

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, which the Department of Agriculture and Markets intends to review in 2019. Public comment on the continuation or modification of these regulations will be accepted until June 25, 2019. The original notice of proposed rulemaking for all listed rules required the preparation of a regulatory flexibility analysis, a rural area flexibility analysis, and/or a job impact statement. As appropriate, small businesses, local governments, and public and private interests in rural areas will be notified by the Department of the rule review for those rules that affect them or have the potential to affect them. All Section and Part references are to Title 1 of the New York Codes, Rules and Regulations.

Rules 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 53 Requirements Governing Importation of Cattle.

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

The continuation of this regulation is necessary to allow cattle originating from states with disease-free status to be imported into New York State without tuberculosis and brucellosis testing and to maintain the program which allows untested cattle to be fed for slaughter at pre-approved feed lots. The regulation was subsequently amended in 2008 to allow, under certain circumstances, the importation of cattle without a certificate of veterinary inspection, if they are moved directly to a specifically approved stockyard or recognized slaughtering establishment. 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. Amendments to this regulation are being considered. See the 2019 Regulatory Agenda.

Part 139 Asian Long Horned Beetle Quarantine.

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 New York City and Long Island. The quarantine area and list of regulated articles has been repeatedly modified to prevent the further spread of the beetle, most recently in 2016 and 2017.

Section 220.5 Frequency of Inspection and Testing of Devices.

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

The continuation of this regulation is necessary to require that municipal directors of weights and measures inspect and test commercial

weighing and measuring devices at least once a year. Amendments to this regulation are being considered. See the 2019 Regulatory Agenda.

Rules 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.

Rules adopted in 1999:

Part 45 Avian Influenza.

Statutory Authority: Agriculture and Markets Law sections 16(1), 18(6), 72, 74 and 75.

The continuation of this regulation is necessary to prevent the spread of avian influenza through live poultry markets in the New York City Metropolitan area by limiting the markets' source of poultry to flocks which are free of disease. The Department's avian influenza control program was further strengthened by additional requirements adopted in 2003, 2005, 2014 and 2015. The amendments adopted in 2015 require that all birds imported into the State for all purposes other than immediate slaughter must be determined or certified to be free of avian influenza. Amendments to this regulation are being considered. See the 2019 Regulatory Agenda.

Rules adopted in 2002:

Part 351 Animal Health Requirements for Admission to Fairs.

Statutory Authority: Agriculture and Markets Law sections 18, 31-b, 72, 74, and 287.

The continuation of this regulation is necessary to maintain health certification requirements for animals exhibited at fairs. Livestock exhibitions at fairs have the potential to facilitate the spread of communicable or infectious diseases among the domestic animal population of the state. The public is also exposed directly to these animals during the exhibitions, increasing the risk of transmission of certain diseases from animals to humans. The regulation was most recently amended in 2013 to require animal identification consistent with federal requirements; and to clarify and ease current regulatory requirements. Amendments to this regulation are being considered. See the 2019 Regulatory Agenda.

Rules adopted in 2003:

Section 221.13 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 continue to allow the sale of common delicatessen products by the quarter and half pound rather than the whole pound. Fractional pricing allows delicatessens to post prices in the unit consumers are most likely to purchase thereby reducing confusion. The regulation also dictates the size of the information required to be posted for delicatessen products and commodities in bulk. Amendments adopted in 2003 allowed a smaller

price label size for delicatessen products. 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.

Rules adopted in 2004:

Part 271 Food offered for sale in retail stores.

Statutory authority: Agriculture and Markets Law sections 16(1), 18(2), (6) and 214-b.

The continuation of this regulation is necessary to combat outbreaks of food borne illness by addressing five risk factors: improper holding temperature, inadequate cooling, contaminated equipment, unsafe food sources and poor personal hygiene. The regulation incorporates provisions of the federal food code focusing on five interventions to help prevent food borne illness as follows: time/temperature relationship, employee health, management knowledge, hands as a vehicle of contamination, and consumer education. This rule was amended in 2011 to update incorporations by reference to current Federal regulations. Amendments to this regulation are being considered. See the 2019 Regulatory Agenda.

Parts 350 and 369 Standards for Conduct of Fairs.

Statutory Authority: Agriculture and Markets Law sections 16, 18 and 287.

The continuation of this regulation is necessary to allow local fairs to set the entry fee for exhibits, rather than requesting the Commissioner's permission if the fee exceeds ten percent of the premium awarded for first place.

Rules adopted in 2006:

Part 154 Ammonium Nitrate and Regulated Ammonium Nitrate Materials.

Statutory Authority: Agriculture and Markets Law Sections 18(6) and 146-f

The continuation of this regulation is necessary to implement L. 2005, c. 620, which requires the registration of persons and entities in New York State that sell, offer for sale or otherwise make available ammonium nitrate or regulated ammonium nitrate materials. Ammonium nitrate is a common chemical compound used in fertilizer, which is also an explosive chemical used to make bombs such as those used in the 1993 World Trade Center and 1995 Oklahoma City bombings.

Part 245 Sanitation and Processing Procedures for Slaughterhouses.

Statutory Authority: Agriculture and Markets Law Sections 16(1), 18(6), and 96-a

The continuation of this regulation is necessary to improve the sanitary conditions and processing procedures of slaughterhouses to help ensure the wholesomeness of meat and poultry produced therein.

Rules adopted in 2007:

Part 68 Captive Cervid Health Requirements.

Statutory Authority: Agriculture and Markets sections 18(6), 72, and 74.

The continuation of this regulation is necessary to prevent further introduction of chronic wasting disease (CWD) into New York State and to permit detection and control if the disease were to arise in the State's captive cervid population. The rule was amended in 2014 to prohibit the movement of cervids susceptible to CWD into New York State. The current restrictions on the movement of cervids was recently extended from August 1, 2018 until August 1, 2023. Amendments to this regulation are being considered. See the 2019 Regulatory Agenda.

Part 363 State Aid to Soil and Water Conservation Districts.

Statutory Authority: Soil and Water Conservation Districts Law sections 4 and 11-a

The continuation of this regulation is necessary to provide a mechanism for the distribution of state financial aid to county soil and water conservation districts in conformance with Soil and Water Conservation Districts Law section 11-a.

Rules adopted in 2008:

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.

Amendments adopted in 2008 allow the importation of certain ruminants without testing for bluetongue, tuberculosis, brucellosis and anaplasmosis and to allow the importation of sheep and goats without a certification of veterinary inspection under certain circumstances. The continuation of this regulation is necessary to 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 prevent the further spread of the Plum Pox Virus throughout the State as well as into neighboring states and provinces. 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.

Rules adopted in 2009:

Part 96 Certification of Seed.

Statutory Authority: Agriculture and Markets Law sections 141 and 142.

The continuation of this regulation is necessary to maintain appropriate standards and procedures for the certification of seed and define terms to be used when referring to seed produced in accordance with these procedures and that meet these standards. This regulation, developed after consultation with the Dean of the State College of Agriculture and Life Sciences and the President of the State University of New York College of Environmental Science and Forestry, gives full effect to Article 9 of the Agriculture and Markets Law.

Rules adopted in 2011:

Part 97 Certification of Small Grain Seed.

Statutory Authority: Agriculture and Markets Law, sections 141 and 142.

The continuation of this regulation is necessary to ensure the accurate labeling of small grain seeds. The rule sets forth land requirements, field inspections, field standards and seed standards for the certification of small grain seeds.

Rules adopted in 2012:

Part 64 Movement and Transfer of Horses and Other Equidae

Statutory Authority: Agriculture and Markets Law, sections 18(6), 72(3), 74(5) and (9).

Amendments to Part 64 adopted in 2012 established the Equine Interstate Passport Program. The continuation of this regulation is necessary to facilitate the interstate movement of horses between participating states by means of documents commonly known as equine interstate passports or entry permits. States participating in these programs permit a qualified horse to enter their state for certain purposes if the horse is accompanied by a passport or permit issued under the authority of the regulatory authorities of another participating state.

Section 276.4 Sale of sliced cheese at farmers' markets.

Statutory Authority: Agriculture and Markets Law, sections 16, 18, 214-b, 251-z-4 and 251-z-9.

The continuation of this regulation is necessary to maintain the exemption for cheese makers who slice and package cheese for sale to consumers at farmers' markets from the requirement that they obtain a food processing license. Cheese is a popular item offered for sale at farmers' market. By eliminating this regulatory burden on cheese makers they are more likely to offer their cheese for sale at farmers' markets thereby attracting additional consumers to the farmers' markets.

Rules adopted in 2013:

Part 192 Cull Onions and Potatoes

Statutory Authority: Agriculture and Markets Law, section 160-v.

The continuation of this regulation is necessary to ensure the proper disposal of culls and waste piles of onions and potatoes not produced in New York State. Improperly disposed onion and potato culls can lead to the introduction of pathogens previously not known to exist in New York State and the outbreak of diseases in New York State agricultural products.

Part 270 Standards of Identity and Grades of Maple Syrup.

Statutory Authority: Agriculture and Markets Law, sections 16, 18, 160-u, 203 and 214-b.

The continuation of this regulations is necessary to ensure that grades of maple syrup meet appropriate compositional requirements to promote public confidence and fair dealing. The rule requires the State's maple syrup manufacturers to label their maple syrup with the same grades as required in other states and Canadian provinces in which it is sold, thereby allowing New York maple syrup to be readily sold in such jurisdictions. The rule also sets standards for determining the grade of a particular maple syrup based upon the syrup's color, taste, and percentage of light transmission assuring consumers that the grade of maple syrup that they purchase will meet their needs and expectations.

Rules adopted in 2015 (4-year review):

Section 127.2 Golden Nematode Quarantine

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

The continuation of this regulation is necessary to address the eradication and management of the golden nematode and continue to prevent the spread of the nematode. The 2015 amendments modified the golden nematode quarantine by lifting the quarantine in specified portions of Nassau, Suffolk and Orleans Counties where surveys of potato, tomato and eggplant fields have been negative for golden nematode. Lifting the quarantine in areas proven to be negative for golden nematode eases the regulatory burden on growers of host crops in those areas without compromising plant health.

Rules adopted in 2016 (3-year review):

Part 159 Growth and Cultivation of Industrial Hemp

Statutory Authority: Agriculture and Markets Law, sections 16, 18, and 508.

The continuation of this regulation is necessary to provide procedures and authorizations for institutions of higher education to conduct research on industrial hemp. The rule ensures that industrial hemp is properly grown and cultivated and, thereafter, held, studied, and disposed of in a manner designed to protect the public health, safety and welfare. Amendments to this regulation are being considered. See the 2019 Regulatory Agenda.

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