

**AGRICULTURE**

**DIVISION OF MARKETING AND DEVELOPMENT**

**General Provisions**

**Proposed Readoption with Amendments: N.J.A.C. 2:48**

Authorized By: Joseph Atchison III, Director, Division of Marketing and Development, the State Board of Agriculture and Edward D. Wengryn, Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:12A-1 et seq., specifically 4:12A-7 and 20.

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

Proposal Number: PRN 2024-079.

Submit comments by August 30, 2024, to:

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The agency proposal follows:

**Summary**

The General Provisions rules, N.J.A.C. 2:48, were scheduled to expire on September 28, 2024.

As the New Jersey Department of Agriculture (Department) filed its notice of readoption prior to that date, the expiration date is extended 180 days to March 27, 2025, pursuant to N.J.S.A.

52:14B-5.1.c(2). The Department is proposing to readopt these rules with a minor amendment,

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

The purpose of these rules is to ensure that the dairy industry and consumers receive the benefit of effective milk control. The rules proposed for readoption define the marketing areas in New Jersey as included in Federal Milk Order No. 1 (Northeast Marketing Area) (Subchapter 1); prohibit false, misleading, or unfair advertising of milk and milk products by dealer and store licensees (Subchapter 2); prevent dealers and store licensees from publishing false and misleading advertisements of milk and prevent the licensee from misleading the consumer concerning the quality of milk and milk products being offered for sale (Subchapter 2); protect the confidentiality of proprietary commercial and financial information obtained by the Department while implementing the rules set forth in this chapter (Subchapter 3); and prevent the use of coupons in any advertising media that results in the sale of any milk or fluid milk product below cost, as defined in the rules of the Department at N.J.A.C. 2:52-7 and 2:53-6, but allow the unlimited use of coupons under certain conditions (Subchapter 4).

The Department proposes to amend N.J.A.C. 2:48-4.1(a) to reduce the advance submission time by which a licensee must provide documentation to the Department for review concerning, but not limited to, “cents off,” “Bonus Card Program,” or “refund” promotions from 60 days to 14 days. That review enables the Department to determine if the promotion will result in the sale of milk products to be below variable cost as defined at N.J.A.C. 2:52-7 and 2:53-6. The reduced advance submission time for licensees to seek approval of their coupon programs will serve to facilitate their business activities and benefit consumers.

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 reoption of N.J.A.C. 2:48 with an amendment ensures that the dairy industry and its consumers will continue to receive the benefits of effective milk control. Failure to readopt the rules defining marketing areas which are co-existent with Federal and State orders would lead to confusion on the part of regulated dealers. The remaining portions of the rules protect consumers from false and misleading advertisements for milk and milk products, describe the conditions pursuant to which licensee information will be held confidential, and provide comprehensive rules for the use of coupons in milk promotion. Therefore, the rules proposed for reoption with an amendment will have a positive social impact.

### **Economic Impact**

The rules proposed for reoption with an amendment will benefit New Jersey dairy farmers, milk dealers, retail stores, and consumers. The proposed rulemaking will benefit consumers by creating a market environment wherein the consumer will not be misled or defrauded by false, misleading, or unfair advertisements.

Approximately 39 New Jersey dairy farmers will receive direct benefits from the proposed rulemaking. These benefits will occur through the maintenance of the Federal and State marketing orders with respect to the guarantee of payment from milk handlers, by defining marketing areas that correspond with the Federal Milk Order No. 1 (Northeast Marketing Area). New Jersey dairy farmers make an important contribution to the State's economy, particularly in rural communities. The rules are an important tool in ensuring that dairy farmers receive payment for their product.

As described more fully in the Summary and Social Impact statements above, milk processors, dealers, and retail stores benefit from the maintenance of a stable competitive marketplace wherein implementation of the rules results in the minimization of predatory, disruptive activities through false and misleading advertising.

Further, milk dealers and store licensees of the Department are assured that their records and reports will remain confidential and not subject to examination by unauthorized persons in accordance with both Federal and State law.

Therefore, for the reasons set forth above and in the Summary and Social Impact statements, these rules will have a positive economic impact.

#### **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 State rules that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. As related to this chapter, the rulemaking requirements are dictated by the New Jersey Milk Control Act, N.J.S.A. 4:12-1 et seq., and are not subject to any Federal requirements or standards. The marketing areas specified in the rules are the same as those set forth in the Federal Milk Order No. 1 (Northeast Marketing Area) and the rules proposed for readoption with an amendment merely restate them for purposes of clarity. Therefore, a Federal standards analysis is not required.

#### **Jobs Impact**

It is not anticipated that the rules proposed for readoption with an amendment will result in the generation or loss of jobs. However, it is anticipated that the rules proposed for readoption

with an amendment will positively affect New Jersey's agricultural industry, averting the permanent loss of jobs.

### **Agriculture Industry Impact**

The rules proposed for readoption with an amendment 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 Summary, Social Impact, 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 with an amendment. The rules proposed for readoption with an amendment impose compliance standards on those participating in this program, as described in the Summary above. The information requested by the Department as a result of the proposed rulemaking is normally maintained by dairies and retail stores as part of their ordinary business practices, such as purchase and sales records and expense records. The compliance requirements, which are imposed concerning advertising and the use of coupons, are necessary to ensure fairness to all in the industry and, therefore, the Department is not able to apply differing or lesser standards based on business size. There are no professional services required to comply with the rules proposed for readoption with an amendment nor will any initial capital outlays be required of any business as a result of the rules proposed for readoption with an amendment.

### **Housing Affordability Impact Analysis**

The rules proposed for readoption with an amendment 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 with an amendment regulate New Jersey's milk dealers and stores to ensure that the dairy industry and its consumers receive the benefits of effective milk control.

### **Smart Growth Development Impact Analysis**

The rules proposed for readoption with an amendment 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, within designated centers, pursuant to the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption with an amendment regulate New Jersey's milk dealers and stores to ensure that the dairy industry and its consumers receive the benefits of effective milk control.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Department has evaluated the proposed rulemaking 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 Jersey Administrative Code at N.J.A.C. 2:48.

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

## SUBCHAPTER 4. RESTRICTIONS ON THE USE OF COUPONS IN MILK PROMOTION

### 2:48-4.1 Coupons for milk restricted

(a) It shall be unlawful and a violation of these regulations for any licensee directly or indirectly through an entity associated in any way with the licensee to print or cause to be printed any

"cents off," "Bonus Card Program," or "refund" coupon in any newspaper or other advertising media (including the milk container), which is redeemable either directly or indirectly through a third party by the consumer upon his **or her** purchase of any milk or fluid milk product unless prior written permission is granted by the Division of Marketing and Development to conduct such programs. All documentation concerning, but not limited to, "cents off," "Bonus Card Program," or "refund" promotions must be submitted [60] **14** days prior to the program commencing to determine if the promotion will result in the sale of such products to be below variable cost as defined in **the** rules of the Division, specifically N.J.A.C. 2:52-7 and 2:53-6.

(b) – (c) (No change)