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RULE PROPOSALS

**AGRICULTURE
DIVISION OF MARKETING AND DEVELOPMENT**

48 N.J.R. 675(a)

Proposed Readoption with Amendments: N.J.A.C. 2:68

Click here to view Interested Persons Statement

Commercial Feeding Stuffs

Authorized By: State Board of Agriculture and Douglas H. Fisher, Secretary, Department of Agriculture.

Authority: *N.J.S.A. 4:1-11.1* and *4:4-20.10*.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2016-063.

Submit comments by July 1, 2016, to:

Alfred W. Murray, Director
Division of Marketing and Development
New Jersey Department of Agriculture
PO Box 330
Trenton, NJ 08625-0330
or to proposedrulesMarkets@ag.state.nj.us

The agency proposal follows:

Summary

The Commercial Feeding Stuffs rule, *N.J.A.C. 2:68*, was scheduled to expire on April 3, 2016. As the Department of Agriculture (Department) has filed this notice with the Office of Administrative Law prior to that date, the expiration date is extended 180 days to September 30, 2016, pursuant to *N.J.S.A. 52:14B-5.1.c(2)*. The Department proposes to readopt these rules with amendments as they have been found to be necessary, reasonable, and proper for the purpose for which they were promulgated. Readoption of the rules with amendments is necessary to continue to protect farmers and consumers by determining the manufacturer's compliance with the guaranteed content of animal feed and to reduce the amount of misbranded and deficient products offered for sale, thereby, insuring the quality of feed and protecting animal growth. The Department utilizes the standards set forth in the most updated edition of the Official Publication of the Association of American Feed Control Officials, Inc. (AAFCO). The AAFCO standards are recognized by the industry as the most comprehensive and current available. They are accepted throughout most of the United States.

In addition to the regulation of feed terms previously referenced, the Department adopts the official pet food regulations, the statement of uniform interpretation and policy, and lists of new animal drugs, certifiable antibiotics, and associated warning statements, the permitted analytical variations, and the pet food protocols and affidavits as contained in the most updated edition of the Official Publication of the AAFCO.

A copy of the AAFCO publication is on file in the Director's Office, Division of Marketing and Development, New Jersey Department of Agriculture, Health and Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625. Copies may be procured by writing to Jennifer Roland, AAFCO, 1800 South Oak Street, Suite 100, Champaign, IL 61820 or by ordering on-line at www.aafco.org. The rule text is proposed for amendment to update the location where the Department's copy of the AAFCO publication is on file, as well as the means of purchasing a copy of the publication. In addition, to properly reflect changes that have been made in the way the AAFCO publication is organized and the amended section coverage in the AAFCO publication, the language of the rules is proposed to be amended to be the same as the language now appearing in the updated AAFCO publication and to more clearly indicate that the language incorporated by reference is the most recent language in the AAFCO publication.

The Department is utilizing the official methods of analysis for feed and pet foods as published in the 18th edition of the Association of Official Analytical Chemists (AOAC), as amended and supplemented, or in accordance with other recognized official methods. The 18th edition is proposed to be incorporated by reference, as amended and supplemented, and the newest edition of this publication is due to be published this year and will replace the 18th edition. The language of the rules is proposed to be amended to reflect the incorporation of the most recent version of the AOAC methods of analysis.

A copy of the AOAC publication is on file in the State Chemist's Office, New Jersey Department of Agriculture, NJPHEAL, 3 Schwarzkopf Drive, Ewing, New Jersey 08628. Copies may be obtained by contacting AOAC Customer Service at (301) 924-7077, extension 170 or by ordering online at www.aoac.org. The rule text is proposed for amendment to update the location where the Department's copy of the AOAC publication is on file and the means of purchasing a copy of the publication. In addition, the rules are proposed to be amended to more clearly indicate that the language incorporated by reference is the most recent language in the AOAC publication.

The Department will continue to use the most updated standards adopted by AAFCO and the most updated methods of analysis adopted by AOAC. The rules are proposed for amendment to use the language "as amended and supplemented" to reflect the incorporation of ongoing revisions as adopted by AAFCO and AOAC.

As the Department has provided a 60-day comment period on this notice of rules proposed for readoption with amendments, this notice is excepted from the rulemaking calendar requirement pursuant to *N.J.A.C. 1:30-3.3(a)5*.

Social Impact

The rules proposed for readoption with amendments will continue to provide a basis for fair competition in the feed and pet food industries, as [page=676] well as protect farmers and consumers who purchase commodities covered in

this chapter.

Both consumers and manufacturers are affected by the testing of commercial feeds. The purpose is to assure adequate and accurate labeling information. The labeling allows the purchase of product with a known quality and the easy comparison of the product with other similar products on the market. *N.J.A.C. 2:68-1.1* through *1.7* will continue to protect purchasers of feed commodities and pet foods by reducing the amount of misbranding and harmful ingredients in animal feeds.

Economic Impact

The rules proposed for reoption with amendments will ensure that consumers continue to realize economic savings through accurate labeling. Manufacturers will be able to compete on an equal basis through the use of the same standards in formulating their labels. Economy of scale will be realized by the opening up of all markets in the United States to any commercial feed manufacturer through one uniform labeling system. The savings from these economies of scale will then be able to be passed on to the consumer. There is no increased cost to the Department by the continuation of these standards. In the 2014-2015 period, 356 samples were analyzed in the laboratory and 5.62 percent were found to be deficient in protein and .84 percent had unsatisfactory fat contents.

Federal Standards Statement

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

The rules proposed for reoption with amendments do not exceed any Federal standards. Therefore, no Federal standards analysis is required.

Jobs Impact

It is not anticipated that the rules proposed for reoption with amendments will result in the generation or loss of jobs. However, it is anticipated that the rules proposed for reoption will positively affect New Jersey's agricultural industry, averting the permanent loss of jobs.

Agriculture Industry Impact

The rules proposed for reoption with amendments will have a positive impact on New Jersey agriculture by helping to maintain a viable agricultural industry in the Garden State as described in the Social Impact and Economic Impact statements above.

Regulatory Flexibility Analysis

The rules proposed for reoption with amendments have an impact on small businesses, as defined under the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq., in that some commercial feed manufacturers are small businesses. The rules propose compliance standards, as described in the Summary above. No recordkeeping or reporting requirements are imposed under the rules. However, the Department knows of no less restrictive a system than expressed in the standards, which are universally accepted and provide a level playing field for all manufacturers, enabling fair competition based on product quality.

The Department has determined that these rules proposed for reoption with amendments do not impose undue burdensome recording, recordkeeping, or compliance requirements on either large or small businesses. The rules proposed for reoption with amendments protect the interest of New Jersey farmers and consumers by determining the

manufacturer's compliance with the guaranteed content of animal feed and by reducing the amount of misbranded and deficient products offered for sale, thereby, insuring the quality of feed and protecting animal growth.

Given the preponderance of small manufacturers and the program's purpose to promote high quality animal feed and pet food products, the Department has provided no lesser or differing requirements or exceptions based on business size.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules proposed for readoption with amendments determine the manufacturer's compliance with the guaranteed content of animal feed and pet food in order to reduce the amount of misbranded and deficient products offered for sale.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption with amendments determine the manufacturer's compliance with the guaranteed content of animal feed and pet food in order to reduce the amount of misbranded and deficient products offered for sale.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at *N.J.A.C. 2:68*.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. ASSOCIATION STANDARDS

2:68-1.1 General rules and regulations

(a) The Department of Agriculture adopts and incorporates by reference the general rules and regulations set forth in the [current] **2015** edition of the official publication of the Association of American Feed Control Officials, Inc., **as amended and supplemented**.

1. - 2. (No change.)

[3. Brand and product names.]

3. Label information.

4. (No change.)

5. Substantiation of Nutritional Suitability.

[5.] **6.** (No change in text.)

[6. Directions for use and precautionary statements.]

7. Directions for Use and Precautionary Statements.

Recodify existing 7.-10. as **8.-11.** (No change in text.)

12. Certain Mammalian Proteins Prohibited in Ruminant Feed.

2:68-1.2 Uniform interpretation and policy

The Department of Agriculture adopts and incorporates by reference the uniform interpretation and policy as set forth in the [current] **2015** edition of the official publication of the Association of American Feed Control Officials, Inc., **as amended and supplemented.**

2:68-1.3 Glossary; [Official] **official** feed terms

The Department of Agriculture adopts and incorporates by reference the glossary of official feed terms as set forth in the [current] **2015** edition of the Official Publication of the Association of American Feed Control Officials, Inc., **as amended and supplemented.**

2:68-1.4 Medicated feeds

The Department of Agriculture adopts and incorporates by reference the standards for medicated feeds as set forth in the [current] **2015** edition of the official publication of the Association of American Feed Control Officials, Inc., **as amended and supplemented.**

2:68-1.5 Definitions of feed ingredients

The **Department of Agriculture adopts and incorporates by reference the** definitions of feed ingredients are as set forth in the [current] **2015** edition of the **official publication of the** Association of American Feed Control Officials, Inc., **as amended and supplemented.**

2:68-1.6 Sampling and analysis

Sampling and analysis shall be conducted in accordance with methods published in [current] **the 18th** edition (**2015**) of the official methods of analysis of the Association of Official **Analytical** Chemists, **which is incorporated herein by reference, as amended and supplemented,** or in accordance with other recognized official methods.

2:68-1.7 Other rules and regulations

In addition to the definitions of feed ingredients and feed terms previously adopted, the Department of Agriculture adopts **and incorporates by reference** the official pet food regulations, the statement of uniform interpretation and policy, and lists of new animal drugs, certifiable antibiotics, and warning statements associated therewith, the [page=677] permitted analytical variations and the pet food protocols and affidavits as contained in the [current] **2015** edition of the official publication of the Association of American Feed Control Officials, **Inc., as amended and supplemented.**

2:68-1.8 Obtaining copies of rules incorporated by reference

(a) A copy of the [current] **2015** edition of the official publication of the American Feed Control Officials is on file in the [Directors] **Director's** Office, Division of Marketing and Development, New Jersey Department of Agriculture, Health & Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625. Copies may be procured by writing to

[Sharon Krebs, AAFCO, P.O. Box 478, Oxford, IN 47971] **Jennifer Roland, AAFCO, 1800 South Oak Street, Suite 100, Champaign, IL 61820**, or by ordering on line at www.aafco.org.

(b) A copy of the [current] **18th** edition of the official methods of the Association of Official Analytical Chemists (AOAC) is on file in the [Director's Office, Division of Marketing and Development, New Jersey Department of Agriculture, Health & Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625.] **State Chemists Office, NJPHEAL, 3 Schwarzkopf Drive, Ewing, New Jersey 08628**. Copies may be procured by [writing to AOAC, Fulfillment Coordinator, 2200 Wilson Boulevard, Arlington, Virginia 22201-3301] **contacting AOAC Customer Service at (301) 924-7077 Ext. 170**, or by ordering online at www.aoac.org.