

2 of 76 DOCUMENTS

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RULE PROPOSALS

**AGRICULTURE
DIVISION OF MARKETING AND DEVELOPMENT**

40 N.J.R. 2158(a)

Proposed Readoption with Amendments: N.J.A.C. 2:72

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

Bonding Requirements of Commission Merchants, Dealers, Brokers and Agents

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

Authority: *N.J.S.A. 4:1-11.1* and *4:11-15 et. seq.*, specifically *4:11-33.1*.

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

Proposal Number: PRN 2008-150.

Submit comments by July 4, 2008 to:

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

The agency proposal follows:

Summary

Pursuant to *N.J.S.A. 52:14B-5.1*, the rules in this chapter are scheduled to expire on June 27, 2008. In accordance with *N.J.S.A. 52:14B-5.1c*, the submission of this notice of proposal to the Office of Administrative Law extends that expiration date 180 days to December 24, 2008. 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 purpose for which they were promulgated. Readoption with amendments is necessary because

N.J.A.C. 2:72 originated with the need to protect the New Jersey growers of perishable agricultural commodities who fell victim to unscrupulous buyers of their product, by insuring that the buyers of perishable farm products doing business with New Jersey farmers have on deposit with the Department of Agriculture sufficient security bond to cover their purchases. The rules have provided the New Jersey farmers a method of recovering moneys owed to them by licensed agricultural commission merchants (any person engaged in the business of soliciting or receiving any perishable agricultural commodity for sale on commission on behalf of the grower thereof), brokers, agents and commodity dealers in the event of bankruptcy or default by enabling the farmer to file a verified claim against the security or deposit held by the Department. The rules establish a formula to be used in determining the amount of the required bond, as well as the claim filing procedures and the requirement that dealers, commission merchants and brokers issue invoices that record the terms of the transaction. The rules have been amended over the years since 1930 to update the minimum and maximum values of the bond requirements, to include additional commodities, and to update payment due dates. This chapter continues to protect New Jersey growers from economic disadvantages caused by the failure of buyers to promptly pay for products ordered and received from growers. *N.J.A.C. 2:72-1.1* and *1.2* give a definition of terms used and explains license application procedures including requirement for proof of surety, \$ 30.00 application fee and the formula to be used in determining the amount of surety to be filed. Claim filing procedures are described in *N.J.A.C. 2:72-2.1*. The necessity of an invoice detailing the terms of the transaction is explained in *N.J.A.C. 2:72-3.1* through *3.3*. The requirement to obtain and record vehicle tare weight and gross weight is set forth in *N.J.A.C. 2:72-3.4*.

The Department is currently proposing amendments to *N.J.A.C. 2:72-2.1(b)* and (c)1 to delete a non-working phone number correcting the contact information for requesting claim forms and filing claim forms.

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

N.J.S.A. 4:11-19 requires that all commission merchants, dealers, agents and brokers of perishable agricultural commodities on a credit basis be licensed after filing the required security with the Department of Agriculture. All commission merchants, dealers, brokers and agents of perishable agricultural commodities in New Jersey, as well as New Jersey growers, are directly affected by these rules. *N.J.A.C. 2:72* ensures that all credit buyers of perishable agricultural commodities are uniformly bonded and licensed to buy products directly from the New Jersey farmer. All New Jersey growers enjoy some economic protection through this process of having all buyers licensed. Unlicensed credit buyers are subject to monetary penalties pursuant to *N.J.S.A. 4:11-34*.

The proposed amendments do not increase any burden on either the growers or the buyers, but rather clarify the Department contact information for requesting claim forms and filing claims.

Economic Impact

Buyers of perishable agricultural commodities are annually charged a \$ 30.00

application fee, as prescribed in *N.J.S.A. 4:11-19*. Buyers also bear the administrative cost of the deposited security, which usually runs \$ 10.00 to \$ 25.00 per thousand or to a maximum of \$ 3,750. This buyer pays this administrative charge directly to the bonding company. There is also a certain economic impact upon the Department of Agriculture for program administration costs.

The proposed amendments do not have an economic impact on either the growers or the buyers, but rather clarify the Department contact information for requesting claim forms and filing claims.

Finally, these rules proposed for readoption, will have a positive economic impact on growers, as they help ensure that growers receive the agreed-upon purchase price from the brokers, dealers, and commission merchants.

Federal Standards Statement

Executive Order No. 27 (1994) and P.L. c. 65 require State agencies that adopt, readopt or amend State rules exceeding any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. The United States Department of Agriculture has promulgated regulations pursuant to its authority under the Perishable Agricultural Commodities Act, 7 *U.S.C. §§499a et seq.*, for the licensing of brokers, dealers, commission merchants, and shippers who purchase and move perishable agricultural commodities through interstate commerce. 7 *CFR 46.1 et seq.*

The Perishable Agricultural Commodities Act and corresponding regulations (PACA) provide Federal standards and licensing requirements for brokers, dealers, and commission merchants that deal with and purchase perishable commodities interstate. *N.J.A.C. 2:72*, however, provides licensing and bonding requirements for dealers, brokers, or commission merchants who purchase agricultural commodities in New Jersey. The requirements imposed under Chapter 72 do not exceed the Federal requirements under PACA; therefore, no Federal standards analysis is required.

Jobs Impact

An evaluation of the rules proposed for readoption with amendments shows that there would be no gain of New Jersey jobs. However, failure to adopt could adversely affect the New Jersey produce, poultry and egg industries including brokers, dealers, producers and growers and others associated with the agricultural industry, resulting in the permanent loss of jobs.

Agriculture Industry Impact

The Social and Economic Impacts above describe the impact of the rules proposed for readoption with amendments on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments have an impact on small businesses in that all buyers, both large and small, operating on a credit basis with New Jersey producers of perishable agricultural commodities, who are, to the best of the Department of Agriculture's knowledge, almost exclusively small businesses, must comply with the provisions of this chapter.

The rules provide for a different price for the security for small businesses. Since the bond is based on the value of the average month's purchases, small businesses will generally have a smaller bond requirement. For example, based on the formula in *N.J.A.C. 2:72-1.2(b)*, the security required for a small business is in the \$ 5,000 to \$ 15,000 range, while the security required for a large business could range from \$ 50,000 to \$ 150,000.

The rules impose both recording and recordkeeping requirements upon dealers and commission merchants to keep basic records of transactions and issue a copy to growers. These requirements, although stipulated in these rules, are normal requirements of doing business and therefore are not viewed as so burdensome as to merit differing standards. Likewise, the rules for filing claims apply uniformly to all growers and require consistent application. Therefore, no differing standard can be applied based on business size.

The Department of Agriculture does not feel the rules impose any more burdens on the regulated community than is necessary to insure the fiscal responsibility of the purchaser on credit. There is no professional assistance required nor initial capital outlays to any business by the rules proposed for readoption with amendments.

Smart Growth Impact

The Department does not anticipate that the rules proposed for readoption with amendments will have any impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at *N.J.A.C. 2:72*.

Full text of the proposed amendments follows (addition indicated in boldface **thus**; deletions indicated in brackets [thus]):

2:72-2.1 Claim filing procedures

(a) (No change.)

(b) Forms for filing claims against any commission merchant, dealer or broker are available by contacting the Department at:

New Jersey Department of Agriculture
P.O. Box 330
Trenton, New Jersey 08625-0330
[(609) 292-5575]

(c) All claim forms and any accompanying attachments shall be filed with the Department within 90 days from the date when payment was due, in accordance with the following:

1. All claims shall be filed at the following address:

New Jersey Department of Agriculture
P.O. Box 330
Trenton, New Jersey 08625-0330;
[(609) 292-5575;]

2.-3. (No change.)