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RULE PROPOSALS

AGRICULTURE

DIVISION OF MARKETING AND DEVELOPMENT

42 N.J.R. 8(a)

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Grades and Standards

Proposed Amendments: N.J.A.C. 2:71-7.3, 7.7 and 7.8

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

Authority: N.J.S.A. 4:1-11.1 and 4:10-13.

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

Proposal Number: PRN 2010-008.

Submit comments by March 5, 2010 to:

Alfred W. Murray, Director
Division of Marketing and Development
New Jersey Department of Agriculture
P.O. Box 330
Trenton, NJ 08625-0330

The agency proposal follows:

Summary

N.J.A.C. 2:71, Grades and Standards, will continue to protect New Jersey's agricultural sectors and the consumers it serves through inspection and grading of agricultural commodities marketed under these programs.

The Department adopted amendments to the Jersey Fresh Quality Grading program, N.J.A.C. 2:71-2, and the Jersey Grown program, N.J.A.C. 2:71-7, to provide appropriate regulatory guidance while maintaining the necessary standards associated with these programs.

The Department is proposing amendments to N.J.A.C. 2:71-7.3 and 7.7 as adopted and effective on October 5, 2009 (see 41 N.J.R. 3794(a)). This section contains requirements for firewood marketed under the Jersey Grown program. One amendment to subsection (b) clarifies the standards for firewood marketed under the Jersey Grown program that is grown on private lands to more clearly identify the necessary approval of a forest management plan. The second amendment deletes the reference to marketing firewood from State lands under the Jersey Grown program because the open bidding process in commercial use is incompatible with such marketing at this time.

The Department is proposing amendments to N.J.A.C. 2:71-7.8 as adopted and effective on October 5, 2009 (see 41 N.J.R. 3794(a)). This section contains requirements for use of the Jersey Grown logo for sunflower seeds, not for human consumption. As adopted, N.J.A.C. 2:71-7.8 contained specific standards for these sunflower seeds in the areas of purity, test weight, moisture, heat damage and other factors and it also contained the standards identified as "USDA No. 2 or better." The Department determined that the specific standards listed were incomplete because the specific standard for insect damage had been inadvertently omitted. In addition, the standard for heat damage contained a typographical error and inclusion of the standards identified as "USDA No. 2 or better" for such sunflower seeds could be read to be in conflict with the specific listed standards. The amendments proposed herein correct the standards for heat damage (two percent, not five percent), add the standard for insect damage and amend "other factors" to remove the reference to USDA No. 2 or better.

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 proposed amendments will affect the growers, producers, packers, wholesalers, retailers and consumers of sunflower seeds (not for human consumption) and firewood.

The Jersey Grown program assures consumers of the quality of the products they purchase. New Jersey farms provide open space and add diversity to the agricultural landscape that benefits the quality of life throughout the Garden State. The proposed amendments will have a positive social impact by clarifying the "Jersey Grown" standards for sunflower seeds (not for human consumption) and the necessary approvals for firewood grown on private lands, thereby helping to maintain these sectors of New Jersey agriculture. Due to the minimal amount of firewood from State lands that would be eligible for marketing under the Jersey Grown program, little or no social impact is anticipated from the proposed deletion of the provision concerning firewood from State lands.

Economic Impact

The proposed amendments will have a positive economic impact for New Jersey through incorporation of clarified standards and procedures, for sunflower seeds (not for human consumption) and for firewood grown on private lands, providing an additional marketing tool for New Jersey producers, growers and packers who choose to use the 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. Therefore, the proposed amendments, clarifying the standards and procedures for sunflower seeds (not for human consumption) and for firewood grown on private lands, will have a positive economic impact. Due to the minimal amount of firewood from State lands that would be eligible for marketing under the Jersey Grown program, little or no economic impact is anticipated from the proposed deletion of the provision concerning firewood from State lands.

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 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.

Participation in the Jersey Grown program is voluntary. The proposed amendments deal with the use of a logo for marketing a New Jersey agricultural commodity. 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 proposed amendments will result in the generation or loss of jobs.

Agriculture Industry Impact

The proposed 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 proposed 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; however the proposed amendments impose compliance standards, as described in the Summary above, only on those participating in these voluntary programs. These rules are designed to ensure truth in packaging and an adherence to statements of quality. This [page=9] assures that products are delivered to consumers free from defects and risk of disease.

The Department of Agriculture has determined that since these proposed amendments are voluntary they do not impose unduly burdensome compliance requirements on either large or small businesses. The amendments do not include any recording or recordkeeping requirements.

Smart Growth Impact

The proposed amendments are consistent with the economic strategies as outlined within the Department's Smart Growth Plan. The proposed amendments 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 proposed amendments will have an insignificant impact on 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 amendments remove a provision concerning firewood from State lands and clarify the standards and procedures for commodities eligible to use the marketing logos when voluntary standards are met.

Smart Growth Development Impact

The proposed amendments 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 amendments remove a provision concerning

firewood from State lands and clarify the standards and procedures for commodities eligible to use the marketing logos.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 7. "JERSEY GROWN" LOGO

2:71-7.3 Use of the "Jersey Grown" logo

(a)-(h) (No change.)

(i) All nursery stock marketed under the logo program shall be propagated and/or be grown in New Jersey for a period of at least six months under the conditions set forth in this section and N.J.A.C. 2:71-7.4. All cut Christmas trees marked under the logo program shall be propagated and/or be grown in New Jersey for a period of at least four years prior to retail sale under the conditions set forth in N.J.A.C. 2:71-7.5. All turfgrass sod marketed under the logo shall be grown in New Jersey for a period of at least eight months prior to retail sale under the conditions set forth in N.J.A.C. 2:71-7.6. All firewood marketed under the program shall be harvested from trees grown in New Jersey private forestlands managed under an approved woodland management plan [or from State lands in accordance with the New Jersey Forest Service Commercial Firewood Program]. All sunflower seeds (not for human consumption) marketed under the program shall be grown in New Jersey under the conditions set forth in N.J.A.C. 2:71-7.8.

(j)-(p) (No change.)

2:71-7.7 Firewood

(a) (No change.)

(b) All firewood marketed under the program shall be harvested from trees grown in New Jersey from private forestlands managed under [an approved] **a forest management plan**[, or from State lands in accordance with the New Jersey State Lands Management Review Procedure] **approved by a Forester, certified by the Society of American Foresters or by another certification entity which can demonstrate standards of comparable rigor.**

(c)-(d) (No change.)

2:71-7.8 Sunflower seeds (not for human consumption)

(a) All sunflower seeds marketed under the program shall meet the following standards:

1.-3. (No change.)

4. Heat damage: Maximum [five] **two** percent; [and]

5. Insect damaged seed: Maximum five percent; and

[5.] **6. Other factors:** No mold, objectionable odor or live infestation present at time of delivery[; US No. 2 or better, not for human consumption] and shall not contain any prohibited noxious weed seed pursuant to N.J.A.C. 2:21-4.1.