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RULE PROPOSALS

**AGRICULTURE
DIVISION OF MARKETING AND DEVELOPMENT**

42 N.J.R. 1936(a)

Proposed Readoption: N.J.A.C. 2:70

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

Agricultural Liming Materials

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

Authority: N.J.S.A. 4:9-21.1 et seq., specifically 4:9-21.11.

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

Proposal Number: PRN 2010-201.

Submit comments by November 6, 2010 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, N.J.A.C. 2:70, Agricultural Liming Materials, is scheduled to expire August 26, 2010. 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 February 22, 2011. The Department of Agriculture is proposing to readopt these rules, as they have been found to be necessary, reasonable and proper for the purposes for which they were promulgated. Readoption is necessary because N.J.A.C. 2:70 was originally promulgated to (1) protect farmers and consumers by determining the manufacturer's compliance with the guaranteed content of liming materials and (2) to reduce the amount of misbranded and deficient products offered for sale thereby insuring the quality and quantity of liming materials and promoting crop yield.

These rules proposed for readoption define materials and require that manufacturers provide information on their label of the materials and guaranteed analyses of their contents. Manufacturers are required to register their products prior to offering them for sale and to be responsible for fees and for tonnage inspection reports.

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.

[page=1937] **Social Impact**

Readoption of N.J.A.C. 2:70 will continue to assure that all consumers of agricultural liming materials continue to have protection when deficient liming materials are detected. Manufacturers will continue to exhibit care in controlling their formulation processes to avoid a penalty and a possible "stop sale" of deficient product. The New Jersey Agricultural Liming Material Act, N.J.S.A. 4:9-21.1 et seq., requires lime manufacturers to provide accurate verifiable information of agricultural liming material, so that farmers or consumers can rely on it. Therefore, the rules proposed for readoption will continue to have a positive social impact.

Economic Impact

Manufacturers of deficient agricultural liming materials will continue to be assessed financial penalties for the marketing of such products; protecting businesses from unfair competition.

Consumers and distributors of agricultural liming materials are provided relief from economic loss by the requirement that such materials be properly labeled. The failure to include correct ingredients in the materials can effectively burn a crop, damage the soil and lower crop yield having an adverse economic effect. These rules have performed, and are expected to perform, a vital role in consumer protection, and this positive economic impact will continue with the readopting of these rules.

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 requirement 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. Because the rulemaking requirements of the Director, Division of Marketing and Development are dictated by the New Jersey Agricultural Liming Materials Act, N.J.S.A. 4:9-21.1 et seq., and are not subject to any Federal requirements or standards, no Federal standards analysis is required.

Jobs Impact

It is not anticipated that the rules proposed for readoption will result in the generation or loss of jobs.

Agriculture Industry Impact

The rules proposed for readoption will have a positive impact on New Jersey agriculture by helping to maintain a viable agriculture industry in the Garden State as described in the Social and Economic Impact statements above.

Regulatory Flexibility Analysis

Both large and small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are affected by the rules proposed for readoption. However, differing standards are not deemed necessary because the requirements are not burdensome and because, while these rules may have an economic impact on these businesses, the Department knows of no less restrictive a system than expressed in the standards. In order to document label claims, minimal reporting requirements required under these rules proposed for readoption are necessary. The standards for "pulverized," "ground" and "granular" limestone; burnt and hydrated limes and liming materials offered for sale in slurry or suspension form, as expressed in these rules, provide the least costly and best protection available, are almost universally accepted and provide a level playing field for all manufacturers, enabling fair competition based on product quality.

The cost of compliance varies with the number of grades of liming materials placed on the market. These costs are solely in the hands of the manufacturer and are solely ones that a manufacturer makes to meet the demands of the market. The law and rules are designed to provide the freest form of safe, honest and understandable competition. They are based on the accepted standards of the Association of American Plant and Food Control Officers, Inc., whose standards are the basis for the laws and rules of not only New Jersey, but also most other states. Use of these standards enable New Jersey manufacturers a chance to compete in other states and countries.

These rules proposed for readoption prevent competition in the liming materials field from being based on brand loyalty, which would further deprive the small manufacturer of the opportunity to compete on merit, requiring them to match the advertising budget of the large manufacturer, which no small manufacturer could do.

It is the belief of the Department that these rules proposed for readoption provide more benefits to more small businesses by complying with these rules and law, than they are hurt by them. They are the minimum necessary to ensure the honest, understandable trade in the commodity based on the important results deliverable by the product, not upon brand loyalty. It is, as a result, more economically advantageous for small business manufacturers to enter and compete in the market in both New Jersey and the rest of the world.

Further, there is no way to protect the consumers of these products without a method of guaranteeing compliance with label claims so there is no way to exempt small businesses from these rules. It is important that consumers be able to rely upon labeling, which provides comparable information and a method of guaranteeing compliance with label claims.

There are no professional services required to comply nor will any initial capital outlays be required of any business as a result of the rules proposed for readoption.

Smart Growth Impact

The rules proposed for readoption are consistent with the economic strategies as outlined within the Department's Smart Growth Plan. The rules proposed for readoption 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 rules proposed for readoption will have an insignificant impact of 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 rules proposed for readoption define materials, require that manufacturers provide information on their label of the materials and guaranteed analyses of their contents; require manufacturers to register their products prior to offering

them for sale and to be responsible for fees and for tonnage inspection reports.

Smart Growth Development Impact

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 house production in Planning Areas 1 or 2 within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption define materials, require that manufacturers provide information on their label of the materials and guaranteed analyses of their contents; require manufacturers to register their products prior to offering them for sale and to be responsible for fees and for tonnage inspection reports.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:70.