

RULE REVIEW

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 2022. Public comment on the continuation or modification of these regulations will be accepted until May 17, 2022. 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.

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. The quarantine area was most recently modified in 2020 to lift approximately 58 square miles of Asian long horned beetle quarantine in Brooklyn and western Queens.

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 2022 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 2022 Regulatory Agenda.

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. Section 68.3 was amended in 2019 to extend the current restrictions on the movement of cervids from August 1, 2018, until August 1, 2023.

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 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 Sections 64.1, 64.2, 64.3 & 64.12 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 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 2012 amendments

modified the golden nematode quarantine by lifting the quarantine in specified portions of Genesee, Steuben, and Livingston 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. Amendments to this regulation are being considered. See the 2022 Regulatory Agenda.

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 2019 (initial 3 - year review):

Part 142 Spotted Lanternfly ("SL").

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

The continuation of this regulation is necessary to prevent SL-infested articles originating in or moving through areas in other states where SL is present from entering NYS. The regulation was subsequently amended in 2019 and 2020 to expand the quarantine area. Amendments to this regulation are being considered. See the 2022 Regulatory Agenda.

Part 224, Fuels for use in automobiles and motor-driven devices and equipment.

Statutory Authority: Agriculture and Markets Law, sections 16(1), 18(6), 179(3)(b), 192-a (1), 192-b (12) and 192-c (13).

The continuation of this rule is necessary to conform regulations with Federal requirements; to provide standards for, and relieve confusion in, the sale of new fuels. Amendments to this regulation are being considered. See the 2022 Regulatory Agenda.

Rules adopted in 2020 (initial 3 – year review):

Part 128, Control of the European Cherry Fruit Fly.

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

The continuation of this rule is necessary to help control the spread of the European Cherry Fruit Fly (ECFF), which renders cherries unmarketable if they are infested. This regulation as originally adopted established regulated and quarantine areas consisting of Erie, Niagara, and Orleans Counties in their entirety. This regulation was amended in 2021 to eliminate all regulated areas; re-define the quarantine area as the counties of Erie, Monroe, Niagara, Orleans and Wayne in their entirety, and portions of Ontario County; and establish a systems approach for the movement of regulated articles (i.e., cherries, and host material including soil beneath the dripline of the host material) out of the quarantine area. The regulations help ensure that control measures are undertaken in the quarantine area, and that the ECFF will not spread beyond those areas via the movement of infested fruit, or through other host material.

Comments should be addressed to:

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