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**RULE PROPOSALS**

**AGRICULTURE  
DIVISION OF MARKETING AND DEVELOPMENT**

*40 N.J.R. 2159(a)*

**Proposed Readoption: N.J.A.C. 2:74**

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

**Controlled Atmosphere Storages**

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

Authority: *N.J.S.A. 4:1-11.1, 4:10-26 et seq.*, specifically 4:10-30.

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

Proposal Number: PRN 2008-151.

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 as they have been found to be necessary, reasonable and proper for the purpose for which they were promulgated.

Chapter 74 was promulgated to promote the development of the New Jersey apple industry by regulating the use of controlled atmosphere storage facilities and the disposition of apples exposed to such storage. The controlled atmosphere process through the use of atmospheric and temperature controls preserves the quality of apples in storage and extends the marketing season of the product.

*N.J.A.C. 2:74-1.1* and *1.2* explain the scope of the law and give a definition of terms used. Construction requirements for controlled atmosphere facilities are described in *N.J.A.C. 2:74-1.3*. Registration is explained in *N.J.A.C. 2:74-1.4* in addition to the fee charged for each controlled atmosphere storage room. The required atmospheric and temperature controls used in this process are then summarized in *N.J.A.C. 2:74-1.5*. The records kept by each owner or operator are described in *N.J.A.C. 2:74-1.6*. The necessity for an invoice covering the sale of controlled atmosphere storage apples is explained in *N.J.A.C. 2:74-1.7*. The means used by the Department in verifying the process is set forth in *N.J.A.C. 2:74-1.8*. Misrepresentation and the requirements for trade and the requirements for storage facilities in the outside the State of New Jersey are then set forth in *N.J.A.C. 2:74-1.9* through *1.11*. Penalties for violating the law or the rules are described in *N.J.A.C. 2:74-1.12*.

The chapter should not be allowed to expire because it has been effective in prohibiting fraudulent branding of apples that have not been stored under controlled atmosphere conditions. This chapter continues to provide the New Jersey apple industry with additional marketing strategies during seasons when weather conditions, economic conditions and/or supply problems are evident.

As the Department has provided a 60-day comment period on this notice of proposed readoption, 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.A.C. 2:74* has an impact on consumers, distributors and owner/operators of apple storage facilities. The chapter guarantees that New Jersey consumers are supplied with high quality apples on a year-round basis by businesses that choose to participate in marketing the product. The chapter also has an effect on owner/operators of the storage facilities who are regulated by the provisions of the chapter in that they are required to keep daily records on oxygen levels for each storage room.

#### **Economic Impact**

The costs of producing controlled atmosphere apples are shared by both the owners/operators of the storage facilities and consumers. Owners/operators of controlled storage facilities are annually charged a \$ 10.00 per room application fee and incur costs for construction and maintenance of storage rooms necessary for the controlled atmosphere process. The price for this value added product is relative to an elastic market system and is controlled by consumer demand.

#### **Federal Standards Statement**

A Federal standards analysis is not required because the rulemaking requirements of the Director of the Division of Marketing and Development, New Jersey Department of Agriculture are dictated by the New Jersey Controlled

Atmosphere Storage Act, *N.J.S.A. 4:10-26* through 33, and are not subject to any Federal requirements or standards.

**Jobs Impact**

An evaluation of the rules proposed for readoption at *N.J.A.C. 2:74* shows that there would be no gain or loss of New Jersey jobs.

**Agriculture Industry Impact**

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

**Regulatory Flexibility Analysis**

Small businesses make use of the opportunity to market controlled atmosphere stored apples and thus are impacted by the rules governing them.

The rules proposed for readoption are designed to orderly market a product to insure that the product is what is claimed. There is no obligation on the grower or marketer to use the controlled atmosphere process except the hope to make a larger profit over a longer period selling season. The standards of the rules are performance standards allowing the operation to be sized to meet the business' operation and expectations and are, therefore, not burdensome and do not need separate standards for recordkeeping and reporting requirements for small businesses. These requirements include daily readings, invoicing, a reporting schedule for oxygen reduction, and registration. There is no professional assistance required nor initial capital outlays to any business by the rules proposed for readoption.

**Smart Growth Impact**

The Department does not anticipate that the rules proposed for readoption 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. 2:74*.