

# RULE ADOPTIONS

## AGRICULTURE

### (a)

#### DIVISION OF PLANT INDUSTRY

##### Importation of Plants and Plant Material

##### Redoption: N.J.A.C. 2:17

Proposed: March 21, 2022, at 54 N.J.R. 469(a).

Adopted: May 25, 2022, by the State Board of Agriculture and

Douglas H. Fisher, Secretary, Department of Agriculture.

Filed: June 13, 2022, as R.2022 d.088, **without change**.

Authority: N.J.S.A. 4:1-11.1, 4:1-21.5, and 4:7-1 et seq., specifically 4:7-4 through 14 and 4:7-15 through 35.

Effective Date: June 13, 2022.

Expiration Date: June 13, 2029.

##### Summary of Public Comment and Agency Response:

The Department of Agriculture received comments from a Jean Public in response to the notice of the proposed readoption of N.J.A.C. 2:17.

COMMENT: Jean Public complains that the United States Department of Agriculture (USDA) and the New Jersey Department of Agriculture (NJDA) allow invasive plants to be imported into this country and into New Jersey, respectively, and to be sold via nurseries, and she argues that the sale of those invasive plants is harmful to New Jersey's native plants. She urges the establishment of a list of invasive plants that would be barred from sale in New Jersey.

RESPONSE: The comment is beyond the scope of this rulemaking, which pertains to the prevention of the movement into New Jersey of diseased or insect infected vegetable plants, including tomato plants and pepper plants.

##### 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 readopted rules at N.J.A.C. 2:17 do not exceed 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.

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 2:17.

### (b)

#### DIVISION OF MARKETING AND DEVELOPMENT

##### School Milk Purchase Regulations

##### Redoption: N.J.A.C. 2:55

Proposed: March 21, 2022, at 54 N.J.R. 470(a).

Adopted: May 25, 2022, by the State Board of Agriculture and

Douglas H. Fisher, Secretary, Department of Agriculture.

Filed: June 9, 2022, as R.2022 d.086, **without change**.

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

Effective Date: June 9, 2022.

Expiration Date: June 9, 2029.

##### Summary of Public Comment and Agency Response:

The Department of Agriculture (Department) received comments from a Jean Public in response to the notice of proposed readoption of N.J.A.C. 2:55.

COMMENT: Jean Public states that she does not support the proposed readoption because she believes that it is time to end the supply of milk to school children. She complains that cows make milk for their calves and that their milk is not for children. She states that there are better ways to get protein to children, and lactose intolerance among a significant portion of the population means that children should get water, rather than milk, which in her view would cost less and be healthier. She also criticizes the treatment of cows by the dairy industry.

RESPONSE: The commenter's concerns are beyond the scope of this rulemaking. The serving of milk to students by schools is unaffected by the regulations proposed for readoption. The readoption of N.J.A.C. 2:55 merely requires that, pursuant to N.J.S.A. 18A:18A-6, when schools purchase milk, the vendors of school milk buy a minimum amount of their milk from New Jersey producers.

##### Federal Standards 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 readoption of N.J.A.C. 2:55 does 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 readopted rules meet, but do not exceed, these Federal requirements. As the readoption of N.J.A.C. 2:55 does not exceed any Federal standards, a Federal standards analysis is not required.

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 2:55.

### (c)

#### DIVISION OF MARKETING AND DEVELOPMENT

##### New Jersey Organic Certification Program

##### Redoption: N.J.A.C. 2:78

Proposed: March 21, 2022, at 54 N.J.R. 472(a).

Adopted: May 25, 2022, by the State Board of Agriculture and

Douglas H. Fisher, Secretary, Department of Agriculture.

Filed: June 13, 2022, as R.2022 d.087, **without change**.

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

Effective Date: June 13, 2022.

Expiration Date: June 13, 2029.

##### Summary of Public Comment and Agency Response:

**No comments were received.**

##### 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 New Jersey

Department of Agriculture (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 certification and labeling, 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 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.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 2:78.

## ENVIRONMENTAL PROTECTION

### (a)

#### AIR QUALITY, ENERGY, AND SUSTAINABILITY

#### Notice of Administrative Changes

#### Radiation Protection Programs

#### Schedule of Fees

#### N.J.A.C. 7:28-64.2

Effective Date: June 23, 2022.

Take notice that the Department of Environmental Protection (Department) is changing its Schedule of Source, Special Nuclear, and Byproduct Material Annual Fees at N.J.A.C. 7:28-64.2, Table 1, and Schedule of Radioactive Materials Annual Fees at N.J.A.C. 7:28-64.2, Table 2. In accordance with N.J.A.C. 7:28-64.10, Adjustment of fees, the Department is adjusting the fees by the previous 12-month inflation factor, calculated from the Consumer Price Index, all urban consumers, U.S. city average. As provided by the U.S. Department of Labor, Bureau of Labor Statistics, the inflation factor is 8.6 percent. (<http://www.bls.gov/news.release/cpi.t01.htm>) The fees were rounded to the nearest \$5.00 increment (either higher or lower), using standard rounding techniques.

Full text of the changed rule follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

#### SUBCHAPTER 64. RADIOACTIVE MATERIALS LICENSE FEES

7:28-64.2 Schedule of fees

(a)-(h) (No change.)

Table 1

Schedule of Source, Special Nuclear, and Byproduct Material Annual Fees

<u>FEE CATEGORY</u>	<u>LICENSE TYPE</u>	<u>ANNUAL FEE (\$)</u>
1.	Special Nuclear Material	
A.-B.	(Reserved.)	
C.	Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring	[1,870] <b>2,030</b>

<u>FEE CATEGORY</u>	<u>LICENSE TYPE</u>	<u>ANNUAL FEE (\$)</u>
D.	systems, including x-ray fluorescence analyzers All other special nuclear material except  a) licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined [in] at N.J.A.C. 7:28-62; b) U-235 or plutonium for fuel fabrication activities; c) spent fuel and reactor-related greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI); d) special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers; or e) licenses or certificates for the operation of a uranium enrichment facility.	[4,790] <b>5,200</b>
E.	(Reserved.)	
2.	Source Material	
A.	(Reserved.)	
B.	Licenses that authorize only the possession, use, and/or installation of source material for shielding, or licenses that authorize possession, storage, and use of reference sources containing source material for calibration, proficiency testing, quality assurance, and/or in the manufacturing of exempt devices.	[640] <b>695</b>
C.	All other source material licenses	[11,010] <b>11,955</b>
3.	Byproduct material	
A.	Licenses of broad scope for possession and use of byproduct material issued under N.J.A.C. 7:28-51 and 54 for processing or manufacturing of items containing byproduct material for commercial distribution.	[24,210] <b>26,290</b>
B.	Other licenses for possession and use of byproduct material issued under N.J.A.C. 7:28-51 for processing	[6,985] <b>7,585</b>