

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.

(a)

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
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 PO Box 330
 Trenton, New Jersey 08625-0330
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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

and water quality. Section 205.201 describes the required elements of organic system plans for production and handling operations seeking certification.

Section 205.202 sets forth the requirements for field and farm parcels used for growing and harvesting organic crops. Land so used must have distinct and defined boundaries or buffer zones to prevent contamination from adjoining lands and be free of prohibited substances for a period of 36 months prior to harvest. Section 205.203 contains the requirements for maintaining or improving the physical, chemical, and biological condition of soils in production areas, the composting requirements for certain animal and plant materials to be applied to production areas, and the requirements for preventing contamination of crops, soil, or water with crop nutrients. Further, this section explains what type of substances can be used to improve soil fertility; prohibits the use of sewage sludge and synthetic substances not included on the national list; and restricts burning as a means of disposal for crop residues. The requirements for the use of certified organic seed, annual seedlings, and planting stock are found at 7 CFR 205.204. In addition, this section sets forth the conditions under which seeds, annual seedlings, and planting stock treated with prohibited substances may be used and when non-organically produced seeds, annual seedlings, and planting stock may be used.

Organic producers are required to engage in the practice of crop rotation pursuant to 7 CFR 205.205. This section also explains the requirements and end-goals of crop rotation. Section 205.206 establishes the permitted management practices for the control and prevention of crop pests, weeds, and diseases. Requirements for harvesting of wild-crops intended to be sold, labeled, or represented as organic are delineated at 7 CFR 205.207.

Section 205.236 contains the requirements and exceptions for the origin of organic livestock and includes the feed exemption for transitioning dairy animals. Further, it defines breeder stock, prohibits removal and reintroduction of certified livestock, prohibits breeder or transitioned dairy stock from being sold as slaughter stock, and explains the recordkeeping requirements to verify the origin of stock. Livestock feed requirements are set forth at 7 CFR 205.237, which requires that livestock receive a diet of agricultural products that are organically produced and notes exceptions on the national list (7 CFR 205.603) that can be used as feed additives or supplements. Further, this section prohibits the use of hormones and drugs to promote growth, supplements, or additives in amounts greater than needed for adequate nutrition, plastic pellets, formulas containing urea or manure, mammalian or poultry by-product, and feed, additives, and supplements in violation of the Federal Food, Drug, and Cosmetic Act.

Section 205.238 mandates that producers establish and maintain preventative livestock health care practices that include preventative disease management, proper feed, proper housing and pasture conditions, exercise, freedom of movement, physical alterations that promote welfare and minimize stress, use of vaccines and other biologics prior to the use of veterinary practices, and medications allowed in accordance with the standards. This section also explains the requirements for using listed parasiticides and the withholding period for breeder and dairy stock receiving them (prohibited for use on slaughter stock). Further, this section prohibits the non-listed synthetic substances, hormones used for growth, and routine use of listed parasiticides. If all methods of approved organic health care practices fail, 7 CFR 205.238 requires that all appropriate measures are to be used to restore an animal to health; however, animals treated with non-approved practices must be clearly identified and not sold, labeled, or represented as organically produced. Section 205.239 contains the requirements for livestock living conditions, which includes outdoor access, access to pasture for ruminants, bedding requirements, and shelter requirements. This section sets forth temporary confinement allowances and requires manure management to prevent contamination of crops, soil, or water.

Section 205.270 defines methods of processing and handling organic products and establishes the circumstances in which listed nonagricultural substances may be used. This section prohibits the use of "excluded methods" (genetically modified organisms), ionizing radiation, sewage sludge, and non-listed volatile synthetic solvents or other synthetic processing aids (except for "made with organic" label claims). Section 205.271 requires producers or handlers of an organic facility to implement

pest management practices for the prevention of pests. In addition, 7 CFR 205.272 requires handlers to prevent commingling and contamination with prohibited substances, prohibits the use of packaging materials, or storage areas treated with synthetic fungicides, preservatives, or fumigants, and prohibits use of used bags or containers that have been in contact with any substance that might compromise the integrity of the organic product, unless thoroughly cleansed.

Under 7 CFR 205.290, temporary variances may be granted by the Administrator of the Agricultural Marketing Service, United States Department of Agriculture (AMS Administrator) in the event of natural disasters (as declared by the Secretary of the USDA), damage or loss resulting from drought, wind, flood, etc., and for purposes of organic research. This section also allows the governing official of a state organic program (SOP) to request temporary variance from the AMS Administrator, and explains notification requirements for the same. Since NJDA has not adopted an SOP, this section of 7 CFR 205.290 is not relevant.

Subpart D (7 CFR 205.300 through 205.312) sets forth the standards for production and handling with which a person selling or labeling an agricultural product as organically produced must comply. Section 205.300 allows use of the term "Organic" on labels, exported products, imported products, and livestock feed only in accordance with NOP standards. Section 205.301 describes the percentage of organic and allowed ingredients required to be used in organic agricultural products and products with organic ingredients labeled under these four different labeling categories: (1) "100 percent Organic"; (2) "Organic" (at least 95 percent); (3) "Made with Organic (specified ingredients or food group(s))" (at least 70 percent); and (4) products with less than 70 percent organic ingredients. This section also explains the percent requirements for livestock feed and restrictions on ingredients used in livestock feed. The requirements and considerations for calculating the percentage of organic ingredients in processed agricultural products are set forth at 7 CFR 205.302.

Sections 205.303, 205.304, and 205.305 describe the requirements and allowances for labels and packaging used on products identified as "100 percent Organic," "Organic," "made with Organic (specified ingredients or food group(s))" and multi-ingredient packaged products with less than 70 percent organically produced ingredients. For each labeling category, these sections establish conditions under which organic terms and references can or cannot be displayed on a product package's principal display panel (pdp), information panel, ingredient statement, and on other package panels. Likewise, 7 CFR 205.306 describes the requirements and allowances for labels and packaging used on livestock feed products labeled as "100 percent Organic" and "Organic."

Labeling requirements for non-retail containers used for shipping (both domestically and internationally) and storing raw or processed organic agricultural products are set forth at 7 CFR 205.307. Section 205.308 establishes the requirements and allowances for signs or other forms of advertising displayed or disseminated at the point of retail sale for products represented as "100 percent Organic" or "Organic." For products represented as "made with Organic (specified ingredients or food group(s))," 7 CFR 205.309 describes the requirements and allowances for signs or other forms of advertising displayed or disseminated at the point of retail sale. The conditions and restrictions for labeling and other forms of advertising for goods produced on exempt or excluded operations are set forth at 7 CFR 205.310.

Finally, 7 CFR 205.311 describes the form of the USDA Organic seal and establishes the conditions and restrictions for display of the USDA seal and the seals, logos, or other identifying marks of certifying agents.

Subpart E (7 CFR 205.400 through 406) sets forth the requirements for a certifying agent to certify producers and handlers as organic production or handling operations. This certification process must be carried out by accredited certifying agents and the rules in this subpart must be read in conjunction with the rules set forth at N.J.A.C. 2:78-2.1, 2.2, and 2.3.

Section 205.400 of Subpart E describes general requirements for handling and production operations seeking organic certification and requires the establishment of an organic system plan, on-site inspections, annual updates to the system plan, recordkeeping duties, submission of fees to certifying agents, notification of spray drift or other application of prohibited substances, and any changes made at certified operations that

may impact compliance with the rule. Section 205.401 requires producers or handlers who are seeking certification to file an application with an accredited certifying agent and sets forth the information required to be provided as part of the application process.

N.J.A.C. 2:78-1.3 expands the NOP's definition section by providing additional words and terms to be used in the rules and additional instructions for interpretation.

N.J.A.C. 2:78-1.4 discusses the confidentiality of information obtained and the protection of this information under Federal and State regulations.

Procedures for filing initial certification applications and annual updates with the NJDA, for both producers and handlers seeking certification, are set forth at N.J.A.C. 2:78-2.1. This section requires applications and accompanying fees to be submitted by the first day of the ninth month after the certification or annual update is received and imposes a \$75.00 late fee for applications postmarked after the due date. Since inspections are scheduled to occur in groups within the same geographical area, late applicants will not be able to be inspected with the group. As a result, this late fee is assessed to cover the additional mileage and travel expense the inspector will charge the Department for the separate trip to the inspection site. Producers and handlers submitting initial applications and annual updates will be subject to an inspection of their premises. The application procedures set forth at N.J.A.C. 2:78-2.1 are necessary in order for the NJDA to comply with its duties as an accredited certifying agent.

N.J.A.C. 2:78-2.2 and 2.3 set forth the fee schedules for producers and handlers, respectively. Fees for both first-time applicants and annual certification updates are listed in these sections. Additional fees for producers are set forth at N.J.A.C. 2:78-2.2(e). Dairy operations and other livestock operations have additional fees assessed due to the complexity in inspecting these facilities and the additional materials used for the health care of the animals, such as vaccinations, medications, and feed. Handlers may also be subject to additional fees, which are set forth at N.J.A.C. 2:78-2.3(f).

The fees imposed pursuant to these sections are consistent with the fees imposed by other accredited certifying agencies and are necessary to cover the costs of operating the certification program. In addition, both N.J.S.A. 4:10-79 and 7 CFR 205.642 authorize the NJDA to set reasonable fees for certification services. Section 205.402 describes the application review requirements for certification agents receiving applications from handling or production operations. This section permits any applicant to withdraw its application at any time, but an applicant shall remain liable for costs associated with review of the application. Section 205.403 establishes the requirements and allowances for certifying agents scheduling and conducting initial on-site inspections and the provisions for applicants withdrawing applications after submission to accredited certifying agents. In addition to the physical inspection of the production unit, facility, or site, certifying agents are required to conduct an exit interview with an authorized representative of the operation.

The terms and conditions under which a certifying agent may grant certification are set forth at 7 CFR 205.404. Following the review of the on-site inspection reports, test results, and information supplied by the applicant, the certifying agent may grant certification to applicants showing compliance with the rule. This section also describes the information required to be contained in organic certificates issued by certifying agents and explains that once certified, organic certification is in effect until surrendered, suspended, or revoked. Section 205.405 contains the requirements and procedures for issuing denials of certification. Certifying agents who determine that noncompliance exists after the review of initial applications or inspection reports are required to provide the applicant with written notification of noncompliance. This section contains specifications and requirements on the issuance of notices of noncompliance and denials of certification and the options for applicants receiving such notices.

Requirements for a producer or handler's continued certification are set forth at 7 CFR 205.406. This section delineates the information required to be submitted as part of the annual update and contains the requirements and notification procedures for certifying agents after completing annual reviews of certified operations.

N.J.A.C. 2:78-2.4 requires producers, handlers, and dealers certified by accredited certifying agents other than the NJDA to register with the

NJDA. Nominal registration fees will be charged to producers, handlers, and dealers of organic agricultural products to be sold in the State, but certified by any accredited certifying agent other than the NJDA. These registration fees are necessary for the NJDA to properly enforce the requirements of this chapter. Registration saves time and effort when investigating noncompliance complaints, not only for NJDA, but for the certified production and handling operations as well, because NJDA will be able to search their registration records to know which businesses and farms are registered and what products they are permitted to sell as organic. As a result, some complaints can be resolved without ever contacting the certified handling or production operation. Moreover, the NJDA operates a cost-share program for NOP-certified operations within the State. The NJDA uses registration as a database to determine what certified operations would be eligible for cost-share monies. Absent registration, certified operations could miss out on such savings.

In addition, other accredited certifying agents certifying New Jersey producers and handlers selling or distributing organic products in New Jersey must also register with the NJDA pursuant to N.J.A.C. 2:78-2.4. A nominal registration fee will also be charged to the other accredited certifying agents, who are certifying agricultural organic products sold in the State. As with registration of non-NJDA certified operations, registration of other accredited certifying agents will allow quick and easy responses to some noncompliance complaints by identifying the non-NJDA certified operations and what products they are certified to produce.

N.J.A.C. 2:78-2.5(a) authorizes exempt and excluded operations to obtain organic certification, if they so choose, and requires operations voluntarily seeking certification to follow the applications procedures at N.J.A.C. 2:78-2.1. Subsection (b) requires any exempt or excluded operations not seeking certification to file a Declaration of Exempt or Excluded Status with the NJDA, along with a nominal processing fee. This requirement is necessary to ensure compliance with the NOP regulations and to assist in investigation of noncompliance complaints since exempt or excluded operations are subject to different standards.

In addition to organic certification, N.J.A.C. 2:78-3.1 establishes an additional certification program for fresh agricultural commodities (fruits, vegetables, and grains) marketed under a "Transitional Sustainable" label. The "Transitional Sustainable" certification requires the same consistent production practices as 100 percent organic products, however it reduces the waiting period after the last application of prohibited substances to the field or farm parcel from three years to one year. Although "Transitional Sustainable" is not specifically authorized pursuant to the NOP certification program, the "Transitional Sustainable" label will help encourage producers to convert from conventional to organic production methods by creating a niche market that will enjoy a higher retail price.

N.J.A.C. 2:78-4.1 and 4.2 set forth the certification mark that may be used by "NJDA Certified Organic" or "Transitional Sustainable" operations, respectively, that have been certified by the NJDA. Improper use of the "NJDA Certified Organic" and "Transitional Sustainable" marks will be handled through the noncompliance procedures set forth at 7 CFR 205.662 and anyone knowingly labeling a product as organic, except in compliance with the NOP, will be subject to the penalties set forth at 7 CFR 205.100(c)(1).

Subpart F (7 CFR 205.500 through 510) contains the requirements for private entities and governmental agencies applying for and obtaining accreditation as a certifying agent. As this part does not apply to organic certification, it is not adopted as part of the proposed new rules.

Subpart G (7 CFR 205.600 through 690) contains the administrative provision of the NOP and is divided into seven headings: (1) The National List of Allowed and Prohibited Substances (7 CFR 205.600 through 607); (2) State Organic Programs (7 CFR 205.620 through 622); (3) Fees (7 CFR 205.640 through 642); (4) Compliance (7 CFR 205.660 through 668); (5) Inspection and Testing, Reporting, and Exclusion from Sale (7 CFR 205.670 through 672); (6) Adverse Action Appeal Process (7 CFR 205.680 through 681); and (7) Miscellaneous (7 CFR 205.690).

Under the heading, National List of Allowed and Prohibited Substances, 7 CFR 205.600, contains criteria for determining which substances and ingredients are allowed or prohibited in products to be sold, labeled, or represented as "organic" or "made with organic (specified ingredients or food group(s))." The remaining sections set forth the substances and ingredients allowed or prohibited. Specifically, 7 CFR

205.601 sets forth a list of those synthetic substances, which may be used in organic crop production and 7 CFR 205.602 sets forth a list of those non-synthetic substances prohibited for use in organic crop production. Section 205.603 sets forth a list of those synthetic substances allowed for use in organic livestock production and 7 CFR 205.604 sets forth a list of those non-synthetic substances prohibited for use in organic livestock production. Section 205.605 sets forth a list of those non-agricultural (non-organic) substances allowed as ingredients in or on processed products labeled as “organic” or “made with organic (specified ingredients or food group(s)),” and 7 CFR 205.606 sets forth a list of those non-organically produced agricultural products allowed as ingredients in or on processed products labeled as organic or made with organic ingredients. Finally, 7 CFR 205.607 describes the procedures for requesting amendments to the “National List” (7 CFR 205.601 through 205.606).

The sections under the heading, State Organic Programs, provide the requirements for states that want to adopt a state organic program (SOP). This program is different from the accreditation of certifying agents and the NJDA is not attempting to create a SOP at this time. These sections are, therefore, not incorporated into these rules.

In the sections under the heading, fees, the NOP sets forth the requirements for imposing and payment of fees for accreditation and certification. As 7 CFR 205.640 and 205.641 pertain to fees and charges for accreditation, they are not incorporated into the chapter. Section 205.642, however, pertains to the imposition of fees and other charges for certification and is incorporated by reference. This section authorizes certifying agents to establish a fee schedule for certification provided that the fees are reasonable and the fee schedule has been filed with the AMS Administrator. As indicated above, certification fees for both producers and handlers certified by the NJDA are set forth at N.J.A.C. 2:78-2.2 and 2.3, respectively.

The sections under the heading, Compliance, set forth the procedures for enforcing the NOP, and penalties for noncompliance. Specifically, 7 CFR 205.660 gives the NOP Program Manager authority to inspect and review certified production and handling operations and sets forth the circumstances in which the NOP Program Manager may suspend or revoke certification. In addition, 7 CFR 205.661 authorizes certifying agents to investigate certified production and handling operations for noncompliance and requires the certifying agent to notify the NOP Program Manager of all compliance proceedings.

N.J.A.C. 2:78-5.1 sets forth the procedures for reporting complaints. It also sets forth the penalties if a complaint is found to be valid after an investigation. Specifically, this section establishes that the penalties and procedures for noncompliance with the NOP by a certified producer or handler will be the noncompliance procedures set forth at 7 CFR 205.662. Any registered but uncertified operation found in noncompliance with this chapter will be subject to revocation of their registration. Finally, unregistered operation selling or distributing organic products in violation of this chapter will 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. N.J.A.C. 2:78-5.1 also sets forth hearing procedures for those aggrieved by a penalty action.

In the event of noncompliance, 7 CFR 205.662 sets forth the procedures certifying agents must follow. Noncompliance procedures include written notification of noncompliance, an opportunity to resolve the noncompliance, and suspension or revocation procedures if the noncompliance is unresolved. In addition, this section sets forth penalties for noncompliance. Penalties for knowingly selling or labeling a product as organic, except in compliance with the NOP will be up to \$10,000 per violation. Anyone making a false statement to the Secretary of the USDA, an SOP’s governing official, or a certifying agent shall be subject to the provisions at 18 U.S.C. § 1001. Section 205.663 contains the requirements, procedures, and deadlines for certified production and handling operations wishing to seek mediation, if there is a dispute with respect to the denial of certification, and the appeal process for mediation decisions. Sections 205.665 and 205.668 address the noncompliance procedures for certifying agents and state organic programs and are not incorporated in the proposed new rules.

Under the heading, Inspection and Testing, Reporting, and Exclusions from Sale, 7 CFR 205.670 sets forth the rights and responsibilities of the

AMS Administrator, governing State officials, accredited certifying agents, and certified operations with respect to the inspection and testing of organic agricultural products and specifically requires that all agricultural products sold, labeled or represented as “100 percent Organic,” “Organic,” or “made with Organic (specified ingredients or food group(s))” be made available for inspection. Section 205.671 prohibits the sale of a product identified as organically produced when residue testing detects prohibited substances at levels that are greater than five percent of the EPA’s tolerance for the residue detected. Section 205.672 explains the rights and requirements for certified operations that are subject to contamination from prohibited substances as a result of a Federal or State emergency pest or disease treatment program.

The sections under the heading, Adverse Action Appeal Process, set forth the procedures for appealing noncompliance decisions. Specifically, 7 CFR 205.680 grants producers and handlers who believe they have been adversely affected by a noncompliance decision the right to an appeal. This section also contains general requirements for written communications and appeal review deadlines. Section 205.681 details the appeals process for certified operations and accredited certifying agents wishing to appeal a proposed certification, suspension, or revocation and delineates when appeals must be filed, where to file, and what to file.

Finally, 7 CFR 205.690, under the heading, Miscellaneous, identifies the Office of Management and Budget (OMB) control number assigned to information collection by the Federal Office of Management and Budget and is not incorporated into the chapter.

The rules, specifically at N.J.A.C. 2:78-1.4, provide that information gathered by the NJDA in accordance with these rules will be held confidential pursuant to 7 CFR 205.501 and 205.504, and the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. N.J.A.C. 2:78-5.1 explains how members of the public can file complaints of non-compliance by businesses certified or registered by the NJDA.

As the NJDA has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed rules for re adoption will implement the NOP by allowing the NJDA to take an active role in protecting consumers of organic agricultural products by providing a means to ensure that those labeled as organic are produced and processed according to uniform standards, which are consistent with national standards. This will give consumers an added measure of protection that the organic products they are buying meet the requirements for organic products established by the NOP. In addition, the creation of a “Transitional Sustainable” program will encourage more farms to make the move from traditional to organic production methods, thereby increasing the amount and variety of organic agricultural products in the State.

Economic Impact

In order to obtain certification from the NJDA and use of the labeling system established by these rules for “NJDA Certified Organic” and “Transitional Sustainable,” producers and handlers will have to submit an application packet, which will include an organic system plan. The organic system plan must describe all aspects of their production or handling operations in accordance with the NOP. In addition, organic producers and handlers seeking certification by the NJDA are required to pay certification fees that vary based on the complexity of the operation and gross sales of organic agricultural products grown and/or processed, to help support the cost of certification services. These fees are intended to cover the anticipated cost of certification, based on NOFA’s cost figures and are consistent with the fees charged by other accredited certifying agents.

While nothing in this chapter will impede non-NJDA certified producers, handlers, and dealers from doing business in New Jersey, nominal registration fees will be charged to producers, handlers, and dealers of organic agricultural products sold in the State that are certified by another NOP accredited certifying agent other than the NJDA. In addition, a nominal registration fee will be charged to other accredited certifying agents who certify organic agricultural products sold in the State. These registration fees are necessary for the NJDA to monitor and enforce the program. As mentioned in the Summary above, registration of

non-NJDA certified producers, handlers, and dealers would benefit those entities as well. Once an entity is certified as organic, it is able to realize a premium price for these organic products, thereby offsetting the cost of registration, certification, and inspection.

As the demand for organic products in the marketplace continues to increase, New Jersey consumers will benefit by the availability of additional local organic agricultural products in the marketplace. The rules proposed for readoption provide a stable source for obtaining organic certification, thereby benefiting New Jersey producers and handlers of organic agricultural products, who will be able to obtain a premium price for their products. In addition, these rules open the organic market to producers and handlers who would otherwise be ineligible through the use of the “Transitional Sustainable” mark.

Federal Standards Statement

Executive Order No. 27 (1994) and P.L. 1995, c. 65 require State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. Through this chapter, the NJDA has adopted the United States Department of Agriculture’s National Organic Program (NOP) Final Rule (7 CFR Part 205) as the State’s organic rule. While the State meets the Federal rules and requirements for organic, it does not exceed them.

N.J.S.A. 4:10-79 mandates that the NJDA include requirements for a separate “Transitional Sustainable” label in addition to a program for organic labeling. Transitional Sustainable labeling allows producers and handlers who otherwise meet the NOP organic requirements access to the organic market if their products and land are free from prohibited substances for one year, rather than the required three years. Although the producer or handler cannot use the term organic, the “Transitional Sustainable” mark easily identifies a similarly high-quality agricultural product, which should have a corresponding market price. The USDA-NOP does not address or prohibit transitional labeling and, therefore, does not set any standards for transitional labeling. Moreover, the rules proposed for readoption expressly state that they will not become effective until the USDA approves the NJDA as an accredited certifying agent.

Therefore, no Federal standards analysis is necessary, since the NJDA is not exceeding any Federal standards or requirements.

Jobs Impact

The Department does not anticipate any creation or loss of jobs as a result of the rules proposed for readoption.

Agriculture Industry Impact

Organic foods continue to be the fastest growing and most profitable sector of local, national, and international agriculture. Since 1990, retail growth for organic products has increased annually at a rate of approximately 20 percent. As of 2002, organic products were sold in approximately 20,000 natural food stores and 73 percent of all conventional grocery stores. Between 1992 and 1997, the number of acres of cropland certified as organic doubled to approximately 1.3 million acres. Total certified organic crop land and pastures now total 2.3 million acres in 48 states. Estimated total sales for organic products increased from \$1 billion in 1990, to \$3.3 billion in 1996, to \$6.5 billion in 1999, and \$7.8 billion in 2000, representing an increase in growth equal to 20 percent per year.

The rules proposed for readoption will provide a mechanism by which organic producers and handlers can obtain organic certification in order to compete in the national and international market for organic agricultural products. The rules also provide a convenient mechanism for new and conventional farmers to benefit from this growing and lucrative sector of agriculture through the use of the “Transitional Sustainable” label. For these reasons, and those set forth in the Social and Economic Impact statements above, the NJDA believes that there will be a positive impact on the agriculture industry as a result of the rules proposed for readoption.

Regulatory Flexibility Analysis

The rules proposed for readoption will have an impact on small businesses, as defined pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., primarily farmers. The rules impose compliance standards, including reporting and recordkeeping, as described in the Summary above, on those participating in this program.

The NJDA has determined that since the rules proposed for readoption are part of a voluntary program, they do not impose unduly burdensome reporting, recordkeeping, or compliance requirements on either large or small businesses. Moreover, the Federal rules already require that any farmer seeking to market his or her products as “organic” must obtain annual certification from an accredited certifying agent in accordance with 7 CFR Part 205. Thus, by implementing the rules proposed for readoption, the NJDA is not imposing any new requirements on farmers wishing to market their products as “organic”; rather, it is creating a more convenient and stable mechanism by which to accomplish the same.

Should an operator choose to participate under the voluntary rules, the cost of participating should be offset by higher prices received for these products. There may be professional assistance required or initial capital outlays necessary to a business wishing to seek initial certification under the rules proposed for readoption, in order to make the transition from traditional to organic farming and/or handling. However, for anyone already certified by another accredited certifying agent, there will be no additional costs for professional assistance or initial capital outlays, beyond the registration fees and annual certification update fees.

The rules proposed for readoption provide differing standards for business sizes with regard to the assessment of initial certification and annual certification updated fees. However, because the NJDA has adopted the National Organic Program as the State rule, the NJDA is unable to offer lesser or differing standards based on business size for program implementation. In addition, the rules proposed for readoption are designed to ensure truth in packaging and an adherence to a uniform standard of quality. Therefore, a differing standard cannot be offered based on business size. Although the rules proposed for readoption may be more costly for a small business to implement, uniform quality standards are necessary for the public health, welfare, and safety.

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 standards for certification of agricultural commodities.

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 standards for certification of agricultural commodities.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated the rules proposed for 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 readopted rules may be found in the New Jersey Administrative Code at N.J.A.C. 2:78.

COMMUNITY AFFAIRS

(a)

DIVISION OF CODES AND STANDARDS

Uniform Construction Code

Proposed Amendments: N.J.A.C. 5:23-2.18, 3.2, 4.5, 6.6, 6.8, 6.9, 6.31, and 12.2

Authorized By: Lieutenant Governor Sheila Y. Oliver,
Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-119.