

“certified” in the current directory of the resident state, sending a copy of the certificate to the Department is not necessary. In instances where vegetable transplant stock is to be shipped to New Jersey, the Department requires that each shipment of plants be accompanied by an official certificate, certifying that the plants are free of injurious pests. There may be a charge in the resident state for issuing this certificate. In addition, if the state of origin charges for inspection costs to issue the official certificate, the additional cost could be reflected in the price of the plant. Finally, there may be some minimal increases in vegetable seed costs to purchaser(s), due to required seed and plant treatments for control of bacterial and leaf blight diseases, but this will be offset by fewer fungicide applications and increased crop yields.

Federal Standards Statement

The importation of plants and plant material rules are promulgated under the authority of a State statute, N.J.S.A. 4:1-21.5. However, 7 U.S.C. § 7712 gives the U.S. Secretary of Agriculture (Secretary) the authority to regulate the movement of plants and plant products in interstate commerce. Pursuant to that authority, the Secretary adopted rules limiting the movement of certain plants and plant parts pursuant to quarantine, 7 CFR 301.10 et seq., and regulating importation of plants or plant products by mail, 7 CFR 351.1 through 351.7. The rules proposed for readoption do not exceed the requirements of any Federal requirements for interstate movement of nursery stock, vegetables, tomato plants, or pepper plants. Therefore, a Federal standards analysis pursuant to Executive Order No. 27 (1944), P.L. 1995, c. 65, is not required.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost by virtue of the rules proposed for readoption.

Agriculture Industry Impact

The rules proposed for readoption should have a positive impact on New Jersey’s agriculture industry. The rules will afford protection to growers and plant dealers from the introduction and distribution of highly injurious plant pests and diseases by requiring an inspection and official certification of plant materials from the state of origin. Additionally, readoption of these rules will help to minimize the probability of crop loss due to farmers planting imported vegetable transplants carrying disease infections. Readoption of these rules will help to minimize the disruption of commerce when large numbers of infected transplants are detected by the Department and ordered destroyed.

Regulatory Flexibility Statement

The rules proposed for readoption primarily affect farmers, plant growers, and dealers who import plants and plant materials and do not impose reporting, recordkeeping, or other compliance requirements on small businesses in New Jersey, as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, compliance requirements are imposed on those businesses that want to export vegetables, tomatoes, or pepper plants to New Jersey. For example, if plant dealers in another state want to export vegetable transplants into New Jersey, they must notify the Department prior to or 24 hours after arrival of the shipment. The cost of this notification is minimal, since it can be done by telephone or email.

To the extent that these rules add a better quality product to the stream of commerce and decrease the number of vegetable and nursery plant stock infested with insects or infected with diseases shipped into the State, the readoption of these rules will be beneficial to both small businesses and consumers, alike. Although compliance requirements on plant production are imposed on small businesses who want to ship tomato or pepper plants into New Jersey, no differing or lesser standard can be imposed on small businesses because uniformity is necessary to ensure quality in the product imported. It is not expected that any technical or expert assistance will be necessary to comply with these rules. However, to the extent that assistance is needed, it is anticipated that such assistance will be provided by the exporting state’s plant regulatory officials, official certifying agencies, or cooperative extension service.

Housing Affordability Impact Analysis

The rules proposed for readoption will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme

unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules proposed for readoption provide for plant importation into New Jersey.

Smart Growth Development Impact Analysis

The rules proposed for readoption will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey, because the rules proposed for readoption with amendments provide for plant importation into New Jersey.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated the proposed readoption and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:17.

(a)

DIVISION OF MARKETING AND DEVELOPMENT

School Milk Purchase Regulations

Proposed Readoption: N.J.A.C. 2:55

Authority: N.J.S.A. 18A:18A-6.

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

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

Proposal Number: PRN 2022-044.

Submit written comments only by May 20, 2022, to:

Joe Atchison, Director
 Division of Marketing and Development
 New Jersey Department of Agriculture
 PO Box 330
 Trenton, New Jersey 08625-0330
pr-markets@ag.nj.gov

The agency proposal follows:

Summary

The rules proposed for readoption were scheduled to expire on September 30, 2020. Pursuant to Executive Order No. 127 (2020) and P.L. 2021, c. 103, any chapter of the New Jersey Administrative Code that would otherwise have expired during the Public Health Emergency originally declared in Executive Order No. 103 (2020) was extended through January 1, 2022. Therefore, this chapter has not yet expired and is extended 180 days from the later of the existing expiration date or the date of filing of this notice of proposed readoption, whichever is later, which date is June 28, 2022, pursuant to N.J.S.A. 52:14B-5.1.c, Executive Order No. 244 (2021), and P.L. 2021, c. 103.

Chapter 55 was promulgated to regulate the purchase and sale of fresh milk by vendors to New Jersey school districts, thereby providing protection to New Jersey dairy farmers who sell, and consumers who buy, these products. As such, the rules proposed for readoption primarily affect New Jersey vendors (licensed milk dealers), and will benefit New Jersey dairy farmers and consumers, primarily school children. These rules set forth the reporting requirements of each New Jersey board of education, all New Jersey vendors (milk dealers) selling milk to New Jersey schools, and all associations of producers. These rules also set forth the calculations for determining compliance with milk purchase requirements and the criteria for transfers, diversion, and substitution of milk; outline the process for proving the unavailability of milk; and describe the responsibility of the Secretary of the Department of Agriculture (Secretary) in determining the validity of a claim of unavailability of New Jersey milk.

Subchapter 1 provides definitions for key terms used in this chapter, including “Association of Producers,” “fresh milk,” and “school milk.”

Subchapter 2 establishes rules for the filing of certain reports. Boards must submit reports to the Secretary explaining if they have purchased or will purchase school milk and must also file all such contracts with the Secretary. Vendors must notify the Secretary of school milk contracts, and file monthly reports detailing the amount of milk they have purchased or sold, and to whom it was transferred. Associations of producers must report sales of milk to vendors monthly.

Subchapter 3 establishes the methods of computation that will be used by the Department of Agriculture (Department) to determine whether compliance with this chapter has occurred. The Department must compute the total amount of school milk sold to all boards, compute the total fresh milk purchased by each vendor, and subtract the pounds of milk sold by each vendor to boards from the pounds of fresh milk purchased. Any excess quantity can be transferred to vendors during the same month, but may not be credited for transfers to vendors in subsequent months. Associations of producers can only sell fresh milk to a vendor during the same month that the association of producers received the fresh milk.

Subchapter 4 establishes how to satisfy the burden of proof that milk was not available. The burden can be satisfied in two ways: 1) by demonstrating that the total milk sales to all boards exceeds the amount of fresh milk produced, and by detailing efforts made to acquire fresh milk; or 2) by advising the Secretary of the unavailability of fresh milk on a month-to-month basis and detailing the efforts to acquire fresh milk. Upon receipt of a report of unavailability, the Secretary must verify the claim and notify the vendor of the Secretary’s determination. If the Secretary determines that fresh milk was available, then the vendor has failed to comply with the agreement. Reasonable handling charges above the Class I price cannot be used to justify a claim that milk is unavailable.

Subchapter 5 establishes penalties for violations at N.J.S.A. 18A:18A-6 and this chapter. Penalties may be no less than \$100.00 and no more than \$500.00 per day for each day of noncompliance. The Secretary shall determine if a violation has occurred and assess a penalty. Vendors aggrieved by the Secretary’s determination may appeal 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. Penalties recovered by the Secretary shall be paid to the school district named in the proceeding.

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 rules proposed for readoption will affect all New Jersey dairy farmers, all New Jersey school milk vendors, and all New Jersey school districts. These rules assure that New Jersey dairy farmers receive the benefit of an effective milk control regulation and that New Jersey school children are afforded the means of receiving a supply of fresh milk. Failure to readopt these rules will remove the assurance for New Jersey dairy producers to have a local economical outlet for their product. Without a sufficient economical outlet, the dairy producers in this State will likely relocate elsewhere, leaving New Jersey without a local supply of fresh milk. Therefore, New Jersey citizens as a whole will benefit from the rules proposed for readoption, as the rules help assure that New Jersey maintains a local supply of fresh milk, thereby creating an overall positive social impact.

The proposed rules at N.J.A.C. 2:55 will also have a positive social impact because the amendments are designed to improve the Department’s ability to track compliance with these rules. Poor enforcement of these rules could result in the loss of an important economic outlet for New Jersey. Such a loss could be devastating to the dairy industry, especially now at a time of extensive decline in milk prices received by producers.

Economic Impact

The rules proposed for readoption will beneficially affect New Jersey dairy farmers (producers), and New Jersey schools. The rules proposed for readoption will provide for the continuation of protection of New Jersey dairy farmers from potential economic harm through the transfer, diversion, and substitution restrictions. Specifically, the rules proposed

for readoption establish the criteria in which to determine whether the statutory obligation to buy milk from New Jersey producers has been met.

This chapter also benefits New Jersey public school children by creating a market environment wherein supplies of New Jersey produced milk are available throughout the year.

Approximately 115 New Jersey dairy producers receive direct benefits from these rules proposed for readoption by ensuring that the farmers have a stable buyer for their product. New Jersey’s dairy industry is an important segment of the agricultural economy, supplying almost one-eighth of the fluid milk and dairy products used by New Jersey consumers. New Jersey dairy producers are important to the State’s economy, particularly for rural communities. These rules will help ensure more stable business operations for dairy producers.

It is not anticipated that the rules proposed for readoption will cause any negative impact. There are no foreseeable costs associated with these rules as they relate to producers and schools. There will, however, be economic impacts to milk vendors, as these rules require the purchase of New Jersey milk in equivalent amounts as are required to fulfill their school contracts. Compliance costs associated with the rules proposed for readoption will be minimal. However, anyone violating the provisions at N.J.S.A. 18A:18A-6 or this chapter will be subject to a monetary penalty. Since this penalty is imposed only for noncompliance, this cost is avoidable.

Federal Standard Statement

Executive Order No. 27 (1994) and P.L. 1995, c. 65, require State agencies that adopt, readopt, or amend State rules exceeding any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. As related to this chapter, the rulemaking requirements are dictated by the Public Schools Contracts Law, specifically N.J.S.A. 18A:18A-6. Although 7 U.S.C. § 608C and 7 CFR Part 1001 establish minimum milk purchasing requirements, the rules proposed for readoption do not mandate any minimum or maximum milk prices for the school milk contracts. Rather, the rules merely require vendors of school milk to buy a minimum amount of milk from New Jersey producers pursuant to N.J.S.A. 18A:18A-6. Therefore, this Federal requirement is unaffected by these rules. Several Federal programs, however, do have procurement requirements for schools purchasing milk for their Federal programs. The Special Milk Program for Children, 7 CFR 215.6, the School Lunch Program, 42 U.S.C. § 1760 and 7 CFR 210.21, and the Child and Adult Care Food Program, 7 CFR 226.22, all require milk procured for the programs to be milk produced in the United States. The rules proposed for readoption meet, but do not exceed, these Federal requirements. As the rules proposed for readoption do not exceed any Federal standards, a Federal standards analysis is not required.

Jobs Impact

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

Agriculture Industry Impact

For the reasons set forth in the Summary, Social Impact, and Economic Impact above, the rules proposed for readoption will have a positive impact on the agriculture industry.

Regulatory Flexibility Analysis

In addition to all New Jersey school boards (672), the rules proposed for readoption apply to approximately 300 vendors (milk dealers), and 115 dairy producers, most of whom are small businesses, as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Small businesses will be affected, but to no greater extent than in the past. Uniform standards for all vendors (milk dealers), school boards, and dairy producers are necessary to ensure New Jersey producers have a local economical outlet for their product and New Jersey school children receive a supply of fresh milk.

As indicated in the Summary above, reporting and compliance requirements are imposed by these rules. It is not anticipated that the rules proposed for readoption will result in any additional recordkeeping requirements beyond those that may be necessary to comply with the reporting requirements. Compliance, therefore, is not anticipated to be overly burdensome because the reports required are designed to be taken directly from records already kept by vendors (milk dealers) and New

Jersey school boards. Generally, the necessary reporting systems are in place and are not likely to experience the need for additional efforts to comply with these rules. Initial capital costs and annual costs of compliance are minimal for both large and small businesses; therefore, the Department has not applied differing or lesser standards based upon business size. While there are compliance and reporting requirements as set forth above, no capital expenditures or professional services will be necessary as a result of the rules proposed for readoption.

Housing Affordability Impact Analysis

The rules proposed for readoption will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules proposed for readoption pertain to school milk purchasing requirements.

Smart Growth Development Impact Analysis

The rules proposed for readoption will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey, because the rules proposed for readoption provide for school milk purchasing requirements.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated the proposed readoption and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:55.

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**DIVISION OF MARKETING AND DEVELOPMENT
New Jersey Organic Certification Program
Proposed Readoption: N.J.A.C. 2:78**

Authority: N.J.S.A. 4:1-11.1, 4:10-14, 4:10-15, and 4:10-79.

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

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

Proposal Number: PRN 2022-045.

Submit written comments only by May 20, 2022, to:

Joe Atchison, Director
Division of Marketing and Development
New Jersey Department of Agriculture
PO Box 330
Trenton, New Jersey 08625-0330
pr-markets@ag.nj.gov

The agency proposal follows:

Summary

The rules proposed for readoption were scheduled to expire on September 30, 2020. Pursuant to Executive Order No. 127 (2020) and P.L. 2021, c. 103, any chapter of the New Jersey Administrative Code that would otherwise have expired during the Public Health Emergency originally declared in Executive Order No. 103 (2020) was extended through January 1, 2022. Therefore, this chapter has not yet expired and is extended 180 days from the later of the existing expiration date or the date of filing of this notice of proposed readoption, whichever is later, which date is June 28, 2022, pursuant to N.J.S.A. 52:14B-5.1.c, Executive Order No. 244 (2021), and P.L. 2021, c. 103.

These rules establish an Organic Certification Program under the direction of the New Jersey Department of Agriculture (“NJDA” or “Department”), Division of Marketing and Development, as mandated at N.J.S.A. 4:10-79. That statute authorizes and directs the NJDA to

implement a certification program. In adopting a State certification program, the NJDA was directed to consider the standards set forth in the National Organic Program (Organic Food Production Act of 1999, 7 U.S.C. § 6501 and National Organic Program, 7 CFR 205). The National Organic Program (NOP) establishes uniform, nationwide standards for the production, handling, and labeling of organically produced agricultural products.

Pursuant to Subpart F of the NOP (7 CFR Subpart 205.500), the United States Department of Agriculture (USDA) qualifies state agencies as accredited certifying agents under the National Organic Program, which allows the NJDA to certify production and/or handle operations that are in compliance with the standards of the NOP. These are the rules and regulations by which the NJDA will carry out the certification process as an accredited certifying agent. As an accrediting agent, the NJDA will be able to provide essential services previously provided by NOFA by offering an alternative source for obtaining organic certification in New Jersey under the NOP. The efficient implementation of this program and the provision of certification services by the NJDA will ensure that consumers are provided with organic products that meet consistent, uniform standards.

These rules set forth the Organic Certification Program by which the NJDA certifies New Jersey producers and handlers of fresh and processed organic agricultural products.

N.J.A.C. 2:78-1.1 sets forth the purpose, scope, and authority for the chapter.

N.J.A.C. 2:78-1.2 adopts and incorporates portions of the National Organic Program (NOP) (7 CFR Part 205) as the official rules and procedures for the production and handling of organic agricultural products in New Jersey. The NOP consists of 7 subparts (A-G), and covers all aspects of organic production and handling. A brief description of the relevant portions of the NOP and the corresponding sections of the rules are set forth below:

Subpart A (7 CFR 205.1 and 205.2) of the NOP defines the words and terms used in the rules and is intended to enhance compliance with regulatory requirements by ensuring a clear understanding of the meaning of key terms. It also sets forth directions on how words and terms should be interpreted.

Subpart B (7 CFR 205.100 through 105) of the NOP establishes the general applicability of the Organic Certification Program. Section 205.100 sets forth who has to be certified pursuant to the NOP and describes the exemptions and exclusions from certification. Specifically, this section requires that all operations not excluded or exempt as defined at 7 CFR 205.101 that intend to produce products sold, labeled, or represented using “100 percent organic,” “organic,” or “made with organic” must meet all of the requirements of the NOP standards. This section also sets forth the penalties for operations that knowingly mislabel or misrepresent products as “100 percent organic,” “organic,” or “made with organic,” or that make false statements to governing officials.

Section 205.101 addresses the requirements for the use of the term, “organic.” It indicates which operations are exempt from certification or are excluded from certain requirements of the rule. In addition, it imposes certain recordkeeping requirements on exempt operations.

Section 205.102 requires that any product sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic” must be produced or handled in accordance with the specified sections of the rule. Section 205.103 addresses recordkeeping by certified production and handling operations. This section sets the duration period and type of records that certified operations must maintain under the NOP. Finally, 7 CFR 205.105 lists the substances, methods, and ingredients whose use is prohibited in organic production and handling by referencing the national list of allowed and prohibited substances (7 CFR 205.601 through 606). This section specifically prohibits the use of genetically modified organisms - except for vaccines approved in accordance with 7 CFR 205.600a, ionizing radiation, and sewage sludge.

Subpart C (7 CFR 205.200 through 290) sets forth organic production and handling requirements. Section 205.200 mandates that a producer or handler intending to sell, label, or represent agricultural products as “100 percent organic,” “organic,” or “made with organic” must comply with the applicable provisions of Subpart C, and that production practices must maintain or improve the natural resources of the operation, including soil