administrative Procedure Act, the following is a list of rules that were adopted by the Department of Motor Vehicles in calendar years 1999, 2004, 2009 and 2014 which must be reviewed in calendar year 2019. Public comment on the continuation or modification of these rules is invited and will be accepted for 45 days from the date of publication in the State Register. Comments may be directed to: The Department of Motor Vehicles, Counsel's Office, 6 ESP, Room 522A, Albany, NY 12228.

2014

MTV-25-13-00004 - Part 78.32 – Enforcement of dealer related regulations.

Analysis of the need for the rule: This regulation was adopted in conjunction with regulatory amendments to Part 20 below, regarding requests by registered dealers for release of a motor vehicle lien. This regulation provides that the submission of false or misleading information to DMV in connection with this process may result in a hearing which may, upon a finding of guilt, result in the suspension or revocation of the dealer's registration and any or all of the number plates. This rule is still used and necessary.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a) and 415(9)(b).

MTV-25-13-00005 – Part 20.17 - Proof of satisfaction of lien by dealers.

Analysis of the need for the rule: This regulation established procedures for dealers to demonstrate that they have satisfied a lien in order to obtain a clear title. The Department of Motor Vehicles is required by law to issue a clear title when it is presented with a proper application, the requisite statutory fee, and acceptable proof of lien satisfaction from the lender acknowledging that its security interest has been released. Occasionally, a lender may take several weeks to provide a written lien release to a vehicle owner after satisfaction of the lien. Chapter 493 of the Laws of 2012 was enacted to expedite the issuance of a no-lien title, in order to facilitate the resale of a motor vehicle that was traded to a dealer with a lien at the time of the trade. Vehicle and Traffic Law section 2121(b) expedites this process by offering dealers, who arrange for the satisfaction of a lien, a procedure to demonstrate to the Department that a clean title should be issued and, consequently, such clear title shall be issued more quickly. The amendments to Section 20.17 were necessary to apprise both lenders and dealers about those proofs of lien satisfaction that the Commissioner deems acceptable. Amendments to Section 78.32, above, made clear that if a dealer abuses the process by submitting false or misleading information to the Commissioner regarding the satisfaction of a lien, the dealer could face suspension or revocation of its registration. This rule, which provides notice to dealers and lienholders about the process necessary to obtain clean title, remains necessary.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a), 2121(a) and (b).

MTV-16-14-00004 - Part 21.2 – Temporary license plates.

Analysis of the need for the rule: This regulation permits the Commissioner to authorize the issuance of a temporary plate for use by State agencies and political subdivisions while the permanent plate is being manufactured. On April 1, 2014, the Department of Motor Vehicles instituted a new process for the manufacture of State and political subdivision license plates that, in part, enhanced law enforcement's ability to identify State and official vehicles used for emergency management purposes. The manufacturing process, which is still in place, requires that the new plates be produced after the registration application is received, therefore requiring the issuance of a temporary plate for use pending the production of the permanent plate. This rule remains necessary to protect the health, safety, and general welfare of the citizens of New York State.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a) and 404(3).

MTV-18-14-00004 – Part 3.5(e) – DMV Road Test.

Analysis of the need for the rule: The regulation was added as a new section in 2014 which prohibited the use of recording equipment in vehicles used during a DMV road test. The regulation ensures that the skills test, also known as a road test, is given in a secure environ-

ment with limited distractions. Recording equipment creates a distraction which compromises the safety of the vehicle occupants and motoring public. The regulation provides for an exception when DMV employees use recording devices for training or investigatory purposes. The rule remains necessary as part of the DMV's highway safety mission.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a) and 502(4)(f) and 508(4).

2009

MTV-16-09-00006 – Part 123 - Traffic Violations Bureau Fines.

Analysis of the need for the rule: Section 226(1)(b) of the Vehicle and Traffic Law (VTL) authorizes the Commissioner of Motor Vehicles to establish a schedule of penalties for violations of the VTL and to print such schedule on the summons issued to a motorist when such ticket is returnable to a Traffic Violations Bureau. In 2009, the fines set forth in the schedule in Part 123 were increased by 25%, accounting for inflation, and to serve as a meaningful deterrent against violations of the VTL. The rationale for the fine increase remains and, therefore, the regulation should not be amended.

Legal basis for the rule: Vehicle and Traffic Law section 215(a), 225(3) and 226(1)(b).

MTV-26-09-00013 – Parts 77 and 78 – Dealer Document Fee.

Analysis of the need for these rules: This amendment raised the dealer document fee from \$45 to \$75. This is a non-DMV fee that a dealer may charge to assist a customer in securing registration and title documents from the Department. The increase was necessary to address the increasing cost of processing DMV registrations and titles and to allow New York State dealers to compete with dealers in neighboring states, i.e., with this increase, New York came within 50% of the national average of dealer document fees, without posing an onerous burden on consumers. The need for the dealer document fee remains.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a) and 419(d)(d).

2004

MTV-27-03-00004 – Part 5.4(a) – Vision Testing.

Analysis of the need for the rule: This regulation provides that an applicant for a license may have a health care professional certify that he/she meets the Department's vision requirements. The amendment provides that such professional may sign the DMV certification form within six months or one year of renewal, depending on the patient's condition. This flexibility gives health care professionals necessary discretion to address unique problems of their patients. Since such flexibility is still needed by professionals, the regulation remains necessary.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a) and 502(6)(a).

MTV-49-03-000015 – Part 78 – Dealer Document Fee.

Analysis of the need for the rule: This regulation raised the fee a dealer may charge a customer for processing registration and title paperwork from no more than \$20 to no more than \$45. The fee was last raised in 1991. This fee increase was justified because the dealer's cost of doing business had increased over the years. Dealers complete the 15 documents with each transaction and comply with increasingly complex state laws. Since the cost of doing business has not diminished over the past five years, and in fact, continues to rise, this regulation remains necessary. This \$45 fee was subsequently increased in 2009 to \$75.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a) and 415(9)(d).

MTV-04-04-00009 – Part 79 – Emissions Inspection Sticker Fees.

Analysis of the need for the rule: This regulation raised the fee that inspection stations pay for each inspection sticker from \$4 to \$6. Inspection stations were allowed to pass the cost to their customers. The revenue generated from the sale of the tickers is deposited into the State's Clean Air Fund. Since this revenue remains critical to the State's ability to monitor the emissions testing program, this regulation is still necessary.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a) and 305(a)(2).

MTV-25-04-00023 – Part 79 – Emissions Inspections.

Analysis of the need for the rule: The Clean Air Act of 1990 and its ensuing federal regulations required New York State to adopt an On Board Diagnostics II (OBDII) system for the inspection of motor vehicles by July 1, 2004. All 1996 and newer vehicles are subject to the OBD II inspection. Failure to adopt this regulation could have resulted in the loss of \$2 billion in federal highway funding. Since OBD II remains essential to compliance with the Clean Air Act and to this State's commitment to clean air, this regulation remains necessary.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a), 301(c), 301(d), 301(f), 302(a), 302(b) and 304-a.

MTV-10-04-00023 – Part 134 – Drinking Driver Program.

Analysis of the need for the rule: This regulation increased the enrollment fee for participating in the Drinking Driver Program (DDP) from no more than \$175 to no more than \$225. (The participant also pays DMV a \$75 administrative fee). The enrollment fee was raised because the vast majority of DDP providers were operating at a deficit and requested the increase to adjust for the escalating cost of doing business. The previous increase was in 1996. Since the cost of providing DDP services has not diminished, this regulation remains necessary.

Legal basis for rule: Vehicle and Traffic Law sections 215(a) and 1196(1) and 1196(6).

MTV-12-04-00002 – Part 134, 135 and 140 – Limited Use Licenses.

Analysis of the need for these rules: These amendments provided that a person is not eligible for a conditional, restricted or post-revocation conditional license (all "limited use" licenses) if such person held a class DJ or MJ license at the time of the violation that resulted in the suspension or revocation of the license. Class DJ and MJ licenses are issued to persons under 18 years of age who have little driving experience. For highway safety reasons, such persons should not be afforded the privileges of a limited use license if their license is suspended or revoked. Due to these continuing highway safety concerns, this regulation remains necessary.

Legal basis for rule: Vehicle and Traffic Law sections 215(a), 530, 1196(7)(a), and 1198.

MTV-18-04-00017 – Part 106.6 – Registration of Pickup Trucks.

Analysis of the need for the rule: The primary purpose of this amendment was to allow the registration of pick-up trucks in the passenger class if such truck weighed no more than 5,500 pounds and was used exclusively for non-commercial purposes. This regulation was supported by many pick-up truck owners and rental car companies who were forced to register the vehicle in the commercial class because the vehicle weighed more than 5,000 pounds, the previous passenger class threshold. The registration class is important, because vehicles with commercial plates are not permitted to operate on many of New York's parkways. Since prohibitions against vehicles with commercial plates operating on parkways still exist, this regulation remains necessary.

Legal basis for the rule: Vehicle and Traffic Law section 215(a), and 401(7) and 401(15).

1999

MTV-41-99-00003 - Part 79 - Heavy Duty Diesel Emissions Program.

Analysis of the need for the rule: Chapter 621 of the laws of 1998 creates the Heavy Duty Vehicles Emissions Reduction Act, requiring all diesel powered vehicles with a gross vehicle weight rating of greater than 8,500 pounds to have an emissions inspection. The law was enacted because diesel powered vehicles pose a threat to the health and well-being of the citizens of New York. This regulation establishes the specific emissions inspection requirements for diesel powered vehicles. Since Chapter 621 is still valid law, these regulations continue to be necessary to establish diesel emissions inspection procedures.

Legal basis for rule: Vehicle and Traffic Law sections 215(a) and 301(f).

MTV-14-99-00005 – Part 174 - Placement of electronic toll collection tags.

Analysis of the need for the rule: DMV adopted this regulation to permit E-Z Pass holders to place this receiver-transmitter device on their windshields. This regulation is still necessary, since E-Z Pass holders continue to need to place the device on the windshield.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a) and 375(1).

MTV-09-99-00006 - Part 15 - New York City Commercial Use Tax.

Analysis of the need for the rule: This amendment authorizes DMV to collect a commercial motor vehicle use tax on behalf of New York City. This regulation was promulgated pursuant to Chapter 789 of the Laws of 1992 and NYC Local Law No. 57. DMV collects forty dollars for commercial vehicles weighing 10,000 lbs. or less and \$400 for non-medallion taxicabs. Since NYC continues to need this revenue and has found that DMV can collect the tax more efficiently than City's Department of Finance, this regulation is necessary to insure continued collection of the tax.

Legal basis for rule: Vehicle and Traffic Law sections 215(a), Chapter 1032 of the Laws of 1960, and Chapter 789 of the Laws of 1992.

MTV-47-98-00003 - Part 6 - Medical Qualifications of Bus Drivers.

Analysis of the need for the rule: DMV adopted this regulation to clarify that all bus drivers must be alcohol and drug free. Since DMV continues to hold bus drivers to the highest highway safety standards, this regulation is necessary to uphold such standards.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a), 509-b and 509-g.

MTV-49-98-00018 - Parts 20 and 78 - Rebuilt Salvage Vehicles.

Analysis of the need for these rules: The amendments to Parts 20 and 78 put motor vehicle purchasers and dealers on notice as to whether a vehicle is deemed a salvage vehicle. Since the value of a vehicle is greatly diminished when it is branded salvage, consumers and dealers have the right to be informed of the vehicle's status. Since this remains a great concern to both consumers and dealers, this regulation continues to be necessary and beneficial.

Legal basis for rule: Vehicle and Traffic Law sections 215(a) 2113(a), 2114(a), and 2126(b).

MTV-15-98-00017 - Part 79 - Motor Vehicle Inspection Procedures.

Analysis of the need for the rule: In 1997, DMV adopted significant revisions to Part 79, implementing the High Enhanced Emissions Program in the New York Metropolitan Area and the Low Enhanced Emissions Program in the rest of the State. The 1999 amendments to Part 79 were primarily technical in nature and served as clarification to the 1997 amendments. The technical amendments repealed obsolete provisions, deleted repetitive sections, and clarified procedures required by inspection stations. This regulation is still necessary because it continues to reflect inspection station procedures. As requirements for the stations have changed over the past five years, appropriate amendments have been made to Part 79.

Legal basis for rule: Vehicle and Traffic Law sections 215(a), 301, 302, 303, 304, 304-a, 305, and 306.

MTV-47-98-00005 - Part 174 - Display of windshield stickers.

Analysis of need for the rule: The rule is still necessary to allow the Westchester Taxi and Limousine Commission to place a for-hire sticker on the windshield of for-hire vehicles. The sticker is intended to protect the safety of the residents of the county and to promote the improvement of for-hire services.

Legal basis for the rule: Vehicle and Traffic Law section 375(1).

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 proposes to continue the following rules adopted in 1999, 2004, and 2009 without modification. Comments are welcome on the proposed continuation of these rules. Five copies of comments should be sent to: Kathleen Burgess, Secretary, 3 Empire State Plaza, Albany,

New York 12223-1350, on or before March 8, 2019. 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 also 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 had been amended several times over the previous 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 Federal Accountable Pipeline Safety and Partnership Act of 1996 (49 U.S.C. § 60105[a]) 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 streamlined certain 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 also clarify the procedures for energy service companies (ESCOs) seeking suspension of a residential customer's distribution service by directing the utilities to apply 16 NYCRR Parts 11.4(a) and 11.4(b). They also amend the required contents of ESCO notices of termination.

