



3 of 48 DOCUMENTS

NEW JERSEY REGISTER

Copyright © 2010 by the New Jersey Office of Administrative Law

VOLUME 42, ISSUE 17

ISSUE DATE: SEPTEMBER 7, 2010

RULE PROPOSALS

AGRICULTURE

DIVISION OF MARKETING AND DEVELOPMENT

42 N.J.R. 1935(a)

Proposed Readoption: N.J.A.C. 2:52

[Click here to view Interested Persons Statement](#)

Processors, Dealers and Subdealers

Authorized By: Alfred W. Murray, Director, Division of Marketing and Development, State Board of Agriculture and Douglas H. Fisher, Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:12A-1 et seq., specifically 4:12A-7 and 20.

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

Proposal Number: PRN 2010-200.

Submit comments by November 6, 2010 to:

Alfred W. Murray, Director
Division of Marketing and Development
New Jersey Department of Agriculture
PO Box 330
Trenton, NJ 08625-0330

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 2:52, Processors, Dealers and Subdealers, is scheduled to expire

September 22, 2010. In accordance with N.J.S.A. 52:14B-5.1c, the submission of this notice of proposal to the Office of Administrative Law extends that expiration date 180 days to March 21, 2011. The Department of Agriculture is proposing to readopt these rules, as they have been found to be necessary, reasonable and proper for the purposes for which they were promulgated. Readoption is necessary because N.J.A.C. 2:52 was originally promulgated to assure that the dairy industry and consumers receive the benefits of effective milk control.

The rules proposed for readoption require milk processors, dealers and subdealers to maintain accurate records on milk transactions to assist the Division of Marketing and Development in its evaluation of the licensee's business operations concerning the licensee's adherence to applicable New Jersey statutes and Division rules, to obtain approval from the Director of Marketing and Development before serving an unlicensed store; to give two weeks' notice to the present supplier of a store requesting to change milk supplier; and to obtain approval to serve unlicensed stores without notice under certain conditions. It also lists conditions under which the Director might deny approval to change supplier. In addition, it describes the conditions pertaining to the changing of a licensee's source of milk supply, the instances when the notice is required; instances when notice is not required; who should file the notice; who should receive the notice; when and why approval to change suppliers may be denied, commencement of the two-week period and who will be notified of approval or denial to change source of supply. Furthermore, it requires that a licensee desiring to stop serving an account must give written notice to the customer and the Director, Division of Marketing and Development, at least two weeks prior to the proposed date of discontinuance. The two weeks' notice is not required if the customer releases the supplier in writing and sends a copy of the release to the Division. Furthermore, licensed milk dealers are prohibited from selling milk below variable cost. The term "variable cost" is defined in the subchapter and certain costs are required to be averaged. Raw milk cost is also defined in this subchapter.

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

Social Impact

The readoption of N.J.A.C. 2:52 assures that the dairy industry and the consumers will continue to receive the benefit of effective milk control regulation. Failure to readopt this chapter would leave a void in the milk control program and result in unstable markets and destructive competition.

Economic Impact

The rules proposed for readoption are driven by economics and beneficially affect New Jersey consumers (especially school children, the [page=1936] elderly and the poor), dairy farmers, milk dealers and subdealers and retail stores.

The rules proposed for readoption benefit consumers by creating a market environment wherein adequate supplies of milk are available to meet consumer demands. Such benefits are direct results of the market stability and competitiveness provided by enforcement of the Division's rules.

Approximately 87 New Jersey dairy farmers receive direct benefits from these rules proposed for readoption in the maintenance of the marketing and production infrastructure conducive to the maintenance of efficient farming operations. New Jersey dairy farmers are important to the State's economy, particularly for rural communities. The rules proposed for readoption are important tools in insuring that dairy farmers receive payment for their products.

Milk dealers, subdealers and retail stores benefit from the maintenance of a stable, competitive marketplace wherein implementation of Division's rules results in the minimization of predatory, disruptive activities. The notice rules assist dealer and subdealers with the collection of money owed for products delivered, help to insure a continuing source of supply for retail stores and provide for the orderly transfer of business.

The rules proposed for re-adoption affect the State of New Jersey (the funding source) by providing data on which accurate license fees are based. The fees of approximately \$ 800,000 collected during Fiscal Year 2009 are allocated for the Dairy Programs' operating costs.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-23 (P.L. 1995, c. 65) requires administrative agencies that adopt, re-adopt or amend any State rules that exceed any Federal standards or requirement to include in the rulemaking a comparison between the two sets of standards and an explanation of the costs and benefits associated with adopting a State standard that exceeds a Federal standard.

As related to this chapter, the rulemaking requirements of the Director, Division of Marketing and Development area dictated by the New Jersey Milk Control Act, N.J.S.A. 4:12-1 et seq., and are not subject to any Federal requirements or standards. Therefore, a Federal standards analysis is not required.

Jobs Impact

It is not anticipated that the rules proposed for re-adoption will result in the generation or loss of jobs.

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

Both larger and small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are affected by the rules proposed for re-adoption.

The rules proposed for re-adoption apply to approximately 300 milk dealers and processors and 9,000 retail stores most of whom are small businesses. Small businesses will be affected, but to no greater extent than in the past. The rules exempt most small milk dealers from the filing of any monthly reports.

The reports required are designed to be taken directly from ordinary records already kept by the licensees for managerial decision-making purposes. Licensees have the necessary reporting systems in place and will not require additional efforts to comply. Wherever possible, the Division of Marketing and Development has combined several reports and eliminated reports that are no longer necessary. In fact, the rules are designed to exempt small businesses from several reporting requirements that are not essential to them.

There are no professional services required to comply with, nor will any initial capital outlays be required for, any business as a result of the rules proposed for re-adoption.

Smart Growth Impact

The rules proposed for re-adoption are consistent with the economic strategies as outlined within the Department's Smart Growth Plan. The rules proposed for re-adoption are consistent with the State's smart growth goals as they encourage the continued viability of the State's farmers. Therefore, the Department anticipates that there will be a positive impact on the State's Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption will have an insignificant impact of affordable 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 regulate New Jersey milk dealers to assure that the dairy industry and consumers receive the benefits of effective milk control.

Smart Growth Development Impact

The rules proposed for readoption will have an insignificant impact on smart growth development and there is an extreme unlikelihood that the rules would evoke a change in house production in Planning Areas 1 or 2 within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption regulate New Jersey milk dealers to assure that the dairy industry and consumers received the benefits of effective milk.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:52.