

FOCUS - 23 of 23 DOCUMENTS

NEW JERSEY REGISTER

Copyright © 2008 by the New Jersey Office of Administrative Law

VOLUME 40, ISSUE 21

ISSUE DATE: NOVEMBER 3, 2008

RULE PROPOSALS

AGRICULTURE

DIVISION OF MARKETING AND DEVELOPMENT

40 N.J.R. 6261(a)

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

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

Grades and Standards

Authorized By: State Board of Agriculture and Charles M. Kuperus, Secretary, Department of Agriculture.

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

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

Proposal Number: PRN 2008-365.

Submit comments by January 2, 2009 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-5.1c, the Grades and Standards rules, N.J.A.C. 2:71, which were scheduled to expire on October 7, 2008 are now scheduled to expire on April 5, 2009. These rules have been in effect, as amended, since 1969. The Department of Agriculture has reviewed these rules, and proposes to readopt these rules with amendments as they have been found to be necessary, reasonable and proper for the purposes for which they were promulgated.

A summary of the existing subchapters follows:

Subchapter 1, New Jersey Standards for Quality of Individual Eggs, contains the rules relating to the marketing, processing, labeling and transporting of eggs. The subchapter states that any eggs marketed to consumers, institutional consumers or retailers shall be edible and shall conform to the standards for consumer grades; that fees and charges for inspection and grading services by Department personnel shall be the same as those charged by the United States Department of Agriculture (USDA); that the name and address of packer or distributor shall be prominently displayed on containers of eggs; that containers of loose eggs produced in New Jersey must be properly sealed; and that there must be registration of labels or containers, which bear the name New [page=6262] Jersey or Jersey. The subchapter also defines a reused egg container; prescribes the proper sanitary conditions in cleaning and handling shell eggs from the packing room to the transporting vehicle; prescribes labeling requirements for New Jersey produced eggs; prescribes use of the New Jersey map symbol on egg packages and in advertising; and defines an egg container.

Subchapter 2, Agricultural Commodities, sets forth the rules describing the standards and grades as applied to fruits and vegetables. The Department of Agriculture, under a cooperative agreement with the USDA, has provided the fruit and vegetable industry with inspection and grading services since 1922 when the first United States Standards were promulgated. The United States Standards are a measure of quality, for example: U.S. Fancy, U.S. No. 1 and U.S. No. 2.

N.J.A.C. 2:71-2.1 provides that the United States Standards are used when grading all New Jersey fruits and vegetables with the exception of asparagus intended for canning or freezing and vine-ripened tomatoes. Asparagus is graded pursuant to N.J.A.C. 2:71-2.8 through 2.17 and N.J.A.C. 2:71-2.18 sets forth the standards for labeling tomatoes as "vine ripened" and the penalties for improper labeling as "vine ripened."

N.J.A.C. 2:71-2.2 through 2.7 deal with the use of "Jersey Fresh" as the logo for the "Jersey Fresh Quality Grading Program" and the "Jersey Fresh Quality Premium Grading Program" on containers of certain agricultural commodities. These rules describe the application for license and the licensing procedure, the license period, charge for licensing, the commodities to be marketed under the "Jersey Fresh" logo, commodity grader, packing requirements, packer identification, definitions of grade standard terms and penalties for improper use.

N.J.A.C. 2:71-3.1, Standards for plant material, states that the State Board of Agriculture adopts and promulgates as Official New Jersey Grades, the United States Standards for asparagus, Christmas trees and tomato plants. This rule aids in the orderly marketing of these commodities.

Subchapter 4, Jersey Fresh Matched Funds Program, sets forth the application procedure and criteria for Jersey Fresh Matched Funds.

Subchapter 5, Marking Open and Closed Packages of Potatoes, originated with the need for an orderly marketing program for quality potatoes. The rules related to marketing, grading, and labeling of potatoes for the economic protection of the State's potatoes marketed shall conform to the standard grades for potatoes and be labeled as to the specific grade.

N.J.A.C. 2:71-6 through 9 deal with the use of the logos for variants of the Jersey Fresh program to incorporate recognized standards for use in identifying New Jersey bred horses and 4-H lambs (Jersey Bred); New Jersey produced plant material and cut Christmas trees (Jersey Grown); New Jersey produced organic products (Jersey Organic); and New Jersey licensed seafood commodities (Jersey Seafood). These rules describe the logo configuration, application for license and the licensing procedure, the license period, charge for licensing, the commodities to be marketed under the logos, the product requirements, criteria and conditions to be met, definitions of terms and penalties for improper use.

The proposed amendments will amend and add logo configurations for "Jersey Fresh" at N.J.A.C. 2:71-2.2(b), amend "Jersey Bred" at N.J.A.C. 2:71-6.3(g), "Jersey Grown" at N.J.A.C. 2:71-7.3(h) and "Jersey Seafood" at N.J.A.C. 2:71-9.3(b) to incorporate new logo designs.

As the Department has provided a 60-day comment period on 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 rules proposed for readoption with amendments at N.J.A.C. 2:71 will affect the producers, packers, wholesalers, retailers and consumers of the commodities covered in this chapter.

N.J.A.C. 2:71-1.1 through 1.40 will continue to protect the egg industry and the consumers it serves by high quality standards that are uniformly applied to all packers of eggs sold and/or produced in New Jersey by mandatory inspections conducted at the retail and wholesale marketing levels. The results of these rules past, present and future guarantee that the New Jersey consumer receives high quality shell eggs in properly identified containers.

N.J.A.C. 2:71-2.1 through 2.32 will continue to protect the New Jersey fruit and vegetable industry and the consumers it serves in that inspection and grading of fruits and vegetables marked as to grade or standard assures the public of compliance with the grade indicated. The service enables the farmer and packer to market a high quality product. This in turn, benefits the consumer who would otherwise be unable to compare quality with price. In addition, this subchapter opens markets to producers, such as the export market, which is not available without inspection.

Further, products packed under the "Jersey Fresh" quality grading logo will enhance the promotion of uniformly packed high quality New Jersey farm products to the benefit of the farmers, packers and consumers. Farmers and packers will gain new markets for their products, while consumers will have more quality products and an identifiable larger supply of quality products available. The "Jersey Fresh Quality Grading Program" has been well received by the growers, buyers and consumers.

N.J.A.C. 2:71-3.1, in setting United States grades as the official grades for New Jersey asparagus, Christmas trees and tomato plants will continue to enhance the marketability of these products through the use of a standard that is well recognized and understood domestically as well as internationally.

N.J.A.C. 2:71-5.1 through 5.7 will continue to protect the potato industry and the consumers it serves by high quality standards which are uniformly applied to all packers of New Jersey produced potatoes by mandatory inspections conducted at the retail and wholesale marketing levels.

The Jersey Fresh advertising and promotional program was developed to draw consumer attention to the availability of New Jersey farm products. This unique program has become the standard against which other states modeled their own marketing programs. As a result of the Jersey Fresh advertising and promotional program, New Jersey consumers are assured of the quality and freshness of the food they purchase. The "Jersey Bred," "Jersey Grown," "Jersey Organic" and "Jersey Seafood" rules proposed for readoption with amendments will have a positive social impact by continuing the advertising and promotional program for New Jersey horses and 4-H market lambs, plant material and cut Christmas trees, organic products and seafood commodities, thereby helping to maintain these important sectors of New Jersey agriculture. New Jersey farms provide tax-paying open space and add diversity to the agricultural landscape that benefits the quality of life throughout the Garden State.

The proposed amendments are promotional and not substantive as to grades and standards and will have no significant impact.

Failure to readopt these rules with amendments will result in the Department's inability to administer fair and effective service and regulatory programs that benefit New Jersey consumers, producers (growers), packers and shippers.

Economic Impact

These rules proposed for readoption as amended are driven by economics and beneficially affect New Jersey

consumers, producers (growers), packers, wholesalers and retailers of the covered commodities.

Producers (growers) will benefit by increased prices received through the sale of high-quality products, while consumers will have further ability to compare quality with price.

The cost of producing a superior quality product in the past and present time is borne both by the producer and consumer. The producer or packer incurs extra costs in producing or purchasing New Jersey eggs and packing containers. These costs are channeled to the consumer in the form of a higher price per dozen charged at the retail level.

Subchapter 2 has the greatest economic impact upon the farmers, packers, brokers, shippers, processors and receivers of fruits and vegetables. These groups would be adversely affected if the inspection and grading program were discontinued. Exports and imports would be drastically curtailed because of State and Federal regulations requiring inspection and certification; also sales to the military would be completely halted. There would be no objective method to establish the true value of loads of fruits and vegetables or uniform quality commensurate with prevailing market prices. Furthermore, there would be no unbiased third party to assist in settling claims or disputes between [page=6263] shippers and receivers. The applicant for the inspection and grading service is charged a minimal fee for the work performed. The fee is a marketing cost that is passed through to the product consumer. This fee is used to help the Department in the administration of the program.

The economic impact on the producers (growers) licensed under these voluntary programs is minimal. The \$ 30.00 annual license fee has been proven to be offset by increases in the price received by the producers through the sale of high quality products.

Any licensed packer using "logo" containers for products other than those covered by the rules or any unlicensed packer using "logo" packages for any product is subject to a penalty of not more than \$ 50.00 for the first offense and not more than \$ 100.00 for each subsequent offense.

The producer or packer incurs extra costs in producing or purchasing New Jersey potatoes and packaging containers. These costs are channeled to the consumer in the form of a higher price per pound charged at the retail level. The cost of producing a superior quality product in the past and present time is borne both by the producer and consumer.

Studies have shown significant revenues are generated by New Jersey livestock farmers each year and are important contributions to the State's economy, particularly for rural communities. According to the 2001 Census of Agriculture, revenues of approximately \$ 300,062,640 are generated by New Jersey greenhouse, nursery and sod industries each year and are important contributions to the State's economy, particularly for rural communities. The market for organically produced agricultural products has exhibited dynamic growth. Current in-State organic production is estimated to have a value of near \$ 3 million and there is an extremely strong consumer demand for these products. According to the 2006 statistics developed by the National Marine Fisheries Service, the ex-vessel value of the New Jersey seafood harvest was over \$ 145 million (\$ 159 million in 2005, \$ 146 million in 2004 and \$ 121 million in 2003). Given that one out of every six jobs in New Jersey is related to the "Coastal Zone," making coastal revenues one of the State's largest economic sectors, generating \$ 50 billion annually--\$ 4.5 billion from fisheries, aquaculture, wild harvest seafood and recreational fishing, the aquaculture and wild harvest seafood industry provides an important contribution to the State's economy, particularly for coastal communities.

The rules proposed for readoption with amendments will have a positive economic impact for New Jersey through continued incorporation of standards, the use of the amended logos and by continuing to provide an additional marketing tool for New Jersey producers of horses and 4-H market lambs, plant material and cut Christmas trees, New Jersey Department of Agriculture certified organic producers or handlers of organic agricultural commodities and licensed aquatic farmers, commercial seafood harvesters or packers of New Jersey seafood that choose to use the applicable logo on their products. There is no cost for anyone who does not participate in this voluntary program. For

those who choose to participate, the cost is \$ 30.00 per year for the annual licensing fee, which will be offset by the value added to the product by use of the logo. The proposed amendments are promotional and not substantive as to grades and standards and will have no significant impact. Therefore, the rules proposed for readoption with amendments 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 which adopt, readopt, or amend any State rules that exceed any Federal standards or requirements 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.

The rules proposed for readoption 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 exceeds 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 proposed for readoption 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 by, 7 CFR 60.101 et seq., for country of origin notification.

The remainder of the rules proposed for readoption with amendments deal with the use of a logo for marketing New Jersey agricultural commodities. Because there are no Federal standards governing the creation and regulation of a logo identifying New Jersey agricultural products, as provided by N.J.S.A. 4:10-1 et seq. and 4:10-16 et seq., no Federal standards analysis is required.

Jobs Impact

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

Agriculture Industry Impact

The proposed rules proposed for readoption 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 and Economic Impacts above.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments have an impact on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., primarily farmers. The rules and amendments impose compliance standards, as described in the Summary above, on those participating in these programs. There are also reporting requirements, including registering samples of labels used in the shell egg program and annual reporting in the Jersey Fresh program. The recordkeeping requirements include maintenance of accurate records in the shell egg program, proper invoicing in the Jersey Fresh Program and the marking of potato packages. However, these rules are designed to ensure truth in packaging and an adherence to statements of quality. This assures that products are delivered to consumers free from defects and risk of disease. Therefore, it is the Department of Agriculture's position that

although these rules proposed for readoption may be more costly for a small business to implement, they are necessary for the public health, welfare and safety. Further, by the use of uniform grades and standards all products are judged against each other intrinsically and not just on advertising budget.

The Department of Agriculture has determined that since portions of these rules proposed for readoption with amendments, specifically N.J.A.C. 2:71-2 and 6 through 9, are voluntary they do not impose unduly burdensome recording, recordkeeping or compliance requirements on either large or small businesses. These sections expand the Jersey Fresh program to protect the interest of New Jersey farmers (small businesses) from various sectors of New Jersey Agriculture by offering the use of the logos. The use of uniform product identification promotes the orderly marketing of goods that are similar in the generic sense and allows equally good products from the small farm to compete with the products of larger operations. Should a producer choose to participate under the voluntary rules, the cost of participating should be offset by higher prices received for the product and by the valuable marketing program provided. There is no professional assistance required nor initial capital outlays to any business by these proposed rules or amendments. Given the preponderance of small producers and the Program's purpose to promote high quality plant material, the Department has provided no lesser or differing requirements or exceptions based on business size.

Smart Growth Impact

The rules proposed for readoption with amendments implement economic development strategies outlined in the Department's Smart Growth Plan. The rules proposed for readoption with amendments are consistent with the State's smart growth goals as they encourage the [page=6264] 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 Department has found that there is an extreme unlikelihood that the scope of the rules proposed for readoption with amendments would change the average costs associated with housing. The rules provide grading and standards for agricultural commodities and creates marketing logos. Cost of housing is not affected.

Smart Growth Development Impact

The rules proposed for readoption with amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the regulation 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 provide grading and standards for agricultural commodities and creates marketing logos.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:71.

Full text of the proposed amendments follows (additions (seven logos at N.J.A.C. 2:71-2.2(b), one at N.J.A.C. 2:71-6.3(g) and one at N.J.A.C. 2:71-7.3(h)) indicated without additional symbolism; deletions indicated in brackets [thus]):

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") on containers of certain fresh fruits, vegetables, shell eggs, cut flowers, cactus, honey, milk (whole, one percent, two percent, skim[,] **and** chocolate), ice cream and ice milk

(a) (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:

[



[Click here for](#)

image]



[Click here for](#)

image



[Click here for](#)

image



Click here for image

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

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:

[



Click here for

image]



Click here for

image

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

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:

[



[Click here for](#)

image]



[Click here for](#)

image

(i)-(p) (No change.)