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RULE PROPOSALS

**AGRICULTURE
DIVISION OF MARKETING AND DEVELOPMENT**

47 N.J.R. 847(a)

Proposed New Rules: N.J.A.C. 2:71-10

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

Grades and Standards

Local Farm Products

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

Authority: N.J.S.A. 4:1-11.1 and 20, 4:10-2, 3, 4, and 13.

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

Proposal Number: PRN 2015-044.

Submit written comments by July 3, 2015, to:

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

or to proposedrulesMarkets@ag.state.nj.us

The agency proposal follows:

Summary

The Department of Agriculture (Department) is proposing new rules to set forth definitions, the standard for classification, and the penalties for mislabeling or otherwise misidentifying farm products sold in New Jersey as "local" (N.J.A.C. 2:71-10). The standards and rules were developed consistent with Executive Order No. 2 (2010) and Executive Order No. 4 (2010).

Because of increased consumer interest in knowing more about where their food comes from, the Department has been approached by some New Jersey farmers, who have questioned the presence of farm products for sale in New Jersey (the Garden State) that are identified as local but are coming from sources that are actually not nearby and are not in New Jersey at all.

Based on review of United States Department of Agriculture (USDA) food program information, there is no national definition of "local," "locally grown," or "locally produced" for farm products, such as fruits, vegetables, milk, and cheese. As a result, farm products that are grown and/or produced some significant distance away can still be labeled and marketed in New Jersey as "local" with no other information about the origin of the farm products. There has been marketing information reported that the trade and consumers pay a premium price for what they believe to be "local" farm products. Other states such as Vermont, Connecticut, and Maryland have also been focusing on this issue to ensure that farm products sold to consumers in their states as "local" are from identified areas or from farms in their states. To better inform New Jersey consumers and furnish assistance to the public with reference to buying farm products, the Department is going in the same direction and is proposing a classification standard of "local" or variations of the word "local." The identification of "local" farm products will help to avoid consumer confusion about the source of "local" farm products they find available in the Garden State. In addition, the proposed new rules will allow farmers to compete effectively in the Garden State's "local" market. "Local" farm products demand a higher price and represent a niche in the market place. Currently, there can be labeling, marketing, or identifying farm products as "local" when the products have not been grown or produced in New Jersey or when the products may be called "local" but they are from a different locality and state of origin that is not identified. This is misleading and detrimental to both consumers and "local" producers.

Proposed N.J.A.C. 2:71-10.1 sets forth the scope and purpose of the new rule, which is to establish a standard for labeling farm products "local" when sold in New Jersey.

Proposed N.J.A.C. 2:71-10.2 and 10.3 set forth the definitions and standard for classification, respectively, of farm products being sold as "local" in New Jersey. To be labeled, marketed, or identified for sale in New Jersey as "local," farm products must be grown or produced in New Jersey or must be clearly identified as grown or produced in another specific locality and state of origin when that other state is not New Jersey.

Proposed N.J.A.C. 2:71-10.4 sets forth penalties for the false, misleading, or improper labeling, marketing, or identifying of farm products offered for sale in New Jersey as "local" when they are not grown or produced in New Jersey or are not identified as grown or produced in a different locality and state of origin. This section also sets forth the provisions for collection and enforcement of penalties. The penalty for a first offense is not more than \$ 100.00 and the penalty for each subsequent offense is not more than \$ 200.00. When a violation involves false, misleading, or improper labeling of farm products each package (unit of sale) is a separate offense.

The proposed new rules do not exclude any producers, growers, or marketers of farm products from offering their products for sale in New Jersey. The proposed new rules only affect the use of the classification standard "local," "locally grown," and "locally produced" to describe farm products sold in New Jersey.

As the Department has provided a 60-day comment period for 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 classification standards in the proposed new rules will draw consumer attention to the availability of "local" farm products grown or produced in the Garden State or in other localities and states of origin that are specifically identified. The proposed new rules will have a positive social impact by helping to maintain an important segment of agriculture [page=848] that provides high quality, "local" farm products to New Jersey consumers. New Jersey farms provide tax-paying open space and add diversity to the agricultural landscape that benefits the quality of life throughout the Garden State.

Economic Impact

The proposed new rules will have a positive economic impact for New Jersey by providing an additional marketing incentive for producers located in New Jersey that choose to use "local" in marketing their farm products in New Jersey and will provide clarity to the consuming public by identifying the locality and state of origin of farm products that are sold but not grown or produced in New Jersey. The proposed new rules will provide marketing opportunities by utilizing existing agricultural products and transforming them into a value-added product, thus increasing demand for "local" agricultural products. The use of "local" in the labeling, marketing, or identifying farm products is voluntary. There is no cost to anyone marketing New Jersey farm products as "local" in New Jersey. There may be a slightly higher cost to identify the locality and state of origin in marketing farm products grown and produced outside of New Jersey when the voluntary choice is made to use the term "local" along with the locality and state of origin; however, this cost would be expected to be balanced against the increased value in the use of the word "local."

Additional costs may be incurred by any person who violates this subchapter and is subject to penalties as discussed in the Summary above.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-23 (P.L. 1995, c. 65) require administrative agencies which 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 the proposed new rules, the rulemaking requirements are dictated by N.J.S.A. 4:1-11.1 and 4:10-13 and are not subject to any Federal requirements.

There are no Federal standards for "local" farm products. Identifying farm products as "local" in New Jersey is voluntary and wholly regulated by the Department. Therefore, no Federal standards analysis is necessary.

Jobs Impact

It is not anticipated that the proposed new rules will result in the loss of jobs. Providing a standard for classification of "local" farm products will have a positive impact and may result in a slight increase in jobs.

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

The proposed new rules 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 new rules impose compliance standards, as

described in the Summary above, only on those choosing to utilizing the "local" standard in labeling, marketing, or identifying their farm products. No professional services are needed to meet the compliance standards.

The Department of Agriculture has determined that since the use of "local" in labeling, marketing, or identifying farm products is voluntary they do not impose unduly burdensome compliance requirements on either large or small businesses. The proposed new rules do not include any reporting or recordkeeping requirements.

The use of a classification standard for "local" farm products being sold in New Jersey provides accurate information to consumers about farm products and provides the opportunity for small farms in New Jersey to compete more successfully.

Housing Affordability Impact Analysis

The proposed new rules 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 proposed new rules set forth the standard for classification for labeling, marketing, or identifying farm products in New Jersey as "local."

Smart Growth Development Impact Analysis

The proposed new rules 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, under the State Development and Redevelopment Plan in New Jersey because the proposed new rules set forth the standard for classification for labeling, marketing, or identifying farm products in New Jersey as "local."

Full text of the proposed new rules follows:

SUBCHAPTER 10. LOCAL FARM PRODUCTS

2:71-10.1 Scope and purpose

To better inform New Jersey consumers, to furnish assistance to the public with reference to buying farm products, and to allow New Jersey farmers to compete effectively in the market for "local" farm products, which demand a higher price and represent a niche in the marketplace, this subchapter establishes a "local" classification standard. When the standard is satisfied so that "local" (or "locally grown" or "locally produced") is clear as to state of origin, the consumer has more complete information about the geographical area to which the word "local" refers. The consumer is therefore unlikely to be misled into thinking "local" always means New Jersey when deciding what farm products to purchase.

2:71-10.2 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

"Department" means the New Jersey Department of Agriculture.

"Farm products" means any agricultural, dairy, or poultry product designed for food purposes, derived or prepared principally from any agricultural, dairy, or poultry product or products.

"Local" including any variations of "local," including, but not limited to, variations such as "locally grown" and "locally produced," means a classification standard that denotes originating in New Jersey or that denotes originating in a clearly identified locality and state of origin when that state of origin is not New Jersey. When the farm products do not

originate in New Jersey, the standard is denoted by "local to," "locally grown in," or "locally produced in," the identified locality, and state of origin. For example, this produce is "locally grown in Anytown, Anystate."

"Secretary" means the Secretary of the New Jersey Department of Agriculture.

2:71-10.3 Use of "local" classification standard for farm products marketed in New Jersey

Farm products for sale in New Jersey that are labeled, marketed, or identified as "local" shall be considered improperly labeled, marketed, or identified, unless the farm products were grown or produced in New Jersey or are clearly identified with the locality and state of origin when that state of origin is not New Jersey.

2:71-10.4 Penalties

(a) Any person, firm, partnership, corporation, cooperative, or association labeling, marketing, or identifying farm products as "local" that have not met the classification standard set forth in N.J.A.C. 2:71-10.3, shall be subject to a penalty of not more than \$ 100.00 for the first offense and not more than \$ 200.00 for each subsequent offense. Whenever a violation of this subchapter involves false, misleading, or improper labeling of farm products, each package shall constitute a separate violation.

(b) The Division of Marketing and Development shall make an initial determination as to whether farm products are improperly labeled or identified as "local."

(c) Any person who is aggrieved by the determination of the Division of Marketing and Development pursuant to (b) above shall, upon written request transmitted to the Department within 20 days of the violation notice, be afforded the opportunity for a hearing.

[page=849] 1. Requests for hearings shall be sent to Alfred Murray, Director, Division of Marketing and Development, New Jersey Department of Agriculture, PO Box 330, Trenton, NJ 08625-0330.

2. The hearing will be conducted in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) The State Board of Agriculture shall make a final determination as to whether to impose a penalty following a hearing as provided in (c) above.

(e) Orders for penalties or to enjoin continuing violations may be collected in a civil action in a summary proceeding pursuant to the Penalty Enforcement Law of 1999, P.L. 1999, c. 274, N.J.S.A. 2A:58-10 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the Penalty Enforcement Law of 1999.