

CHAPTER 71 **GRADES AND STANDARDS**

Authority

N.J.S.A. 4:1-11.1, 4:3-11.12, 4:10-6 and 4:10-13.

Source and Effective Date

R.2009 d.98, effective February 23, 2009.
See: 40 N.J.R. 6261(a), 41 N.J.R. 1392(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 71, Grades and Standards, expires on February 23, 2016. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Pursuant to Executive Order No. 66(1978), Subchapter 1, New Jersey Standards for Quality of Individual Shell Eggs, and Subchapter 2, Fruits and Vegetables, were readopted as R.1983 d.394 and d.395, respectively, effective September 1, 1983. See: 15 N.J.R. 1050(a), 15 N.J.R. 1574(a); 15 N.J.R. 1051(a), 15 N.J.R. 1574(b).

Pursuant to Executive Order No. 66(1978), Chapter 71, Grades and Standards, was readopted as R.1988 d.370, effective July 8, 1988. See: 20 N.J.R. 953(a), 20 N.J.R. 1871(a).

Pursuant to Executive Order No. 66(1978), Chapter 71, Grades and Standards, was readopted as R.1993 d.379, effective July 2, 1993. See: 25 N.J.R. 1801(a), 25 N.J.R. 3453(a).

Pursuant to Executive Order No. 66(1978), Chapter 71, Grades and Standards, was readopted as R.1998 d.376, effective June 26, 1998. See: 30 N.J.R. 1459(b), 30 N.J.R. 2617(c).

Subchapter 4, Jersey Fresh Matched Funds Program, was adopted as R.1999 d.175, effective June 7, 1999. See: 31 N.J.R. 572(a), 31 N.J.R. 1478(a).

Administrative change: Pursuant to Reorganization Plan No. 03-2002, the Division of Dairy and Commodity Regulation was renamed Division of Marketing and Development, effective February 27, 2003. See: 35 N.J.R. 3(a), 35 N.J.R. 1539(b).

Chapter 71, Grades and Standards, was readopted as R.2003 d.434, effective October 7, 2003. See: 35 N.J.R. 2974(a), 35 N.J.R. 5060(a).

Subchapter 6, "Jersey Bred" Logo, was adopted as new rules by R.2004 d.6, effective January 5, 2004. See: 35 N.J.R. 3749(a), 36 N.J.R. 169(a).

Subchapter 7, "Jersey Grown" Logo, was adopted as new rules by R.2004 d.201, effective June 7, 2004. See: 36 N.J.R. 626(a), 36 N.J.R. 2715(b).

Subchapter 8, "Jersey Organic" Logo, was adopted as new rules by R.2006 d.412, effective December 4, 2006. See: 38 N.J.R. 2237(a), 38 N.J.R. 4995(a).

Subchapter 9, "Jersey Seafood" Logo, was adopted as new rules by R.2008 d.104, effective April 21, 2008. See: 39 N.J.R. 4887(a), 40 N.J.R. 2105(a).

Chapter 71, Grades and Standards, was readopted as R.2009 d.98, effective February 23, 2009. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. NEW JERSEY STANDARDS FOR QUALITY OF INDIVIDUAL SHELL EGGS

2:71-1.1 through 2:71-1.22 (Reserved)

Repealed by R.1978 d.402, eff. November 21, 1978.
See: 10 N.J.R. 416(a), 11 N.J.R. 2(b).

2:71-1.23 Marketing of shell eggs

(a) Any eggs which are marketed to consumers, institutional consumers or retailers shall be edible and shall conform to the standards for consumer grades AA, A or B as published in the Federal Register volume 20, number 22, February 1, 1955, part 56 subpart C, known as the Code of Federal Regulations Governing the Grading of Shell Eggs and United States Standards Grades and Weight Classes for Shell Eggs, (7 CFR part 56, subpart C) effective July 1, 1971, and any further changes in these Federal rules and regulations, after proper promulgation shall be deemed the rules and regulations of the New Jersey State Board of Agriculture:

1. Exception: restricted eggs may be marketed in accordance with the exemption provisions in the Federal Egg Products Inspection Act (Public Law 91-597) and the USDA Regulation Governing the Inspection of Eggs and Egg Products (7 CFR Part 59), and any further changes in these Federal rules and regulations, after proper promulgation shall be deemed to be the rules and regulations of the New Jersey State Board of Agriculture.

As amended, R.1975 d.358, eff. January 1, 1976.
See: 7 N.J.R. 398(a), 8 N.J.R. 3(a).

2:71-1.24 through 2:71-1.29 (Reserved)

Repealed by R.1978 d.402, eff. November 21, 1978.
See: 10 N.J.R. 416(a), 11 N.J.R. 2(b).

2:71-1.30 Certificates of grade

(a) For the inspection or classification of shell eggs or poultry and the issuance of a certificate of the grade or other classification of such product, the fees and charges for the services of department personnel shall be the same as the current fee schedule of the Agricultural Marketing Service of USDA, as amended, 7 CFR parts 55, 56, 59 and 60.

As amended, R.1970 d.119, eff. October 1, 1970.

See: 2 N.J.R. 69(c), 2 N.J.R. 89(a).

As amended, R.1977 d.339, eff. September 7, 1977.

See: 9 N.J.R. 354(b), 9 N.J.R. 451(b).

As amended, R.1978 d.115, eff. March 30, 1978.

See: 10 N.J.R. 90(a), 10 N.J.R. 182(c).

As amended, R.1978 d.402, eff. November 21, 1978.

See: 10 N.J.R. 416(a), 11 N.J.R. 2(b).

2:71-1.31 Name and address on containers

(a) The name and address of the packer or distributor shall be considered prominently designated on a container of eggs when in bold-faced type not less than 1/16 inch in height.

1. In consumer graded eggs this designation shall be preceded by the words "Produced and Packed by", "Packed and Distributed by", "Packed for and Distributed by", or "Distributed by", whichever is the correct expression of fact.

2. The street address of the packer or distributor need not be shown provided the name is listed in a current public directory.

(b) For the purposes of this section, "consumer graded eggs" are defined to mean eggs offered for sale to consumers at the retail level.

As amended, R.1978 d.402, eff. November 21, 1978.

See: 10 N.J.R. 416(a), 11 N.J.R. 2(b).

2:71-1.32 Sealing containers

All containers of loose eggs, produced in New Jersey whether graded or ungraded destined for New Jersey identified pack, shall be sealed with gummed tape at least 2½ inches wide in a manner marked with the name and address of the New Jersey producer partly on the tape and partly on the container. Only those eggs in containers thus taped and marked may be used for packing into New Jersey identified cartons.

As amended, R.1978 d.402, eff. November 21, 1978.

See: 10 N.J.R. 416(a), 11 N.J.R. 2(b).

2:71-1.33 Registering sample of label or container

A sample of any label or container on which appears the name "New Jersey" or "Jersey" or the name of any county or

“Vacuum cooled” means using a process which, through a vacuum, reduces air pressure in a large chamber, thus promoting cooling by rapid evaporation of moisture.

“Well colored” means, in the case of raspberries, that the whole surface of the berry shows a color characteristic of a mature berry.

“Well developed” means, in the case of romaine, that the plant shows normal growth and shape.

“Well filled” means, in the case of blueberries, cherry tomatoes, grape tomatoes, raspberries and strawberries, that the fruit be one-quarter to one-half inch above the rim of the cup. In the case of peas, snap beans and fall and winter squash (acorn, butternut and spaghetti), they shall be in contact with the cover.

“Well trimmed” means, in the case of asparagus, that at least two-thirds of the butt of the stalk is smoothly trimmed in a plane approximately parallel to the bottom of the container and that the butt is not stringy or frayed. In the case of endive and escarole, that the roots are neatly cut near the point of attachment of the outer leaf stems. In the case of romaine, that the stem is trimmed off close to the point of attachment of the outer leaves. In the case of cabbage, that the head shall not have more than four wrapper leaves. In the case of fennel (sweet anise), that not more than one coarse outer branch is left on each side of the bulb to protect the tender inside portion, the portion of the root remaining is not more than one-half inch in length. Tops may be either full length or cut back to not less than 10 inches except that not more than five of the outer branches may be cut back to less than 10 inches if necessary to facilitate proper packing, but not more than three of these may be on the same side of the bulb. In the case of shallots, that the tops are no longer than one quarter-inch.

“Wine” means a diverse commodity class composed of the yeast fermentation products of the must, or juice, pressed from grapes, fruit or other agricultural products. Wine is a fruit product, but fermentation produces a variety of chemical changes in the must, and so wine is not simply juice with ethanol added. Fermentation alters the must by altering the conjugation of organic acids and phenolics, by extraction and the formation of copigments and the development of an anaerobic and protective redox potential.

New Rule R.1985 d.282, eff. June 3, 1985.

See: 17 N.J.R. 765(b), 17 N.J.R. 1407(d).

Amended by R.1986 d.201, effective June 2, 1986.

See: 18 N.J.R. 588(b), 18 N.J.R. 1196(c).

Added definitions “fairly well trimmed” and “mixed colors”; amended “fairly well filled” and “tight”.

Amended by R.1987 d.89, effective February 2, 1987.

See: 18 N.J.R. 2347(a), 19 N.J.R. 287(a), 19 N.J.R. 355(a).

Hydrocooled amended to 32°F from 34°F.

Amended by R.1987 d.442, effective November 2, 1987.

See: 19 N.J.R. 1593(c), 19 N.J.R. 1987(a).

Added definitions “well colored” and “well filled”.

Amended by R.1988 d.97, effective March 7, 1988.

See: 19 N.J.R. 2327(b), 20 N.J.R. 525(a).

Added text to “fairly tight” and added definitions “Well developed” and “Well trimmed”.

Amended by R.1988 d.370, effective August 1, 1988.

See: 20 N.J.R. 953(a), 20 N.J.R. 1871(a).

Amended “fairly tight” and “fairly well filled”.

Amended by R.1989 d.234, effective April 6, 1989.

See: 21 N.J.R. 227(a), 21 N.J.R. 1118(b).

Added definition of “fairly clean” regarding shallots. Expanded definitions of several words and terms as they apply to newly added fruits and vegetables to Jersey Fresh program participation.

Amended by R.1990 d.354, effective July 16, 1990.

See: 22 N.J.R. 1296(a), 22 N.J.R. 2140(b).

Added definitions of “Application of tolerances” and “tolerances”; expanded cases in definitions of “fairly tight” and “well filled”.

Amended by R.1992 d.374, effective October 5, 1992.

See: 24 N.J.R. 2318(b), 24 N.J.R. 3511(b).

Amended by R.1994 d.485, effective September 19, 1994.

See: 26 N.J.R. 2831(a), 26 N.J.R. 3828(a).

Amended by R.2000 d.380, effective September 18, 2000.

See: 32 N.J.R. 2218(a), 32 N.J.R. 3391(a).

In “Application of tolerances”, inserted references to bok choy and cactus; in “Tight”, substituted a reference to sweet corn for a reference to green corn, inserted a reference to bok choy, and deleted “well” following “sufficiently”; and in “Well filled”, inserted a reference to grape tomatoes.

Amended by R.2003 d.434, effective November 3, 2003.

See: 35 N.J.R. 2974(a), 35 N.J.R. 5060(a).

Added “Fairly uniform in color” and “Fairly well colored”.

Amended by R.2004 d.422, effective November 15, 2004.

See: 36 N.J.R. 2319(a), 36 N.J.R. 5088(b).

Added “Jersey Fresh Milk”, “Jersey Fresh Flavored Milk”, “Licensed packer”, “Made with Jersey Fresh Milk”, “Made with Premium Jersey Fresh Milk” and “Producer”.

Amended by R.2005 d.329, effective October 3, 2005.

See: 37 N.J.R. 2163(a), 37 N.J.R. 3809(c).

Added definition “Wine”.

Amended by R.2009 d.296, effective October 5, 2009.

See: 41 N.J.R. 1296(a), 41 N.J.R. 3794(a).

In definition “Fairly well colored”, inserted “and means, in the case of eggplant (fresh for processing), that it has a fairly good characteristic for the variety, except that streaks of green color, that does not materially detract from the appearance, shall be permitted”.

2:71-2.7 Penalties

(a) Any licensed packer using “logo” containers for products other than those covered by these rules or any unlicensed packer using “logo” packages for any product shall be subject to a penalty of not more than \$50.00 for the first offense and not more than \$100.00 for each subsequent offense, except for violations of N.J.S.A. 4:10-5 which penalty shall be \$50.00.

(b) After the second violation of any part of this subchapter of the same regulated product packed by the same licensed packer during the same calendar year, the license to pack under the Jersey Fresh Quality Grading program will be revoked for the remainder of the license year.

(c) Any licensed producer using “logo” containers for products other than those covered by this chapter or any unlicensed producer using “logo” packages for any product shall be subject to a penalty of not more than \$50.00 for the first offense and not more than \$100.00 for each subsequent offense, except for violations of N.J.S.A. 4:10-5, which penalty shall be \$50.00.

(d) After the second violation of any part of this subchapter by the same licensed producer during the same calendar year, the license to pack under the Jersey Fresh

Quality Grading program will be revoked for the remainder of the license year.

(e) Any entity licensed to transfer ownership of containers bearing the "logo" which violates any part of the regulations shall be subject to a penalty of not more than \$50.00 for the first offense and revocation of license for a subsequent offense, except for violators of N.J.S.A. 4:10-5 which the penalty shall be \$50.00.

(f) The Division of Marketing and Development shall make an initial determination as to whether to deny an initial license, or revoke a license as provided in (a) through (e) above.

(g) Any applicant who is aggrieved by the determination of the Division of Marketing and Development pursuant to (f) above shall, upon written request transmitted to the Department within 20 days of the license denial, or notice of intent to revoke a license, be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Administrative Procedure Rules, N.J.A.C. 1:1.

1. Requests for hearings shall be sent to Alfred Murray, Director, Division of Marketing and Development, N.J. Department of Agriculture, P.O. Box 330, Trenton, New Jersey 08625-0330

(h) The State Board of Agriculture shall make a final determination as to whether to deny or revoke a license following a hearing as provided in (g) above.

(i) Orders for penalties or to enjoin continuing violations may be enforced by summary action brought in the name of the Department in Superior Court or Municipal Court.

(j) Upon revocation of a license, a producer may reapply for a license for the next license year.

New Rule R.1985 d.282, effective June 3, 1985.

See: 17 N.J.R. 765(b), 17 N.J.R. 1407(d).

Amended by R.1986 d.201, effective June 2, 1986.

See: 18 N.J.R. 588(b), 18 N.J.R. 1196(c).

Deleted "Jersey Fresh" and added text "Quality Grading".

Amended by R.1987 d.89, effective February 2, 1987.

See: 18 N.J.R. 2347(a), 19 N.J.R. 287(a), 19 N.J.R. 355(a).

Added (c) and renumbered (c)-(d) as (d)-(e).

Amended by R.2004 d.422, effective November 15, 2004.

See: 36 N.J.R. 2319(a), 36 N.J.R. 5088(b).

Added (c), (d), and (f) through (j), recodified existing (c) as (e).

Amended by R.2009 d.296, effective October 5, 2009.

See: 41 N.J.R. 1296(a), 41 N.J.R. 3794(a).

In (c), substituted "this chapter" for "these rules" and "producer" for "packer" following "unlicensed"; and inserted a comma following "N.J.S.A. 4:10-5".

2:71-2.8 (Reserved)

Repealed by R.2009 d.296, effective October 5, 2009.

See: 41 N.J.R. 1296(a), 41 N.J.R. 3794(a).

Section was "Asparagus for canning or freezing".

2:71-2.9 (Reserved)

Repealed by R.2009 d.296, effective October 5, 2009.

See: 41 N.J.R. 1296(a), 41 N.J.R. 3794(a).

Section was "Diameter classifications".

2:71-2.10 (Reserved)

Repealed by R.2009 d.296, effective October 5, 2009.

See: 41 N.J.R. 1296(a), 41 N.J.R. 3794(a).

Section was "Definition of terms".

2:71-2.11 (Reserved)

Repealed by R.2009 d.296, effective October 5, 2009.

See: 41 N.J.R. 1296(a), 41 N.J.R. 3794(a).

Section was "Grade classifications of asparagus spears".

2:71-2.12 (Reserved)

Repealed by R.2009 d.296, effective October 5, 2009.

See: 41 N.J.R. 1296(a), 41 N.J.R. 3794(a).

Section was "Asparagus spears described and permitted in N.J. No. 1 grade".

2:71-2.13 (Reserved)

Repealed by R.2009 d.296, effective October 5, 2009.

See: 41 N.J.R. 1296(a), 41 N.J.R. 3794(a).

Section was "Procedure for loads received after severe wind and rain storm".

2:71-2.14 (Reserved)

Repealed by R.2009 d.296, effective October 5, 2009.

See: 41 N.J.R. 1296(a), 41 N.J.R. 3794(a).

Section was "Asparagus spears described and permitted in N.J. No. 2 grade".

2:71-2.15 (Reserved)

R.1970 d.20, eff. Jan. 27, 1970.

See: 2 N.J.R. 12(a); 2 N.J.R. 29(b).

Repealed by R.2009 d.296, effective October 5, 2009.

See: 41 N.J.R. 1296(a), 41 N.J.R. 3794(a).

Section was "Function and need for unrestricted sampling of asparagus for processing".

2:71-2.16 (Reserved)

R.1970 d.20, effective Jan. 27, 1970.

See: 2 N.J.R. 12(a); 2 N.J.R. 29(b).

Repealed by R.2009 d.296, effective October 5, 2009.

See: 41 N.J.R. 1296(a), 41 N.J.R. 3794(a).

Section was "Unrestricted sampling; definition".

2:71-2.17 (Reserved)

R.1970 d.20, effective Jan. 27, 1970.

See: 2 N.J.R. 12(a); 2 N.J.R. 29(b).

Repealed by R.2009 d.296, effective October 5, 2009.

See: 41 N.J.R. 1296(a), 41 N.J.R. 3794(a).

Section was "Equipment and personnel required".

2:71-2.18 Vine ripened tomatoes

(a) "Vine ripened" means tomatoes have been left on the plant until the surface of the flesh of each tomato has achieved some discernable degree of pink or red color at the time of harvest and have not been treated with ethylene gas.

(b) Tomatoes labeled with the term "vine ripened" shall be considered mislabeled unless the surface of the flesh of each tomato has attained some discernable degree of pink or red color at the time of harvest and has not been treated with ethylene gas.

(c) Any person labeling tomatoes as "vine ripened" which have not met the standards set forth in (a) above shall be subject to a penalty of not more than \$50.00 for the first offense and not more than \$100.00 for each subsequent offense.

1. Each improperly labeled carton shall be considered a separate offense.

(d) The Division of Marketing and Development shall make an initial determination as to whether tomatoes are improperly labeled as "vine ripened."

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

1. Requests for hearings shall be sent to Alfred Murray, Director, Division of Marketing and Development, N.J. Department of Agriculture, PO Box 330, Trenton, New Jersey 08625-0330.

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

(g) Orders for penalties or to enjoin continuing violations may be enforced by summary action brought in the name of the Department in Superior Court or Municipal Court.

New Rule by R.2005 d.329, effective October 3, 2005.

See: 37 N.J.R. 2163(a), 37 N.J.R. 3809(c).

Section was "Reserved."

2:71-2.19 through 2:71-2.25 (Reserved)

2:71-2.26 Requests; charges

Requests may be made of the Department by producers, dealers, shippers, processors, brokers, retailers or other commercial parties to a transaction involving fruits and vegetables to have the fruits or vegetables inspected or graded and certified on official certificates by qualified employees of the Department. A charge shall be made for such services. Such charge shall be paid by the requestor of such services.

as an official emblem for identifying New Jersey bred horses and 4-H market lambs.

(b) Only those persons, firms, partnerships, corporations or associations licensed to use the Jersey Bred logo shall be permitted to attach or have it imprinted upon any documents related to their horses and 4-H market lambs or to employ its use in advertising or in any manner whatsoever. Layout of proposed advertising to be used for the marketing of Jersey Bred horses and 4-H market lambs shall be submitted for approval by the Division of Marketing and Development, New Jersey Department of Agriculture, in advance of their manufacture and use.

(c) Any person, firm, partnership, corporation or association wishing to employ the Jersey Bred logo to be used in marketing New Jersey produced horses and 4-H market lambs shall make application to the New Jersey Department of Agriculture for a license to do so. The application shall be made in writing, upon a form provided by the Department for this purpose. The application shall reveal the name and address of the user, the type of animal for which the user is seeking a license and other such information as is deemed necessary for enforcement of the Jersey Bred program. The Department will hold confidential any information provided in the application which constitutes proprietary commercial or financial information, or is otherwise protected from disclosure under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., subject to the limitations set forth therein.

(d) All applications approved for issuance of license shall have the license granted for the period of one year commencing July 1. Licenses shall be renewed annually upon application filed with the Department 60 days prior to the date of July 1.

(e) A fee of \$30.00 shall accompany the application form and shall be made payable to the New Jersey Farm Products Publicity Fund. If an applicant is deemed ineligible, the fee shall be refunded.

(f) When a license holder discontinues use of the Jersey Bred logo, fails to renew his or her license when required or has his or her license revoked, he or she shall be prohibited from its use in any manner, including, but not limited to, stationery, forms, advertising on billboards or other signs or on trucks or car panels.

(g) The configuration of the Jersey Bred Logo is as follows:



(h) All horses and 4-H market lambs marketed under the "logo" program shall be produced in New Jersey under the conditions set forth in N.J.A.C. 2:71-6.4 and 6.5.

(i) Any licensed producer using the Jersey Bred logo for horses and 4-H market lambs without satisfying the requirements set forth in N.J.A.C. 2:71-6.4 and 6.5, any unlicensed producer using the Jersey Bred logo, or anyone violating any provision of N.J.S.A. 4:10-14 shall be subject to a penalty of not more than \$50.00 for the first offense and not more than \$100.00 for each subsequent offense, except for violations of N.J.S.A. 4:10-5 which penalty shall be \$50.00.

(j) After the second violation of any part of this subchapter by the same licensed producer during the same calendar year, the license to use the Jersey Bred logo shall be revoked for the remainder of the license year. A preliminary determination of revocation made by the Department shall be reviewed and approved by the State Board.

(k) Orders for penalties or to enjoin continuing violations may be enforced by summary action brought in the name of the Department in Superior Court or Municipal Court.

(l) Upon revocation of a license, a producer may reapply for a license for the next license year.

Amended by R.2009 d.98, effective April 6, 2009.
See: 40 N.J.R. 6261(a), 41 N.J.R. 1392(a).
Updated the Jersey Bred logo in (g).

2:71-6.4 Horses

(a) A Jersey Bred pleasure horse shall meet all requirements set forth in N.J.A.C. 2:34-2.1(b).

(b) A Jersey Bred Standardbred shall meet all requirements set forth in N.J.A.C. 2:32-2.2.

(c) A Jersey Bred Thoroughbred shall meet all requirements set forth in N.J.A.C. 13:70-6.53.

2:71-6.5 4-H market lambs

All 4-H market lambs born in the State of New Jersey will be eligible for the use of the Jersey Bred logo as long as the ewe has been in the State for the last trimester (50 days) of her pregnancy.

SUBCHAPTER 7. "JERSEY GROWN" LOGO

2:71-7.1 Scope and purpose

(a) A New Jersey farmer, grower or producer of agricultural or horticultural products is permitted to make application to the New Jersey Department of Agriculture for the use of the "Jersey Grown" logo if they satisfy the following:

1. A New Jersey producer of nursery stock or plant material, who is certified pursuant to N.J.A.C. 2:16 to sell

or distribute nursery stock or plant material and who complies with the requirements set forth in 2:71-7.4;

2. A New Jersey grower of cut Christmas trees who complies with the requirements set forth in N.J.A.C. 2:71-7.5;

3. A New Jersey grower of turfgrass sod who complies with the requirements set forth in N.J.A.C. 2:16-7 and 2:71-7.6;

4. A New Jersey firewood producer who complies with the requirements set forth in N.J.A.C. 13:47C-3.1 and 2:71-7.7; or

5. A New Jersey sunflower seed (not for human consumption) producer who complies with the requirements set forth in N.J.A.C. 2:71-7.8.

Amended by R.2006 d.424, effective December 4, 2006.

See: 38 N.J.R. 3345(a), 38 N.J.R. 4994(a).

Added final sentence.

Repeal and New Rule, R.2009 d.296, effective October 5, 2009.

See: 41 N.J.R. 1296(a), 41 N.J.R. 3794(a).

Section was "Scope and purpose".

2:71-7.2 Definitions

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

"Agriculture" means the production of plants and animals useful to man, including all forms of farm products and farm production.

"Certificate" means a document authorized or prepared by a duly authorized Federal or State regulatory official that affirms, declares, or verifies that an article, nursery stock, plant, product, shipment or any other officially regulated article meets phytosanitary (quarantine), nursery inspection, pest freedom, plant registration or certification, or other set of legal requirements (N.J.S.A. 4:7-15 et seq.).

"Certification" means the act, by a duly authorized regulatory official of the Department, of affirming, declaring, or verifying compliance with nursery inspection, pest freedom, plant registration or certification, or any other set of legal requirements.

"Cut Christmas tree" means sheared stock of the coniferous species which are normally cut and marketed as Christmas trees or holiday trees and include the following species:

1. Leyland Cypress (*Cupressocyparis Leylandii*);
2. Douglas Fir (*Pseudotsuga Menziesii*);
3. Balsam Fir (*Abies Balsamea*);
4. Canaan Fir (*Abies Balsamea* var. *Phanerolepis*);
5. Red Fir (*Abies Magnifica*);
6. White Fir (*Abies Concolor*);

7. Fraser Fir (*Abies Fraseri*);
8. Grand Fir (*Abies Grandis*);
9. Noble Fir (*Abies Procera*);
10. White Spruce (*Picea Glauca*);
11. Blue Spruce (*Picea Pungens*);
12. Norway Spruce (*Picea Abies*);
13. Eastern Red Cedar (*Juniperus Virginiana*);
14. Red Pine (*Pinus Resinosa*);
15. White Pine (*Pinus Strobus*);
16. Southwestern White Pine (*Pinus Strobiformis*);
17. Virginia Pine (*Pinus Virginiana*); and
18. Scotch Pine (*Pinus Sylvestris*).

"Grower" means, but is not limited to, any person who raises, grows or propagates cut Christmas trees or turfgrass sod, whether for profit or other reasons, or whether outdoors or indoors.

"Nursery" means any location where nursery stock is grown, propagated, stored, or sold; or any location from which nursery stock is distributed direct to a customer.

"Nursery Certificate" is a document issued by the Department indicating that the nursery stock was inspected pursuant to N.J.S.A. 4:7-15 et seq. and certified to be apparently free of dangerously injurious insects, highly invasive weed plants and plant diseases. The certificate is valid for one calendar year or until a subsequent inspection finds infestation of dangerously injurious plant pests or diseases.

"Nursery stock" means all plants, trees, shrubs, and vines grown for sale, as well as grafts, cuttings, and buds and other parts of plants that may be sold for propagation, whether cultivated or wild; but shall not include herbaceous annuals or plants, flowers, vines or cuttings grown under glass and commonly known as florists' stock.

"Plant material" includes any part of a plant, tree, aquatic plant, plant product, plant material, shrub, vine, fruit, rhizome, vegetable, seed, bulb, stolon, tuber, corm, pip, cutting, scion, bud, graft, or fruit pit.

"Plant pest" includes, but is not limited to: any pest of plants, agricultural commodities, crop seed, farm products, horticultural products, nursery stock, or non-cultivated plants. This includes, but is not limited to: insects, snails, nematodes, fungi, viruses, bacterium, microorganisms, mycoplasma like organisms, weeds, plants, or parasitic higher plants.

"Producer" means a farmer who raises, grows, propagates or maintains, for profit or other reasons, outdoors or indoors, any horticultural product, plant material or nursery stock in New Jersey.

“Secretary” means the Secretary of the State of New Jersey Department of Agriculture or his or her designee.

“Sell” means an offer for sale, expose for sale, possess for sale, exchange, barter, or trade.

Amended by R.2006 d.424, effective December 4, 2006.

See: 38 N.J.R. 3345(a), 38 N.J.R. 4994(a).

Added definition “Cut Christmas tree”; in definition “Grower”, inserted “cut Christmas trees, whether” and “or whether” and deleted “, any horticultural product, nursery stock, or plant” from the end; and rewrote definition “Producer”.

Amended by R.2009 d.296, effective October 5, 2009.

See: 41 N.J.R. 1296(a), 41 N.J.R. 3794(a).

In definition “Grower”, deleted a comma following “grows”, and inserted “or turfgrass sod”.

2:71-7.3 Use of the “Jersey Grown” logo

(a) The New Jersey Department of Agriculture approves the use of “Jersey Grown” in conjunction with the New Jersey map symbol under provisions of N.J.S.A. 4:10-5 and 4:10-15 as an official emblem for identifying New Jersey produced plant material, turfgrass sod, firewood, sunflower seeds (not for human consumption) and cut Christmas trees.

(b) Persons, firms, partnerships, corporations or associations must first obtain a valid nursery certificate, issued by the Division of Plant Industry pursuant to N.J.A.C. 2:16, before applying to utilize the “Jersey Grown” logo on plant material or nursery stock. Persons, firms, partnerships, corporations or associations utilizing the “Jersey Grown” logo on cut Christmas trees must be licensed in accordance with this section and comply with the requirements of N.J.A.C. 2:71-7.5. Persons, firms, partnerships, corporations or associations utilizing the “Jersey Grown” logo on turfgrass sod must be licensed in accordance with this section and comply with the requirements of N.J.A.C. 2:71-7.6. Persons, firms, partnerships, corporations or associations utilizing the “Jersey Grown” logo on firewood must be licensed in accordance with this section and comply with the requirements of N.J.A.C. 13:47C-3.1 and 2:71-7.7. Persons, firms, partnerships, corporations or associations utilizing the “Jersey Grown” logo on sunflower seeds (not for human consumption) must be licensed in accordance with this section and comply with the requirements of N.J.A.C. 2:71-7.8. No nursery certificate is needed for cut Christmas trees, turfgrass sod, firewood or sunflower seeds (not for human consumption).

(c) Only those persons, firms, partnerships, corporations or associations licensed to use the “Jersey Grown” logo shall be permitted to attach or have it imprinted upon any documents related to their nursery stock, plant material, turfgrass sod, firewood, sunflower seeds (not for human consumption) or cut Christmas trees or to employ its use in advertising or in any manner whatsoever. Layout of proposed advertising to be used for the marketing of “Jersey Grown” plants and nursery stock shall be submitted for approval by the Division of Marketing and Development, New Jersey Department of Agriculture, in advance of their manufacture and use.

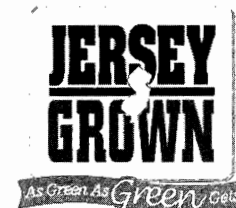
(d) Any person, firm, partnership, corporation or association wishing to employ the “Jersey Grown” logo in marketing New Jersey produced plant materials, nursery stock, turfgrass sod, firewood, sunflower seeds (not for human consumption) and cut Christmas trees shall make application to the New Jersey Department of Agriculture for a license to do so. The application shall be made in writing, upon a form provided by the Department for this purpose. The application shall reveal the name, address and nursery certificate of the user, the type of plant material, nursery stock or cut Christmas tree for which the user is seeking a license and other such information as is deemed necessary for enforcement of the “Jersey Grown” program. The Department will hold confidential any information provided in the application, which constitutes proprietary commercial or financial information, or is otherwise protected from disclosure under the Open Public Records Act, N.J.S.A. 4:1A-1 et seq., subject to the limitations set forth therein.

(e) All applications approved for issuance of license shall have the license granted for the period of one year commencing July 1. Licenses shall be renewed annually upon application filed with the Department 60 days prior to the date of July 1.

(f) A non-refundable fee of \$30.00 shall accompany the application form and shall be made payable to the New Jersey Farm Products Publicity Fund.

(g) When a license holder discontinues use of the Jersey Grown logo, fails to renew his license when required or has his license revoked, he shall be prohibited from its use in any manner, including, but not limited to, stationery, forms, advertising on billboards or other signs or on trucks or car panels.

(h) The configuration of the Jersey Grown logo is as follows:



(i) All nursery stock marketed under the logo program shall be propagated and/or be grown in New Jersey for a period of at least six months under the conditions set forth in this section and N.J.A.C. 2:71-7.4. All cut Christmas trees marked under the logo program shall be propagated and/or be grown in New Jersey for a period of at least four years prior to retail sale under the conditions set forth in N.J.A.C. 2:71-7.5. All turfgrass sod marketed under the logo shall be grown in New Jersey for a period of at least eight months prior to retail sale under the conditions set forth in N.J.A.C. 2:71-7.6. All firewood marketed under the program shall be harvested from trees grown in New Jersey private forestlands managed under an approved woodland management plan. All sun-

flower seeds (not for human consumption) marketed under the program shall be grown in New Jersey under the conditions set forth in N.J.A.C. 2:71-7.8.

(j) Any licensed producer using the "Jersey Grown" logo for nursery stock or plant material without satisfying the requirements set forth in this section and N.J.A.C. 2:71-7.4, any licensed grower using the "Jersey Grown" logo for cut Christmas trees without satisfying the requirements set forth in this section and N.J.A.C. 2:71-7.5, any licensed grower using the "Jersey Grown" logo for turfgrass sod without satisfying the requirements set forth in this section and N.J.A.C. 2:71-7.6, any licensed producer using the "Jersey Grown" logo for firewood, any licensed producer using the "Jersey Grown" logo for sunflower seeds (not for human consumption) without satisfying the requirements set forth in this section and N.J.A.C. 2:71-7.7, any unlicensed or uncertified producer or grower using the "Jersey Grown" logo or anyone violating any provision of N.J.S.A. 4:10-14 shall be subject to a penalty of not more than \$50.00 for the first offense and not more than \$100.00 for each subsequent offense, except for violations of N.J.S.A. 4:10-5, which penalty shall be \$50.00.

(k) After the second violation of any part of this subchapter by the same licensed producer or grower during the same calendar year, the license to use the "Jersey Grown" logo shall be revoked for the remainder of the license year.

(l) The Division of Marketing and Development shall make an initial determination as to whether to deny an initial license, or revoke a license as provided in subsections (j) and (k) of this section.

(m) Any applicant who is aggrieved by the determination of the Division of Marketing and Development pursuant to (l) above, shall, upon written request transmitted to the Department within 20 days of the license denial, or notice of intent to revoke a license, be afforded the opportunity for a hearing thereon 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.

1. Requests for hearings shall be sent to Alfred Murray, Director, Division of Marketing and Development, N.J. Department of Agriculture, PO Box 330, Trenton, New Jersey 08625-0330.

(n) The State Board of Agriculture shall make a final determination as to whether to deny or revoke a license following a hearing as provided in (m) above.

(o) Orders for penalties or to enjoin continuing violations may be enforced by summary action brought in the name of the Department in Superior Court or Municipal Court.

(p) Upon revocation of a license, a producer or grower may reapply for a license for the next license year.

Amended by R.2006 d.424, effective December 4, 2006.
See: 38 N.J.R. 3345(a), 38 N.J.R. 4994(a).

In (a), inserted "and cut Christmas trees"; in (b), (c), (d) and (j), inserted quotation marks around "Jersey Grown" throughout; in (b), inserted "on plant material or nursery stock" and added last sentence; in (c), inserted "nursery stock," and "or cut Christmas trees"; in (d), deleted "and" following "plant materials," inserted "and cut Christmas trees", substituted a comma for "or" following "plant material" and inserted "or cut Christmas tree"; in (i), deleted quotation marks around "logo" and added last sentence; in (j), inserted "any licensed grower using the 'Jersey Grown' logo for cut Christmas trees without satisfying the requirements set forth in this section and N.J.A.C. 2:71-7.5," and "or grower"; and in (k) and (p), inserted "or grower".

Amended by R.2009 d.98, effective April 6, 2009.

See: 40 N.J.R. 6261(a), 41 N.J.R. 1392(a).

Updated the Jersey Grown logo in (h).

Amended by R.2009 d.296, effective October 5, 2009.

See: 41 N.J.R. 1296(a), 41 N.J.R. 3794(a).

In (a) and (c), inserted "turfgrass sod, firewood, sunflower seeds (not for human consumption)"; in (d), inserted "turfgrass sod, firewood, sunflower seeds (not for human consumption)"; rewrote (b) and (j); and in (i), inserted the last three sentences.

Amended by R.2010 d.128, effective June 21, 2010.

See: 42 N.J.R. 8(a), 42 N.J.R. 1139(a).

In (i), deleted "or from State lands in accordance with the New Jersey Forest Service Commercial Firewood Program" following "plan".

2:71-7.4 Plant material and nursery stock

(a) Pursuant to the authority of N.J.A.C. 1:30-2.2, the Department hereby adopts and incorporates by reference, the American National Standards Institute, "American Standard for Nursery Stock," ANSI Z60.1-1996 as the standard for the nursery stock. All nursery stock shall meet or exceed the nursery stock and plant standards set forth the American Nursery and Landscape Association ANSI Z60.1-1996.

1. Copies may be obtained by contacting the American Nursery and Landscape Association, 1250 I Street, N.W., Suite 500, Washington, DC 20005.

2. A copy is on file in the Director's office—Division of Plant Industry, New Jersey Department of Agriculture, PO Box 330, Trenton, New Jersey 08625-0330.

(b) All nursery stock marketed under this program shall be maintained free of injurious insects and plant diseases. Pursuant to the authority of N.J.A.C. 1:30-2.2, the Department hereby adopts and incorporates by reference, the Rutgers Cooperative Extension publication "Pest Control Recommendations for Shade Tree and Commercial Nursery Crops" (E036T) for use as a guide by New Jersey plant and nursery stock producers to ensure freedom from injurious plant pests and diseases.

1. Copies of this publication may be purchased from Rutgers, The State University of New Jersey, Publications Distribution Center, RCE, Cook College, 57 Dudley Road, New Brunswick, NJ 08901-8520. In addition, the publication is available free of charge on the Rutgers Cooperative Extension website at <http://www.rce.rutgers.edu>.

2. A copy is on file in the Director's office—Division of Plant Industry, New Jersey Department of Agriculture, PO Box 330, Trenton, New Jersey 08625-0330.

(c) All nurseries and plant producers shall be certified by the Department of Agriculture, Division of Plant Industry in accordance with N.J.A.C. 2:16 and 2:18-1.1 through 1.6.

(d) All nursery stock shall be propagated and/or be grown in New Jersey for a period of at least six months prior to retail sale.

2:71-7.5 Cut Christmas trees

(a) Pursuant to the authority of N.J.A.C. 1:30-2.2, the Department hereby adopts and incorporates by reference, the "United States Standards for Grades of Christmas Trees" §51.3085 through 51.3106, effective October 30, 1989 and reprinted January 1997, as amended and supplemented, as the standard for cut Christmas trees. All cut Christmas trees utilizing the "Jersey Grown" logo shall meet or exceed the standards set forth at §51.3087 for grade "U.S. No. 1".

(b) Copies of the "United States Standards for Grades of Christmas Trees" may be obtained from the following:

1. U.S. Department of Agriculture, Agricultural Marketing Service, Fresh Products Branch Standardization Section, Fruit and Vegetable Programs, 1400 Independence Ave, SW Room 2065-S, Stop Code 0240, Washington, D.C. 20250-0240;
2. Online at the Agricultural Marketing Service website: <http://www.ams.usda.gov/standards/christtr.pdf>;
3. The Director's office - Division of Marketing and Development, New Jersey Department of Agriculture, P.O. Box 330, Trenton, New Jersey 08625-0330; or
4. The Executive Secretary's office - New Jersey Christmas Tree Growers Association, P.O. Box 211, Stockton, NJ 08559.

(c) Leyland Cypress, Norway Spruce, Southwestern White Pine and Canaan Fir, which are not listed in the United States Standards for Grades of Christmas Trees, shall comply with all listed standards with the exception of the density standards, defined at §51.3097, which shall be as follows:

1. Heavy Density:
 - i. Norway Spruce = 80 to 100 percent;
 - ii. Leyland Cypress = 90 to 100 percent;
 - iii. Southwestern White Pine = 90 to 100 percent; and
 - iv. Canaan Fir = 70 to 100 percent;
2. Medium Density:
 - i. Norway Spruce = 60 to 80 percent;
 - ii. Leyland Cypress = 70 to 90 percent;
 - iii. Southwestern White Pine = 70 to 90 percent; and
 - iv. Canaan Fir = 50 to 70 percent; and
3. Light Density:
 - i. Norway Spruce = 40 to 60 percent;
 - ii. Leyland Cypress = 50 to 70 percent;
 - iii. Southwestern White Pine = 50 to 70 percent; and
 - iv. Canaan Fir = 40 to 50 percent.

(d) In addition to the requirements set forth in (a) above, all cut Christmas trees shall be grown in New Jersey for a period of at least four years prior to retail sale.

New Rule, R.2006 d.424, effective December 4, 2006.
See: 38 N.J.R. 3345(a), 38 N.J.R. 4994(a).

2:71-7.6 Turfgrass sod

(a) All turfgrass sod marketed under the program shall meet or exceed the standards set forth at N.J.A.C. 2:16-7, Turfgrass Sod, or shall meet the conditions set forth in (b) below.

(b) Growers who do not meet or exceed the standards set forth in N.J.A.C. 2:16-7 solely because the turfgrass species and varieties they wish to utilize are not yet approved by the Turfgrass Extension Specialist, SEBS, Rutgers, the State University, must obtain Department approval prior to planting. To be eligible for Department approval, all turfgrass species and varieties must be recognized and recommended by appropriate specialists at other universities as suitable for growing under New Jersey conditions. Plantings approved by the Department will be considered pilot projects for a period not to exceed five years.

(c) Licensed individuals or entities must satisfy all the conditions set forth in N.J.A.C. 2:71-7.3 and N.J.S.A. 4:10-5 and 4:10-14 and pay a \$3.00 inspection fee for each acre entered.

New Rule, R.2009 d.296, effective October 5, 2009.
See: 41 N.J.R. 1296(a), 41 N.J.R. 3794(a).

2:71-7.7 Firewood

(a) All firewood marketed under the program shall meet or exceed the New Jersey Office of Weights and Measures standards set forth at N.J.A.C. 13:47C-3.1, Cordwood and Firewood.

(b) All firewood marketed under the program shall be harvested from trees grown in New Jersey from private forestlands managed under a forest management plan approved by a Forester, certified by the Society of American Foresters or by another certification entity which can demonstrate standards of comparable rigor.

(c) All firewood marketed under the program shall conform to the requirements set forth at N.J.A.C. 2:20, Quarantines, to ensure that firewood is not moved outside regulated areas unless accompanied by a valid certificate or limited permit issued by the United States Department of Agriculture, Animal and Plant Health Inspection Service or the Department.

(d) Licensed individuals or entities must satisfy all the conditions set forth in N.J.A.C. 2:71-7.3 and N.J.S.A. 4:10-5 and 4:10-14.

New Rule, R.2009 d.296, effective October 5, 2009.
See: 41 N.J.R. 1296(a), 41 N.J.R. 3794(a).
Amended by R.2010 d.128, effective June 21, 2010.
See: 42 N.J.R. 8(a), 42 N.J.R. 1139(a).
Rewrote (b).

2:71-7.8 Sunflower seeds (not for human consumption)

(a) All sunflower seeds marketed under the program shall meet the following standards:

1. Purity: Minimum 98 percent;
2. Test weight: Minimum 27 lbs/Bu;
3. Moisture: Maximum 10 percent;
4. Heat damage: Maximum two percent;
5. Insect damaged seed: Maximum five percent; and
6. Other factors: No mold, objectionable odor or live infestation present at time of delivery and shall not contain any prohibited noxious weed seed pursuant to N.J.A.C. 2:21-4.1.

New Rule, R.2009 d.296, effective October 5, 2009 (operative March 31, 2010).

See: 41 N.J.R. 1296(a), 41 N.J.R. 3794(a).

Amended by R.2010 d.128, effective June 21, 2010.

See: 42 N.J.R. 8(a), 42 N.J.R. 1139(a).

In (a)4, substituted "two" for "five" and deleted "and" from the end; added new (a)5; recodified former (a)5 as (a)6; and in (a)6, deleted "; US No. 2 or better, not for human consumption" following "delivery".

SUBCHAPTER 8. "JERSEY ORGANIC" LOGO

2:71-8.1 Scope and purpose

(a) A New Jersey "Jersey Organic" producer or handler who is certified by the Department pursuant to N.J.A.C. 2:78 to sell or distribute products identified as organic agricultural products is permitted to make application to the New Jersey Department of Agriculture for a license to use the "Jersey Organic" logo in marketing agricultural commodities.

(b) These rules will become effective and the logo identified in N.J.A.C. 2:71-8.3(h) will become available for use only after the Department becomes accredited by the United States Department of Agriculture, National Organic Program as a certifying agent pursuant to 7 CFR §205.101 et seq.

2:71-8.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings. Words of art undefined in the following paragraphs shall have the meaning attributed to them by trade usage or general usage as reflected by definition in a standard dictionary, such as Webster's.

"Agricultural commodities" means any fresh fruits, vegetables, ornamental, horticultural and floricultural products listed in N.J.A.C. 2:71-2.4.

"Certified" means an entity determined to be in compliance with the New Jersey Organic Certification Program set forth in N.J.A.C. 2:78 and which possesses a certificate from the Department designating it as a certified organic operation.

"Certifying agent" means any entity accredited by the United States Secretary of Agriculture as a certifying agent pursuant to the National Organic Program, 7 CFR Part 205.

"Crops" means a plant or part of a plant intended to be marketed as an agricultural product or fed to livestock.

"Department" means the New Jersey Department of Agriculture.

"Handler" means any person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production, except such term shall not include final retailers of agricultural products that do not process agricultural products. For the purposes of this definition, handling shall include the selling, processing or packaging of agricultural products and shall not include the sale, transportation or delivery of crops or livestock by the producer thereof to a handler.

"Livestock" means any cattle, sheep, goat, swine, poultry, or equine animals used for food or in the production of food, fiber, feed, or other agricultural-based consumer products; wild or domesticated game; or other non-plant live, except such term shall not include aquatic animals or bees for the production of food, fiber, feed, or other agricultural-based consumer products.

"Producer" means a person who engages in the business of growing or producing food, fiber, feed and other agricultural-based consumer products.

"Organic" means a labeling term that refers to any agricultural products produced in accordance with the National Organic Program, 7 CFR Part 205.

"Organic certification number" means the identification number listed on the organic certification certificate issued to the organic producer or handler.

"Retailer" means a restaurant, delicatessen, bakery, grocery store, or any retail outlet with an in-store restaurant, delicatessen, bakery, salad bar or other eat-in or carry-out service of processed or prepared raw and ready-to-eat food.

2:71-8.3 Use of the "Jersey Organic" logo

(a) The Department approves the use of "Jersey Organic" in conjunction with the New Jersey map symbol under provisions of N.J.S.A. 4:10-5 and 4:10-15 as an official emblem for identifying New Jersey produced organic products.

(b) The configuration of the "Jersey Organic" logo is as follows:



(c) Persons, firms, partnerships, corporations, cooperatives or associations must possess a valid organic certificate, issued by Department pursuant to N.J.A.C. 2:78 in order to apply for and utilize the "Jersey Organic" logo.

(d) Only those persons, firms, partnerships, corporations, cooperatives or associations licensed to use the "Jersey Organic" logo pursuant to N.J.A.C. 2:71-8.4, shall be permitted to attach or imprint it upon any documents, labels, packages or containers related to their products or to employ its use in advertising or in any manner whatsoever. Layout of proposed advertising to be used for the marketing of "Jersey Organic" agricultural products must be submitted to and approved by the Department's Division of Marketing and Development in advance of its manufacture and/or use. Advertising layouts will be evaluated based upon the following criteria:

1. The color scheme of the advertisement;
2. The font used;
3. The configuration, color, and size of the logo;
4. Placement of the logo;
5. The advertising medium used; and
6. Consistency with the wholesome image of the "Jersey Fresh" Promotional Program.

(e) When a license holder discontinues use of the "Jersey Organic" logo, fails to renew its license when required or has its license revoked, the license holder shall be prohibited from its use in any manner, including, but not limited to, stationery, forms, advertising on billboards or other signs or on trucks or car panels.

(f) All agricultural organic commodities marketed under the "Jersey Organic" logo program must comply with the specific grades and standards for each commodity as set forth at N.J.A.C. 2:71-1, 2 and 5 and meet the conditions for organic certification set forth in N.J.A.C. 2:78. Persons, firms, partnerships, corporations, cooperatives or associations are prohibited from using the "Jersey Organic" logo on any agricultural commodity that does not meet the requirements of this subchapter.

(g) All unlicensed and/or uncertified persons, firms, partnerships, corporations, cooperatives or associations shall be prohibited from using the "Jersey Organic" logo in any manner.

2:71-8.4 Licensing

(a) Any producer or handler wishing to employ the "Jersey Organic" logo shall make application to the New Jersey De-

partment of Agriculture for a license to do so. The application shall be made in writing, upon a form provided by the Department for this purpose. The application shall identify the name, address and organic certification number of the user, the commodities for which the user is seeking a license and other such information as the Department deems necessary for the enforcement of the "Jersey Organic" logo program. Applications can be obtained by contacting the Department at Director, Division of Marketing and Development, N.J. Department of Agriculture, P.O. Box 330, Trenton, New Jersey 08625-0330.

(b) All applications approved for issuance of a license shall have the license granted for the period of one year commencing April 1. Licenses shall be renewed annually upon application filed with the Department 60 days prior to April 1 of each year.

(c) A non-refundable annual fee of \$30.00 shall accompany all initial and license renewal application forms and shall be made payable to the New Jersey Farm Products Publicity Fund.

(d) The Department will hold confidential any information provided in the application which constitutes proprietary commercial or financial information, or is otherwise protected from disclosure under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., subject to the limitations set forth therein.

(e) The Division of Marketing and Development shall make an initial determination as to whether to deny an initial license or an annual license renewal pursuant to (a) and (b) above, or revoke a license as provided in N.J.A.C. 2:71-8.5(b).

2:71-8.5 Penalties

(a) Any person, firm, partnership, corporation, cooperative or association using the "Jersey Organic" logo for organic agricultural commodities without satisfying the requirements set forth in N.J.A.C. 2:78 or this subchapter, any unlicensed or uncertified producer or handler using the "Jersey Organic" logo, or anyone violating any provision of N.J.S.A. 4:10-1 et seq., shall be subject to a penalty of not more than \$50.00 for the first offense and not more than \$100.00 for each subsequent offense.

(b) After the second violation of any part of this subchapter by the same licensed person, firm, partnership, corporation, cooperative or association during the same calendar year, the license to use the "Jersey Organic" logo shall be revoked for the remainder of the license year.

1. The Division of Marketing and Development shall make an initial determination as to whether to revoke a license under this subsection.

2. Revocation of a license pursuant to this subsection does not prohibit a licensee from reapplying for a license for the next license year.

(c) Any applicant who is aggrieved by the determination of the Division of Marketing and Development pursuant to N.J.A.C. 2:71-8.4 or 8.5, upon written request as provided below, shall be afforded the opportunity for a hearing thereon 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.

1. Written requests for hearings shall be sent to:

Director, Division of Marketing and Development
N.J. Department of Agriculture
P.O. Box 330
Trenton, New Jersey 08625-0330

2. Written request for hearings must be transmitted to the Department within 20 days of the license denial or notice of intent to revoke a license.

(d) The State Board of Agriculture shall make a final determination as to whether to deny or revoke a license following a hearing as provided in (c) above.

(e) Orders for penalties or to enjoin continuing violations may be enforced by the filing of a summary proceeding brought in the name of the Department in Superior Court or Municipal Court.

sperm, larvae, and juvenile and adult stages, any of which is required to be in water during that stage of its life. This definition does not include birds and mammals.

“Department” means the New Jersey Department of Agriculture.

“Depuration” means the process of reducing the pathogenic organisms that may be present in shellfish by using a controlled environment as a treatment option.

“Farmed shellfish” means clams and/or oysters that are farm-raised and packed in New Jersey.

“Farmer” or “aquatic farmer” means any person, firm, partnership, corporation, cooperative or association who is engaged in propagating, rearing and subsequent harvesting of aquatic organisms in controlled or selected environments for economic gain within the State of New Jersey and shall include, but is not limited to, activities to intervene in the rearing process to increase production, such as stocking, feeding, transplanting and providing for protection from predators.

“Finfish” means any vertebrate aquatic organism other than mammals and birds.

“Harvester” or “commercial seafood harvester” means a person, firm, partnership, corporation, cooperative or association who is engaged in harvesting wild aquatic organisms for economic gain under strict management programs instituted by the National Oceanic Atmospheric Association National Marine Fisheries Service (NOAA Fisheries), Atlantic States Marine Fisheries Commission, and the New Jersey Department of Environmental Protection to maintain sustainable fishery resources.

“Licensed seafood commodity” or “licensed seafood commodities” means any aquatic organism that is farm-raised or wild caught and packed in New Jersey, which are the subject of a license issued by the Department pursuant to N.J.A.C. 2:71-9.4.

“Licensee” means any person, firm, partnership, corporation, cooperative or association licensed by the Department pursuant to N.J.A.C. 2:71-9.4.

“Packer” means any person, firm, partnership, corporation, cooperative or association engaged in the business of processing and packaging aquatic organisms within the State of New Jersey and distributing it to wholesalers or retailers.

“Program” means the Jersey Seafood Quality Grading Program established pursuant to this subchapter.

“Seafood” means any finfish, mollusk, crustacean, other invertebrate or aquatic vegetable produced in either freshwater or saltwater and used for human food.

“Secretary” means the Secretary of the Department of Agriculture of the State of New Jersey or his or her designee.

SUBCHAPTER 9. “JERSEY SEAFOOD” LOGO

2:71-9.1 Scope and purpose

A licensed aquatic farmer, commercial seafood harvester or packer of New Jersey seafood is permitted to make an application to the New Jersey Department of Agriculture for the use of the “Jersey Seafood” logo for the Jersey Seafood Quality Grading Program on containers of licensed seafood commodities.

2:71-9.2 Definitions

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

“Aquatic Farmer License” means the formal license issued by the Department pursuant to N.J.A.C. 2:89 for the possession and ownership of aquatic organisms by a person, firm, partnership, corporation, cooperative or association.

“Aquatic organism” means an animal or plant of any species or hybrid thereof and includes gametes, seeds, eggs,

"Shellfish" means clams, oysters, mussels and scallops that are harvested and packed in New Jersey.

"Shellfish grower" means any person, firm, partnership, corporation, cooperative or association who is engaged in propagating, rearing and subsequent harvesting of shellfish in controlled or selected environments for economic gain and shall include, but is not limited to, activities to intervene in the rearing process to increase production, such as stocking, feeding, transplanting and protection from predators.

2:71-9.3 Use of the "Jersey Seafood" Logo

(a) The Department approves the use of the "Jersey Seafood" logo as an official emblem for identifying New Jersey licensed seafood commodities.

(b) The configurations of the "Jersey Seafood" logo are as follows:



(c) Only those persons, firms, partnerships, corporations, cooperatives or associations licensed to use the "Jersey Seafood" logo shall be permitted to attach or have it imprinted upon any label, package or container related to their licensed seafood commodities, employ its use in advertising or use it in any other manner whatsoever. Layout of proposed advertising to be used for marketing the "Jersey Seafood" logo must be submitted to and approved by the Department's Division of Marketing and Development in advance of its marketing and use. Advertising layouts will be evaluated based on the following criteria:

1. The color scheme of the advertisement;
2. The font used;
3. The configuration, color, and size of the logo;
4. Placement of the logo;
5. The advertising medium used; and
6. Consistency with the wholesome image of the "Jersey Fresh" Promotional Program.

(d) Only licensed seafood commodities may be marked with the "Jersey Seafood" logo. Licensed seafood commodities may be marked using self-adhesive labels, rubber stamps or imprinted containers that identify those licensed seafood commodities as being packed under the "Jersey Seafood" logo. Markings must comply with the marking requirements in N.J.A.C. 2:71-9.5.

(e) When a licensee discontinues use of the "Jersey Seafood" logo, fails to renew its license when required or has its license revoked, the licensee shall be prohibited from its use in any manner, including, but not limited to, product labels, stamps, containers, stationery, forms, advertising on billboards or other signs or on trucks or car panels.

(f) A licensed aquatic farmer, commercial seafood harvester or packer using the "Jersey Seafood" logo for licensed seafood commodities who has not satisfied the requirements set forth in N.J.A.C. 2:71-9.4 and 9.5 shall be prohibited from using the "Jersey Seafood" logo in any manner.

(g) All unlicensed persons, firms, partnerships, corporations, cooperatives or associations shall be prohibited from using the "Jersey Seafood" logo in any manner.

2:71-9.4 Licensing

(a) Any person, firm, partnership, corporation, cooperative or association wishing to employ the "Jersey Seafood" logo must make an application to the Department for a license and registration number. The application shall be made in writing, upon a form provided by the Department for this purpose and shall contain the name and address of the user, the type of licensed seafood commodities for which the user is seeking a license and any other information the Department deems necessary for the enforcement of the Program.

(b) An annual fee of \$30.00 shall accompany each application form and shall be made payable to the "New Jersey Farm Products Publicity Fund." If an applicant is deemed ineligible the fee shall be refunded.

(c) All applications approved for issuance of licenses and registration numbers shall have the license granted for the period of one year commencing April 1. Applications for an initial license and registration number and for license and registration number renewal shall be submitted at least 20 days prior to April 1 of the license year. The Department shall approve or deny applications within 20 days after receipt of a completed application that complies with the requirements of (a) and (b) above.

(d) Interim licenses and registration numbers may be granted to qualified persons, firms, partnerships, corporations, cooperatives or associations for the remainder of the license year. The Department shall approve or deny interim applications within 20 days after receipt of a completed application that complies with the requirements of (a) and (b) above.

(e) Each licensee shall submit a report by December 31 of each license year. The report must be submitted on forms supplied by the Department and shall indicate the number of packages and/or containers packed by licensed seafood commodity under the "Jersey Seafood" logo. Failure to timely supply this report may be cause for denial or delay of licensing approval for the following licensing year.

(f) Any person, firm, partnership, corporation, cooperative or association wishing to transfer ownership of containers bearing a "Jersey Seafood" logo to another licensee shall make an application to the Department for a transfer license. The application shall be made in writing, upon a form provided by the Department. Any licensee who transfers ownership of containers, labels or stamps bearing the "Jersey Seafood" logo must supply a copy of each shipping invoice or statement to the Department within 30 days of the date of transfer.

(g) The Division of Marketing and Development shall make the initial determination as to whether to approve or deny a license application submitted pursuant to this section.

(h) The Department will hold confidential any information provided in any application submitted pursuant to this section that constitutes proprietary commercial or financial information, or is otherwise protected from disclosure under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., subject to the limitations set forth therein.

2:71-9.5 Packing requirements, packer identification and containers

(a) All containers, packages and packaging material bearing the "Jersey Seafood" logo must be new.

(b) Each container or package bearing the "Jersey Seafood" logo must include the following information imprinted in letters not less than three-eighths of an inch in height and clearly marked on the container or package:

1. The name and address of the packer;
2. The phrase "Product of U.S.A. (NJ)"; and
3. A statement indicating the method of production using either the phrase "Wild Caught" or "Farm-Raised."

(c) Live farm-raised finfish shall be graded, packed and contained as follows:

1. Live finfish must be farmed in New Jersey;
2. Farmers of live finfish must possess an Aquatic Farmer License;
3. Live finfish shall be free from visible evidence of all infections, contagious, or communicable disease and known exposure thereto for at least 30 days prior to shipment;

4. Live finfish must show good movement, clear and bright eyes, and be free of all antibiotics and chemical additives;

5. Live finfish must be transported in accordance with the following requirements:

- i. Water temperature during transport must be appropriate for the species;
- ii. Oxygen levels in the water during transport must be appropriate for the species; and
- iii. Appropriate drug withdrawal times shall be observed and records must be kept in accordance with the Recommended Management Practices for Aquatic Farms published by Rutgers University, revised March 2004, incorporated herein by reference, as amended and supplemented. A copy of this publication is available on the Department's website at: <http://www.jerseyseafood.nj.gov/aquacultureamp.pdf> or by contacting the Department's Fish and Seafood Development Program at P.O. Box 330, Trenton, New Jersey 08625. A copy of this publication is also available by contacting Rutgers Cooperative Extension, N.J. Agricultural Experiment Station, Rutgers, the State University of New Jersey, 88 Lipman Dr., New Brunswick, NJ 08901-8525; and

6. All live finfish shall be produced in accordance with the Recommended Management Practices for Aquatic Farms published by Rutgers University, revised March 2004.

(d) Whole farm-raised finfish shall be graded, packed and contained as follows:

1. Whole finfish must be farmed in New Jersey;
2. Farmers of whole finfish must possess an Aquatic Farmer License;
3. Whole finfish must show clear and bright eyes, flesh must be resilient, gills must be bright red, and odor should be fresh or briny;
4. Whole finfish must be transported in accordance with the following requirements:
 - i. Whole finfish must be packed in ice or gel packs and shipped at a temperature that does not exceed 40 degrees Fahrenheit; and
 - ii. Appropriate drug withdrawal times shall be observed and records must be kept in accordance with the Recommended Management Practices for Aquatic Farms, published by Rutgers University, revised March 2004;
5. All whole finfish shall be produced in accordance with the Recommended Management Practices for Aquatic Farms, published by Rutgers University, revised March 2004.

(e) Farmed shellfish shall be graded, packed and contained as follows:

1. All farmed shellfish must be grown out or produced in New Jersey;
2. A shellfish grower must possess an Aquatic Farmer License;
3. A shellfish grower must be in compliance with all appropriate license requirements, which may include, but are not limited to, those set forth in N.J.S.A. 50:2-1 et seq., 50:3-1 et seq., and 50:3-20.11 et seq., and N.J.A.C. 2:89-4.4, 7:25-8, 7:25A, 8:13, and 8:21-1, 2, 9, 11 and 13, as amended;
4. All farmed shellfish must be free from antibiotics and chemical additives and their shells must be whole and free of grit, sand and fouling organisms;
5. Containers holding farmed shellfish must be properly tagged in compliance with the 2005 National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Sections X .05, Shellstock Identification, and .06, Shucked Shellfish Labeling, as amended and supplemented, which is incorporated herein by reference;
6. All farmed shellfish must be handled in compliance with the following sections of the 2005 National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, as amended and supplemented, which is incorporated herein by reference:
 - i. Section VI, Shellfish Aquaculture, subsections .01, Exceptions, .02, General, and .03, Seed Shellstock only;
 - ii. Section VIII, Control of Shellfish Harvesting, subsections .01, General, and .02, Shellstock Harvesting and Handling; and
 - iii. Section XIII, Shellstock Shipping, subsections .01, Critical Control Points, and .02, Sanitation;
7. A copy of the 2005 National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish is available by contacting the Office of Seafood Division of Programs and Enforcement Policy, 200 C Street, SW (HFS-417), Washington, DC 20204. This document is also available online at <http://www.cfsan.fda.gov/~ear/nss3-toc.html>;
8. All live farmed shellfish shall be produced in accordance with the Recommended Management Practices for Aquatic Farms, published by Rutgers University, revised March 2004.

(f) Wild-caught finfish shall be graded, packed and contained as follows:

1. Finfish must be landed by a New Jersey registered vessel;

2. Finfish must be landed in accordance with all rules and regulations promulgated by the NOAA Fisheries Service, the Atlantic States Marine Fisheries Commission, and the New Jersey Department of Environmental Protection to help ensure the sustainability of the resource;

3. Finfish should show good quality as indicated by clear bright eyes, resilient flesh, bright red gills, and odor should be fresh or briny;

4. Whole/dressed finfish must be chilled as quickly as possible, packed in ice or gel packs and shipped at temperatures that do not exceed 40° Fahrenheit.

i. Ice must be made from potable water;

5. All surfaces that contact fish must be sanitized using appropriate FDA approved methods;

6. Cleaning and sanitizing schedules and procedures must be established and compliance monitored;

7. Packing must be appropriate for method of transport and product form in order to preserve quality;

8. Fillets, steaks and other cut forms must be processed under Hazard Analysis Critical Control Point (HACCP) procedures as provided by the Fish and Fisheries Products Hazards and Controls Guidance, third edition, June 2001, which is incorporated herein by reference, as amended and supplemented. This document is available online at <http://www.cfsan.fda.gov/~comm/haccp4.html>. Processing facilities must meet the requirements of local health departments; and

9. Any firm that processes finfish for human consumption must possess a wholesale food license required by N.J.S.A. 24:15-13 and N.J.A.C. 8:21-13, Rules Governing Wholesale Food Establishments.

(g) Wild Caught Bivalve molluscan shellfish shall be graded, packed and contained as follows:

1. All shellfish must be landed in New Jersey;

2. All shellfish must be harvested and packed by individuals who are in compliance with all appropriate license requirements, which may include, but are not limited to, those set forth in N.J.S.A. 50:2-1 et seq., 50:3-1 et seq., and 50:3-20.11 et seq., and N.J.A.C. 2:89-4.4, 7:25-8, 7:25A, 8:13, and 8:21-1, 2, 9, 11 and 13, as amended;

3. All shellfish must be harvested from approved, seasonally approved or special restricted waters as specified by N.J.A.C. 7:12-1, 3, and 4;

4. The shells of all shellfish must be whole, free of grit, sand and fouling organisms;

5. All shellfish must be handled in compliance with the National Shellfish Sanitation program 2005 Guide for the Control of Molluscan Shellfish;

6. Containers holding shellfish must be properly tagged in compliance with the 2005 National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, Sections X .05, Shellstock Identification, and .06, Shucked Shellfish Labeling;

7. All shellfish must be handled in compliance with the following sections of the 2005 National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish:

- i. Section VI, Shellfish Aquaculture, subsections .01, Exceptions, .02, General, and .03, Seed Shellstock;
- ii. Section VIII, Control of Shellfish Harvesting, subsections .01, General, and .02, Shellstock Harvesting and Handling; and
- iii. Section XIII, Shellstock Shipping, subsections .01, Critical Control Points, and .02, Sanitation; and

8. Any firm that processes shellfish for human consumption must possess a wholesale food license required by N.J.S.A. 24:15-13 and N.J.A.C. 8:21-13, Rules Governing Wholesale Food Establishments.

(h) Crustaceans shall be graded, packed and contained as follows:

1. Lobsters and crabs must be harvested in New Jersey in accordance with all rules and regulations promulgated by the National Marine Fisheries Service, the Atlantic States Marine Fisheries Commission and the New Jersey Department of Environmental Protection (N.J.A.C. 7:25) to help ensure the sustainability of the resource;

2. Live lobsters and crabs should be vigorous and show good leg movement;

3. Lobsters and crabs should be kept moist and cool;

4. Lobster temperatures should remain above 32 degrees Fahrenheit and below 50 degrees Fahrenheit to maintain quality;

5. Lobsters and crabs should be packed right-side up;

6. Packing must be appropriate for method of transport; and

7. Any firm that processes crustaceans for human consumption must possess a wholesale food license required by N.J.S.A. 24:15-13, and N.J.A.C. 8:21-13, Rules Governing Wholesale Food Establishments.

(i) Value Seafood Products shall be graded, packed and contained as follows:

1. Value-added seafood products shall be processed in New Jersey under an FDA-approved Hazard Analysis Critical Control Point (HACCP) plan that is regularly monitored as provided by the Fish and Fisheries Products Hazards and Controls Guidance, third edition, June 2001;

2. Processing facilities must meet the requirements of local health departments;

3. Seafood processing facilities should have an established set of sanitary operating procedures that include cleaning and sanitizing schedules and procedures, as well as compliance monitoring;

4. Any firm that wholesales, stores or processes seafood products (fresh or saltwater) for human consumption must possess a wholesale food license required by N.J.S.A. 24:15-13 and N.J.A.C. 8:13-1 and 8:21-13, Rules Governing Wholesale Food Establishments; and

5. Only potable water shall be used.

2:71-9.6 Penalties

(a) Any person, firm, partnership, corporation, cooperative or association who violates the provisions of this subchapter shall be subject to a penalty of not more than \$50.00 for the first offense and a penalty of not less than \$50.00 and not more than \$100.00 for each subsequent offense.

(b) In addition to the penalties set forth in (a) above, if the subsequent offense occurs in the same calendar year and involves the same licensee and the same licensed seafood commodity, the Department may revoke their license. Revocation of a license pursuant to this subsection does not prohibit a licensee from reapplying for a license for the next license year.

(c) Any person, firm, partnership, corporation, cooperative or association licensed pursuant to N.J.A.C. 2:71-9.4(f) to transfer ownership of containers bearing the "Jersey Seafood" logo who transfers ownership in violation of this subchapter shall be subject to a penalty of no more than \$50.00 for the first offense and revocation of their license for any subsequent offense.

(d) Orders for penalties or to enjoin continuing violations may be enforced by summary action brought in the name of the Secretary in Superior Court or Municipal Court.

(e) The Division of Marketing and Development shall make an initial determination as to whether to revoke a license under this section.

(f) Any person, firm, partnership, corporation, cooperative or association aggrieved by the determination of the Division of Marketing and Development pursuant to this section or N.J.A.C. 2:71-9.4 shall be afforded an opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1, subject to the following:

1. All hearing requests must be in writing and received by the Department within 20 days of the license denial, notice of intent to revoke a license, or penalty notice;

2. Hearing requests shall be sent to:

New Jersey Department of Agriculture
Director, Division of Marketing and Development
P.O. Box 330
Trenton, New Jersey 08625; and

3. The State Board of Agriculture shall make a final determination as to whether to deny, revoke a license or impose a penalty following the Office of Administrative Law hearing.