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. Proclamation 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.


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 Zolotowski, 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

DIVISION OF MARKETING AND DEVELOPMENT
School Milk Purchase Regulations
Proposed Readoption: N.J.A.C. 2:55

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.