

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

AGRICULTURE

(a)

DIVISION OF PLANTS

Importation of Plants and Plant Material

Proposed Readoption: N.J.A.C. 2:17

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

Authority: N.J.S.A. 4:1-11.1, 4:1-21.5, and 4:7-1 et seq., specifically
4:7-4 through 14 and 4:7-15 through 35.

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

Proposal Number: PRN 2022-043.

Submit written comments by May 20, 2022, to:

Joseph Zoltowski, Director
Division of Plant Industry
New Jersey Department of Agriculture
PO Box 330
Trenton, New Jersey 08625-0330
Pr-plantindustry@ag.nj.gov

The agency proposal follows:

Summary

The rules proposed for readoption were scheduled to expire on September 30, 2020. Pursuant to Executive Order No. 127 (2020) and P.L. 2021, c. 103, any chapter of the New Jersey Administrative Code that would otherwise have expired during the Public Health Emergency originally declared in Executive Order No. 103 (2020) was extended through January 1, 2022. Therefore, this chapter has not yet expired and is extended 180 days from the later of the existing expiration date or the date of filing of this notice of proposed readoption (December 30, 2021), whichever is later, which date is June 28, 2022, pursuant to N.J.S.A. 52:14B-5.1.c, Executive Order No. 244 (2021), and P.L. 2021, c. 103.

The Department of Agriculture (Department) has reviewed the rules and has determined them to be necessary, reasonable, and proper for the purposes for which they were originally promulgated.

Subchapter 1 provides a basis for cross-acceptance of officially published states' lists of certified nurseries and plant dealers as meeting filing requirements for businesses desiring to ship nursery stock into New Jersey.

Subchapter 2 is reserved.

Subchapter 3 regulates the movement of diseased and insect-infested plants into New Jersey by requiring inspection, official certification from the state of origin, and notification of the shipment prior to or within 24 hours of arrival.

Subchapter 4 prescribes the entry specifications for the admission of tomato plants into New Jersey in order to control and prevent the spread of disease and insect infestation. Specifically, Subchapter 4 sets forth the requirements governing production of tomato plants to be shipped to New Jersey, the packing requirements for tomato transplants, and the shipping requirements for tomato plants. Movement of diseased and insect-infested tomato plants is strictly prohibited. In order to move tomato plants into New Jersey, the plants must be inspected, plants must be accompanied by official certification from the state of origin, and the shipper must provide notification of the shipment prior to or within 24 hours of arrival.

Subchapter 5 prescribes the entry specifications for the admission of pepper plants into New Jersey in order to control and prevent the spread of disease and insect infestation. Specifically, Subchapter 5 sets forth the requirements governing production of pepper plants to be shipped to New Jersey, the packing requirements for pepper transplants, and the shipping requirements for pepper plants. Movement of diseased and insect-infested pepper plants is strictly prohibited. In order to move pepper plants into New Jersey, plants must be inspected, plants must be accompanied by official certification from the state of origin, and the shipper must provide notification of the shipment prior to or within 24 hours of arrival.

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).

Social Impact

The rules proposed for readoption at N.J.A.C. 2:17 primarily affect certain plant growers and dealers conducting business within New Jersey, specifically those growers and dealers who deal with nursery stock, vegetables, tomato plants, and pepper plants. The social impact of the rules proposed for readoption are beneficial to plant growers, farmers, and consumers. By ensuring that plants and plant materials are free from disease and infectious insects, purchasers can be confident that they are purchasing good quality products. Not only will the quality of the plants and plant materials produced under Department inspection programs result in greater crop production for farmers, but the public will also benefit directly from a higher degree of quality in both plants and plant products. Continued implementation of these rules will result in a higher degree of quality in both plants and plant products regulated under these rules and will provide nurserymen and farmers protection against the introduction of insects and disease into their existing stock.

Economic Impact

Although N.J.A.C. 2:17 primarily addresses the requirements for the importation of plants and plant materials into the State, there may be some minimal costs in meeting these requirements. In the case of nursery stock, it requires the plant dealer to send the Department a copy of their current valid resident-state certificate prior to shipment into New Jersey. This cost is expected to be minimal, as it only involves the cost of copying and postage. However, if the nursery or plant dealer is already listed as

“certified” in the current directory of the resident state, sending a copy of the certificate to the Department is not necessary. In instances where vegetable transplant stock is to be shipped to New Jersey, the Department requires that each shipment of plants be accompanied by an official certificate, certifying that the plants are free of injurious pests. There may be a charge in the resident state for issuing this certificate. In addition, if the state of origin charges for inspection costs to issue the official certificate, the additional cost could be reflected in the price of the plant. Finally, there may be some minimal increases in vegetable seed costs to purchaser(s), due to required seed and plant treatments for control of bacterial and leaf blight diseases, but this will be offset by fewer fungicide applications and increased crop yields.

Federal Standards Statement

The importation of plants and plant material rules are promulgated under the authority of a State statute, N.J.S.A. 4:1-21.5. However, 7 U.S.C. § 7712 gives the U.S. Secretary of Agriculture (Secretary) the authority to regulate the movement of plants and plant products in interstate commerce. Pursuant to that authority, the Secretary adopted rules limiting the movement of certain plants and plant parts pursuant to quarantine, 7 CFR 301.10 et seq., and regulating importation of plants or plant products by mail, 7 CFR 351.1 through 351.7. The rules proposed for readoption do not exceed the requirements of any Federal requirements for interstate movement of nursery stock, vegetables, tomato plants, or pepper plants. Therefore, a Federal standards analysis pursuant to Executive Order No. 27 (1944), P.L. 1995, c. 65, is not required.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost by virtue of the rules proposed for readoption.

Agriculture Industry Impact

The rules proposed for readoption should have a positive impact on New Jersey’s agriculture industry. The rules will afford protection to growers and plant dealers from the introduction and distribution of highly injurious plant pests and diseases by requiring an inspection and official certification of plant materials from the state of origin. Additionally, readoption of these rules will help to minimize the probability of crop loss due to farmers planting imported vegetable transplants carrying disease infections. Readoption of these rules will help to minimize the disruption of commerce when large numbers of infected transplants are detected by the Department and ordered destroyed.

Regulatory Flexibility Statement

The rules proposed for readoption primarily affect farmers, plant growers, and dealers who import plants and plant materials and do not impose reporting, recordkeeping, or other compliance requirements on small businesses in New Jersey, as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, compliance requirements are imposed on those businesses that want to export vegetables, tomatoes, or pepper plants to New Jersey. For example, if plant dealers in another state want to export vegetable transplants into New Jersey, they must notify the Department prior to or 24 hours after arrival of the shipment. The cost of this notification is minimal, since it can be done by telephone or email.

To the extent that these rules add a better quality product to the stream of commerce and decrease the number of vegetable and nursery plant stock infested with insects or infected with diseases shipped into the State, the readoption of these rules will be beneficial to both small businesses and consumers, alike. Although compliance requirements on plant production are imposed on small businesses who want to ship tomato or pepper plants into New Jersey, no differing or lesser standard can be imposed on small businesses because uniformity is necessary to ensure quality in the product imported. It is not expected that any technical or expert assistance will be necessary to comply with these rules. However, to the extent that assistance is needed, it is anticipated that such assistance will be provided by the exporting state’s plant regulatory officials, official certifying agencies, or cooperative extension service.

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 for plant importation into New Jersey.

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, or within designated centers, under the State Development and Redevelopment Plan in New Jersey, because the rules proposed for readoption with amendments provide for plant importation into New Jersey.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated the proposed readoption and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:17.

(a)

DIVISION OF MARKETING AND DEVELOPMENT

School Milk Purchase Regulations

Proposed Readoption: N.J.A.C. 2:55

Authority: N.J.S.A. 18A:18A-6.

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

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

Proposal Number: PRN 2022-044.

Submit written comments only by May 20, 2022, to:

Joe Atchison, Director
 Division of Marketing and Development
 New Jersey Department of Agriculture
 PO Box 330
 Trenton, New Jersey 08625-0330
pr-markets@ag.nj.gov

The agency proposal follows:

Summary

The rules proposed for readoption were scheduled to expire on September 30, 2020. Pursuant to Executive Order No. 127 (2020) and P.L. 2021, c. 103, any chapter of the New Jersey Administrative Code that would otherwise have expired during the Public Health Emergency originally declared in Executive Order No. 103 (2020) was extended through January 1, 2022. Therefore, this chapter has not yet expired and is extended 180 days from the later of the existing expiration date or the date of filing of this notice of proposed readoption, whichever is later, which date is June 28, 2022, pursuant to N.J.S.A. 52:14B-5.1.c, Executive Order No. 244 (2021), and P.L. 2021, c. 103.

Chapter 55 was promulgated to regulate the purchase and sale of fresh milk by vendors to New Jersey school districts, thereby providing protection to New Jersey dairy farmers who sell, and consumers who buy, these products. As such, the rules proposed for readoption primarily affect New Jersey vendors (licensed milk dealers), and will benefit New Jersey dairy farmers and consumers, primarily school children. These rules set forth the reporting requirements of each New Jersey board of education, all New Jersey vendors (milk dealers) selling milk to New Jersey schools, and all associations of producers. These rules also set forth the calculations for determining compliance with milk purchase requirements and the criteria for transfers, diversion, and substitution of milk; outline the process for proving the unavailability of milk; and describe the responsibility of the Secretary of the Department of Agriculture (Secretary) in determining the validity of a claim of unavailability of New Jersey milk.