

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF MARKETING AND DEVELOPMENT

Grades and Standards

Readoption with Amendments: N.J.A.C. 2:71

Adopted Repeals: N.J.A.C. 2:71-2.29 and 2.30

Proposed: August 7, 2023, at 55 N.J.R. 1567(a).

Adopted: November 15, 2023, by the State Board of Agriculture and Joseph Atchison III, Assistant Secretary, Department of Agriculture.

Filed: November 16, 2023, as R.2023 d.142, **without change**.

Authority: N.J.S.A. 4:1-11.1, 4:3-11.12, 4:10-6, and 4:10-13.

Effective Dates: November 16, 2023, Readoption;

December 18, 2023, Amendments and Repeals.

Expiration Date: November 16, 2030.

Summary of Public Comments and Agency Responses:

In response to the notice of proposed readoption of N.J.A.C. 2:71 with amendments and repeals, the Department of Agriculture ("Department" or "NJDA") received a single email with comments from a Jean Public. In their comments, Jean Public raised seven distinct points concerning the proposed rulemaking, which are separately summarized and addressed below.

COMMENT: In commenting on the rule proposal, Jean Public first asserts that laying hens are not being treated humanely and that their eggs should not be allowed to be connected to any claim to the contrary.

RESPONSE: N.J.A.C. 2:71-1 addresses the New Jersey standards concerning the quality of individual shell eggs. The commenter complains of the inhumane raising of chickens producing shell eggs in New Jersey. That is not the subject of N.J.A.C. 2:71; rather, the rules governing the humane treatment of poultry, including their feeding, watering, keeping, marketing and sale, and care and treatment, are addressed at N.J.A.C. 2:8. It is further noted that the commenter complains that chickens are kept in cages that have insufficient space for their bodies and that leave them unable to stretch their wings. However, to the contrary, N.J.A.C. 2:8-4.4(d)1 requires "cage housing" to be "[o]f sufficient size to allow each bird to stand upright in the cage without having its head protrude through the top of the cage, lie down, get up, walk, spread its wings, move its head freely, turn around and rest." The commenter also complains that some chickens are fed unspecified "toxic chemicals" to keep them on their feet with no veterinary care provided to others. However, to the contrary, N.J.A.C. 2:8-4.2(b) requires poultry in New Jersey to have daily access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition for each bird, and N.J.A.C. 2:8-4.6(c) states that "[p]roper medical care for the diagnosis or management of injury or disease must be provided to sick or injured poultry."

COMMENT: Jean Public argues that fruits and vegetables grown with pesticides should be so labeled.

RESPONSE: The Department does not agree that what the commenter suggests is necessary. Fruits and vegetables grown in accordance with the National Organic Program, 7 CFR Part 205, can be labeled as organic, demonstrating that they have been grown without the use of pesticides.

COMMENT: Jean Public asserts that the Federal standards for grading vegetables are inadequate, and that New Jersey should adopt higher standards.

RESPONSE: The commenter does not explain which standards they believe need improvement. In any event, the Department does not agree that Federal standards applicable to the grading of vegetables are inadequate or deficient.

COMMENT: Jean Public contends that the production of milk from cows in New Jersey should be stopped because it is abusive and cruel.

RESPONSE: The comment is beyond the scope of this rulemaking.

COMMENT: Jean Public urges that violations for the misuse of the Jersey Fresh logo should be punished more severely. The commenter proposes a penalty of \$5,000 for the first offense to stop such violations.

RESPONSE: The Department vigorously monitors and protects against any unauthorized use of the Jersey Fresh logo. Nonetheless, the Department does not believe that it is necessary to increase the penalty amount associated with misuse of the Jersey Fresh logo by packers and producers at N.J.A.C. 2:71-2.7. Notwithstanding that a penalty of \$100.00 for a first offense and \$200.00 for a second offense for the misuse of the Jersey Fresh logo may not seem to be a heavy penalty, the Department is not aware of any significant or widespread misuse of the Jersey Fresh logo by packers and producers to justify a heavier penalty.

COMMENT: Jean Public asserts that the Social Impact statement does not adequately consider the impact of the rules on consumers.

RESPONSE: The Department does not agree. Throughout the Social Impact statement, the Department considers the impact of the provisions at N.J.A.C. 2:71 on consumers. In fact, ensuring that agricultural products meet certain quality standards is a benefit to consumers, as was explained by the Department in the rulemaking proposal.

COMMENT: Jean Public asserts that truthfulness regarding products marketed to consumers will promote consumer confidence and demand, which in turn will benefit the New Jersey economy.

RESPONSE: The Department agrees and the Department believes that the rules as proposed will promote the quality of New Jersey agricultural products, which is an economic benefit to consumers as well as producers throughout New Jersey.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-23 (P.L. 1995, c. 65) require administrative agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law.

The rules readopted with amendments rely on Federal standards and offer voluntary marketing quality standards and logos. Products marketed under "Made from Premium Jersey Fresh Milk" use New Jersey-produced milk with a somatic cell count which is lower than, and, therefore, more stringent than, the Federal minimum standards (7 CFR 58.133). However, this is a voluntary, special marketing program, which has a limited supply of less than five percent of the fluid milk consumed in New Jersey and does not seek to establish standards except for those who choose to participate in this marketing program. As such, its requirements will not conflict with any Federal standards.

The Jersey Seafood program relies on 7 CFR 60.101 et seq., which sets forth Federal standards for labeling wild and farm-raised fish and shellfish products with regard to country of origin notification. The rules readopted with amendments at N.J.A.C. 2:71-9.5(a) impose labeling standards that are substantially the same as, but do not exceed, those required at 7 CFR 60.101 et seq., for country of origin notification.

The remainder of the rules readopted with amendments deal with the use of a logo for marketing New Jersey agricultural commodities. As a general matter, there are no Federal standards governing the creation and regulation of logos identifying New Jersey agricultural products, as provided at N.J.S.A. 4:10-1 et seq. However, the "Jersey Organic" program and logo do require qualifying agricultural products to meet the conditions set forth in the National Organic Program, 7 CFR Part 205. As such, that part of the rule requires adherence to, and does not exceed, those Federal standards, and no Federal standards analysis is required.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 2:71.

Full text of the adopted amendments follows:

SUBCHAPTER 2. AGRICULTURAL COMMODITIES

2:71-2.2 Use of “Jersey Fresh” as the logo for the “Jersey Fresh Quality Grading Program” and “Jersey Fresh Quality Premium Program” (referred to as the “logos”)

(a) (No change.)



(c)-(e) (No change.)

(f) Any person, firm, partnership, corporation, or cooperative marketing commodities in accordance to the grading standards at N.J.A.C. 2:71-2.5(d), must qualify the “logo” as “Made With”. The words “Made With” shall appear directly above all “logos” in conspicuous and easily legible type in distinct contrast (by topography, layout, color, embossing, or molding) with other matter on the package and in a type size easily discernable by the consumer and must be approved by the Department before use.

2:71-2.4 Agricultural commodities intended to be marketed under the Jersey Fresh Quality Grading Program and Premium Program

(a)-(c) (No change.)

(d) Raw milk used to process products “Made with Premium Jersey Fresh Milk” shall meet the standards set forth at (c) above, as well as a somatic cell count not exceeding 150,000 somatic cells per milliliter.

(e)-(h) (No change.)

2:71-2.6 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

...
 “Made with Premium Jersey Fresh Milk” means food products that utilize milk produced in New Jersey with a somatic cell count not exceeding 150,000 somatic cells per milliliter as an ingredient and meet the New Jersey and Federal standards for Jersey Fresh milk.
 ...

2:71-2.7 Penalties

(a)-(f) (No change.)

(g) Any applicant who is aggrieved by the determination of the Division of Marketing and Development pursuant to (f) above shall, upon written request transmitted to the Department within 20 days of the license denial, or notice of intent to revoke a license, be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Administrative Procedure Rules, N.J.A.C. 1:1.

1. Requests for hearings shall be sent to Director, Division of Marketing and Development, N.J. Department of Agriculture, PO Box 330, Trenton, New Jersey 08625-0330.

(h)-(j) (No change.)

(b) The configuration of the Jersey Fresh Quality Grading Program Logos and the Jersey Fresh Quality Grading Program Premium Logo are as follows:

2:71-2.18 Vine ripened tomatoes

(a)-(d) (No change.)

(e) Any applicant who is aggrieved by the determination of the Division of Marketing and Development pursuant to (d) above shall, upon written request transmitted to the Department within 20 days of the violation notice, be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

1. Requests for hearings shall be sent to Director, Division of Marketing and Development, N.J. Department of Agriculture, PO Box 330, Trenton, New Jersey 08625-0330.

(f)-(g) (No change.)

2:71-2.27 Agreements for inspection services

(a) (No change.)

(b) Agreements for inspection services of fewer than five consecutive days may be made orally with an authorized representative of the Division of Marketing and Development.

2:71-2.28 Charges for inspection or grading and certification services; written agreements for commodity inspection

(a) Charges for inspection or grading and certification services of five or more consecutive days duration, performed pursuant to a written agreement between the New Jersey Department of Agriculture and the requester of the services, shall be made according to the following schedule:

1. Basic schedule for all products:

i. A charge of \$408.00 per eight-hour day for each inspector;

ii. A charge of \$2,040 per five-day week (Monday through Friday) of 40 hours or less for each inspector;

iii. A charge of \$76.50 per hour, or portion thereof, for all hours worked over 40 in the five-day week (Monday through Friday), or for all hours over eight hours per day;

iv. There will be at least a two-hour minimum charge of \$153.00 assessed for each inspector assigned work on Saturday and/or Sunday; and a charge of \$76.50 per hour, or portion thereof, for the actual hours worked by each inspector on Saturday and/or Sunday in excess of two hours;

v. There will be at least a two-hour minimum charge of \$153.00 assessed for each inspector assigned work on legal State holidays occurring Monday through Friday; and a charge of \$76.50 per hour, or portion thereof, for the actual hours worked by each inspector on legal

State holidays occurring Monday through Friday in excess of two hours; and

- vi. (No change in text.)
2.-3. (No change.)

2:71-2.29 and 2.30 (Reserved)

2:71-2.31 Charges; oral agreements between Department of Agriculture and requestor

Charges for inspection or grading and certification services performed pursuant to an oral agreement between the New Jersey Department of Agriculture and the requestor shall be made according to the hourly rate schedule set forth at N.J.A.C. 2:71-2.32.

2:71-2.32 Hourly rate charges

(a) The hourly rate charges shall be made according to the following schedule:

1. A charge of \$51.00 per hour, or portion thereof, for regular work hours, 8:00 A.M. to 5:00 P.M. on regular workdays, Monday through Friday;

2. A charge of \$76.50 per hour, or portion thereof, for work started or completed between 6:00 P.M. and 7:00 A.M. on regular workdays, Monday through Friday.

3. A charge of \$76.50 per hour, or portion thereof, for work performed on Saturdays, Sundays, or legal State holidays at the request of the requester.

SUBCHAPTER 4. JERSEY FRESH MATCHED FUNDS PROGRAM

APPENDIX A

NEW JERSEY DEPARTMENT OF AGRICULTURE APPLICATION FOR "JERSEY FRESH" DEVELOPMENT AND/OR PROMOTIONAL FUNDS

The undersigned hereby applies for matched funds to be used in market development programs and/or promotion of New Jersey grown or produced agricultural commodities during calendar year _____.

In consideration of the receipt of such funds, the undersigned agrees:

1. To provide an equal amount of monetary funds for the specified purpose.

2. To use the New Jersey Department of Agriculture Jersey Fresh promotion theme, slogan and/or logo in conjunction with their programs. (Logo "Slick Sheets" will be provided.)

3. To submit to the New Jersey Department of Agriculture a notarized listing of expenditures at the completion of the promotional program.

ORGANIZATION _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

TELEPHONE _____ VENDOR FEDERAL ID # _____

SIGNATURE _____ DATE _____

AMOUNT OF MATCHED FUNDS REQUESTED FROM THE NEW JERSEY DEPARTMENT OF AGRICULTURE \$ _____

SCHEDULED DATE OF EVENT (IF APPLICABLE) _____

Return this application by _____ to Director, New Jersey Department of Agriculture, Division of Markets, PO Box 330, Trenton, New Jersey 08625-0330. PLEASE BE SURE TO ATTACH A W-9 FORM.

Purpose of Organization

1. Please describe your organization, its purpose or mission.

JERSEY FRESH MATCHED FUNDS APPLICATION PART II

(Use separate sheets as needed)

1. Explain in detail how your proposed project will benefit the New Jersey Agricultural Industry, and complement the existing Jersey Fresh program.

2. Include the estimated number of people, projected participants, audience, or targeted individuals (i.e., the number of people who you anticipate benefiting from your project).

3. Outline promotional program and provide a breakdown of estimated costs of all components of the program.

APPENDIX B

NEW JERSEY DEPARTMENT OF AGRICULTURE AFFIDAVIT OF PERFORMANCE

The undersigned hereby acknowledges the receipt of \$ _____ on or about _____ from the New Jersey Department of Agriculture used in a program of market development, promotion, and/or education of New Jersey grown or produced agricultural commodities.

The undersigned attests that he/she/it contributed monetary funds to at least match (on a dollar for dollar basis) those provided by the New Jersey Department of Agriculture in the amount of \$ _____ and that a total of \$ _____ was expended for the following program(s).

The following is an itemization of all expenditures directly incurred with the use of Jersey Fresh Matched Funds. ATTACH PAID INVOICES, CANCELED CHECKS OR OTHER RECEIPTS which show your total expenditures. (Attach additional sheets as required.)

ORGANIZATION _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

SIGNATURE _____ TITLE _____

Subscribed and sworn to before me this _____ day of _____ 19____.

Notary Public of New Jersey

RETURN THIS FORM BEFORE _____ to Director, NJ Department of Agriculture, Division of Markets, PO Box 330, Trenton, New Jersey 08625-0330.

SUBCHAPTER 6. "JERSEY BRED" LOGO

2:71-6.3 Use of "Jersey Bred" as the logo for any "Jersey Bred Program"

(a)-(f) (No change.)

(g) The configuration of the Jersey Bred Logo is as follows:



(h)-(l) (No change.)

SUBCHAPTER 7. “JERSEY GROWN” LOGO

2:71-7.3 Use of the “Jersey Grown” logo

(a)-(g) (No change.)

(h) The configuration of the Jersey Grown logo is as follows:



(i)-(l) (No change.)

(m) Any applicant who is aggrieved by the determination of the Division of Marketing and Development pursuant to (l) above, shall, upon written request transmitted to the Department within 20 days of the license denial, or notice of intent to revoke a license, be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

1. Requests for hearings shall be sent to Director, Division of Marketing and Development, N.J. Department of Agriculture, PO Box 330, Trenton, New Jersey 08625-0330.

(n)-(p) (No change.)

SUBCHAPTER 8. “JERSEY ORGANIC” LOGO

2:71-8.1 Scope and purpose

A New Jersey “Jersey Organic” producer or handler who is certified by a United States Department of Agriculture, National Organic Program Accredited Certifying Agent to sell or distribute products identified as organic agricultural products is permitted to make application to the New Jersey Department of Agriculture for a license to use the “Jersey Organic” logo in marketing agricultural commodities.

2:71-8.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings. Words of art undefined in the following paragraphs shall have the meaning attributed to them by trade usage or general usage as reflected by definition in a standard dictionary, such as Webster’s.

...

“Certified” means an entity determined to be in compliance with the United States Department of Agriculture, National Organic Program, 7 CFR Part 205.

...

2:71-8.3 Use of the “Jersey Organic” logo

(a)-(b) (No change.)

(c) Persons, firms, partnerships, corporations, cooperatives, or associations must possess a valid organic certificate, issued from a certifying agent in order to apply for and utilize the “Jersey Organic” logo.

(d)-(e) (No change.)

(f) All agricultural organic commodities marketed under the “Jersey Organic” logo program must comply with the specific grades and standards for each commodity as set forth at N.J.A.C. 2:71-1, 2, and 5 and

meet the conditions for organic certification set forth at 7 CFR Part 205. Persons, firms, partnerships, corporations, cooperatives, or associations are prohibited from using the “Jersey Organic” logo on any agricultural commodity that does not meet the requirements of this subchapter.

(g) (No change.)

2:71-8.5 Penalties

(a) Any person, firm, partnership, corporation, cooperative, or association using the “Jersey Organic” logo for organic agricultural commodities without satisfying the requirements set forth at 7 CFR Part 205 or this subchapter, any unlicensed or uncertified producer or handler using the “Jersey Organic” logo, or anyone violating any provision at N.J.S.A. 4:10-1 et seq., shall be subject to a penalty of not more than \$100.00 for the first offense and not more than \$200.00 for each subsequent offense, except for violations at N.J.S.A. 4:10-5, which penalty shall be \$100.00. Whenever an offense involves false, misleading, or improper labeling of farm products, each package shall constitute a separate offense.

(b)-(e) (No change.)

COMMUNITY AFFAIRS

(a)

NEW JERSEY HISTORIC TRUST

Garden State Historic Preservation Trust Fund Grants

Adopted Amendments: N.J.A.C. 5:101-1.3, 2.1 through 2.9, 3.1, 3.2, 3.4, 3.5, 3.6, 3.7, 3.8, 4.1, and 5.1

Adopted New Rules: N.J.A.C. 5:101-2.4, 2.5, 2.6, 2.7, 2.10, 2.11, 2.12, 2.13, 2.14, 2.17, 2.18, 2.19, 2.22, 2.23, 2.24, 3.6, 3.7, 3.10, 3.11, and 3.12

Proposed: August 7, 2023, at 55 N.J.R. 1599(a).

Adopted: November 15, 2023, by Peter Lindsay, Chair, New Jersey Historic Trust.

Filed: November 16, 2023, as R.2023 d.141, **without change**.

Authority: N.J.S.A. 13:1B-15.114c and 13:8C-42 et seq.

Effective Date: December 18, 2023.

Expiration Date: June 5, 2025.

Summary of Public Comments and Agency Responses:

Comments were received from Lawrence Fast, Chairman, Morris County Historic Preservation Trust Fund Review Board.

1. COMMENT: The commenter, speaking on behalf of the Morris County Historic Preservation Trust Fund, agreed with the New Jersey Historic Trust’s (Trust) rulemaking to include an emergency intervention fund citing that it has been needed for a long time. The commenter also noted that the Trust’s notice of proposal to use the Preserve NJ Historic Preservation Fund for the acquisition of easements would encourage more private owners to preserve and protect their historic resources in perpetuity.

RESPONSE: The New Jersey Historic Trust thanks the commenter for their comments.

Federal Standards Statement

No Federal standards analysis is required for the adopted amendments and new rules because the adopted amendments and new rules are not being adopted in order to implement, comply with, or participate in any program established pursuant to Federal law or pursuant to a State law that incorporates or refers to Federal law, standards, or requirements.

Full text of the adopted amendments and new rules follows: