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**RULE PROPOSALS**

**AGRICULTURE**

**DIVISION OF MARKETING AND DEVELOPMENT**

42 N.J.R. 1934(a)

**Proposed Readoption: N.J.A.C. 2:48**

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

**Dairy Industry**

**General Provisions**

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 2010-199.

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. 2:48, General Provisions, 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. 2:48 was originally promulgated to assure that the dairy industry and consumers receive the benefits of effective milk control.

The rules proposed for readoption define the marketing areas in New Jersey as included in Federal Milk Order No. 1 (Northeast Marketing Area), prohibit false, misleading or unfair advertising of milk and milk products; prevent dealers and store licensees from publishing false and misleading advertisements of milk and prevent the licensee from misleading the consumer concerning the quality of milk and milk products being offered for sale; and prevent the use of coupons in any advertising media that results in the sale of any milk or fluid milk product below cost, as defined in the rules of the Division at N.J.A.C. 2:52-7 and 2:53-6. N.J.A.C. 2:48-4.2 and 4.3 provide for the unlimited use of coupons under certain conditions.

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. 2:48 assures that the dairy industry and consumers will continue to receive the benefits of effective milk control. Failure to readopt the rules defining marketing areas which are co-existent with Federal and State orders would lead to confusion on the part of regulated dealers. The remaining portions of the rules protect consumers from false and misleading advertisements for milk and milk products, protect the confidential reports and records for licensees of the Division of Marketing and Development, provide comprehensive rules for the use of coupons in milk promotion and describe the conditions under which information will be held confidential. Therefore, these rules proposed for readoption will have a positive social impact.

### **Economic Impact**

The rules proposed for readoption will benefit the New Jersey dairy farmers, milk dealers, retail stores and consumers.

The rules proposed for readoption benefit consumers by creating a market environment wherein the consumer will not be misled or defrauded by false, misleading or unfair advertisements.

Approximately 87 New Jersey dairy farmers will receive direct benefits from the rules proposed for readoption. These benefits will occur through the maintenance of the Federal and State marketing orders with respect to the guarantees of payment from milk handlers, by defining marketing areas that correspond with the Federal Milk Order No. 1 (Northeast Marketing Area). New Jersey dairy farmers make an important contribution to the State's economy, particularly in rural communities. The rules proposed for readoption are important tools in insuring that dairy farmers receive payment for their product.

As described more fully in the Summary and Social Impact above, milk processors, dealers 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 through false and misleading advertising.

Further, milk dealers and store licensees of the Division are assured that their records and reports will remain confidential and not subject to examination by unauthorized persons in accordance with both Federal and State law.

[page=1935] Therefore, for the reasons set forth above and in the Summary and Social Impact, these rules will have a positive economic impact.

**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 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 are 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. The marketing areas specified in the rules are the same as those set forth in the Federal Milk Order No. 1 (Northeast Marketing Area) and the rules proposed for readoption merely restate them for purposes of clarity. Therefore, a Federal standards analysis is not required.

**Jobs Impact**

It is not anticipated that the rules proposed for readoption will result in the generation or loss of any jobs.

**Agriculture Industry Impact**

The rules proposed for readoption 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 Summary, Social and Economic Impacts above.

**Regulatory Flexibility Analysis**

Both large 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 readoption.

The rules proposed for readoption impose compliance standards, as described in the Summary above, on those participating in this program. The information requested by the Department as a result of the rules proposed for readoption is normally maintained by dairies and retail stores as part of ordinary business practices, such as purchase and sales records and expense records. The compliance requirements, which are imposed concerning advertising and use of coupons, are necessary to ensure fairness to all in the industry and therefore, the Department is not able to apply differing or lesser standards based on business size. There are no professional services required to comply nor will any initial capital outlays be required of any business as a result of the rules proposed for readoption.

**Smart Growth Impact**

The rules proposed for readoption are consistent with the economic strategies as outlined within the Department's Smart Growth Plan. The rules proposed for readoption 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's Milk dealers and stores to assure that the 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 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's milk dealers and stores to assure that the industry and consumers receive the benefits of effective milk control.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:48.