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RULE PROPOSALS

**AGRICULTURE
DIVISION OF MARKETING AND DEVELOPMENT**

48 N.J.R. 529(a)

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

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

Grades and Standards

Authorized By: State Board of Agriculture and Douglas H. Fisher, 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 2016-046.

Submit comments by June 3, 2016, to:

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The agency proposal follows:

Summary

The Grades and Standards rules, N.J.A.C. 2:71, were scheduled to expire on February 23, 2016. As the Department filed its notice of reoption on this date, the expiration date is extended 180 days to August 21, 2016, pursuant to N.J.S.A. 52:14B-5.1.c(2). These rules have been in effect, as amended, since adopted in 1969. The New Jersey Department of Agriculture (Department) has reviewed these rules, and proposes to readopt these rules without change 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 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 the packer or distributor shall be prominently displayed on containers of eggs; that containers of loose eggs produced in New Jersey must be properly sealed; that there must be registration of labels or containers that bear the name New 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; penalties for violators; and defines an egg container. Violators shall be liable to a penalty of not less than \$ 50.00 or more than \$ 100.00 for the first offense, not less than \$ 100.00 or more than \$ 200.00 for a second offense, and not less than \$ 300.00 or more than \$ 500.00 for a third or subsequent offense. Every day a violation occurs at the same location shall be considered a separate violation.

Subchapter 2 sets forth the rules describing the standards and grades as applied to fruits and vegetables. The Department, 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 New Jersey adopts the United States Standards for use when grading all New Jersey fruits and vegetables with the exception of vine-ripened tomatoes. N.J.A.C. 2:71-2.18 sets forth the New Jersey 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. 2:71-2.26 through 2.32 addresses requests for certified inspection and grading services for fruits and vegetables. These rules describe the written and oral agreements for services for single and multiple commodities and the applicable charges for requested services.

N.J.A.C. 2:71-3.1 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 sets forth the application procedure and criteria for Jersey Fresh Matched Funds.

Subchapter 5 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 potato industry. The subchapter states that any 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 nursery stock, plant material, turfgrass sod, firewood, sunflower seeds - not for human consumption, cut Christmas trees, and ornamental annual plant material (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 [page=530] 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. Violators of the voluntary "logo" programs shall be liable to a fine of not more than \$ 100.00 for the first offense and not more than \$ 200.00 for each subsequent offense, except for violations of N.J.S.A. 4:10-5, which shall be liable of a penalty of \$ 100.00. When an offense involves false, misleading, or improper labeling of farm products, each package shall constitute a separate offense.

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 will affect the producers, packers, wholesalers, distributors (for processed products), 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, packer, and distributor 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 chapter 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, distributors, and consumers. Farmers, packers, and distributors 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 that 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 will have a positive social impact by continuing the advertising and promotional program for New Jersey horses and 4-H market lambs, nursery stock, plant

material, turfgrass sod, firewood, sunflower seeds - not for human consumption, cut Christmas trees and ornamental annual plant material, 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.

Failure to readopt these rules 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

The rules proposed for readoption are driven by economics and beneficially affect New Jersey consumers, producers (growers), packers, wholesalers, distributors, 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.

N.J.A.C. 2:71-2.26 through 2.32 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 rules and 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 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 licensees under these voluntary "logo" programs is minimal. The \$ 30.00 annual license fee has been proven to be offset by increases in the price received through the sale of high quality products.

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.

Any violator of the provisions of the rules proposed for readoption shall be subject to penalties as described in the Summary above.

Studies have shown significant revenues are generated by New Jersey farmers each year and are important contributions to the State's economy, particularly for rural communities. According to the USDA, Agricultural Marketing Service (AMS), sales of fruits and vegetables generated revenue of \$ 310.7 million in 2014. The market for organically produced agricultural products has exhibited dynamic growth and there is an extremely strong consumer demand for these products. According to the National Agricultural Statistic Service (NASS) 2014 Organic Survey, in-State organic production is estimated to have a value of \$ 7.8 million and according to the 2014 Horticultural Census, Nursery/Greenhouse sales generated revenue of \$ 356 million. According to NASS 2012 Census of Agriculture, the Equine industry has 3,068 farms with 27,658 acres. In addition, according to the 2013 statistics developed by the National Marine Fisheries Service, New Jersey's seafood harvest was valued at \$ 133 million.

The rules proposed for readoption will have a positive economic impact for New Jersey through continued

incorporation of standards, the use of the logos and by continuing to provide an additional marketing tool for New Jersey producers of fruits and vegetables, horses and 4-H market lambs, nursery stock, plant material, turfgrass sod, firewood, sunflower seeds (not for human consumption), cut Christmas trees and ornamental annual plant material, New Jersey Department of Agriculture certified organic producers or handlers of organic agricultural commodities and licensed aquatic farmers, and 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 these voluntary programs. 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.

[page=531] **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 State rules that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law.

The rules proposed for readoption 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 exceed 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 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 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 will result in the generation or loss of jobs. However, it is anticipated that the rules proposed for readoption will positively affect New Jersey's agricultural industry, averting the permanent loss of jobs.

Agriculture Industry Impact

The rules proposed for readoption 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 Impact statements above.

Regulatory Flexibility Analysis

The rules proposed for readoption 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 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, the rules proposed for readoption 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's position that although the 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 has determined that since portions of the rules proposed for readoption, 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. The rules proposed for readoption 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 one 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. Given the preponderance of small producers and the program's purpose to promote high quality farm 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 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 provide grading and standards for agricultural commodities and voluntary marketing "logo" programs.

Smart Growth Development Impact Analysis

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 housing 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 provide grading and standards for agricultural commodities and voluntary marketing "logo" programs.

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