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RULE PROPOSALS

**AGRICULTURE
OFFICE OF THE SECRETARY**

45 N.J.R. 2291(a)

Proposed Readoption with Amendments: N.J.A.C. 2:1-1, 2, and 3

Proposed Repeal and New Rule: N.J.A.C. 2:1 Appendix

Click here to view Interested Persons Statement

Administration

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

Authority: *N.J.S.A. 4:1-11, 52:14B-3, and 52:14B-4.*

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

Proposal Number: PRN 2013-147.

Submit written comments by December 20, 2013 to:

Alfred Murray, Assistant Secretary
Department of Agriculture
P.O. Box 330
Trenton, New Jersey 08625
al.murray@ag.state.nj.us

The agency proposal follows:

Summary

Pursuant to *N.J.S.A. 52:14B-5.1.c(2)*, *N.J.A.C. 2:1-1, 2, and 3* expire on March 27, 2014. The New Jersey Department of Agriculture (Department) has reviewed the rules and, with the following proposed amendments, has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated, as required by Executive Order No. 66 (1978). The last revisions to the rules were effective in 2006. A summary of the existing subchapters and proposed amendments follows.

Subchapter 1 contains the rules governing the designation of additional organizations to the annual State Agricultural Convention and sets forth the procedures an organization seeking to send delegates to the convention must follow. An amendment to *N.J.A.C. 2:1-1.3(a)* is proposed to add the Department website address as a source to obtain forms.

Subchapter 2 delineates the responsibilities of the Department, lists and prescribes the functions of its departmental units, and sets forth the Department's table of organization. Amendments are proposed to delete *N.J.A.C. 2:1-2.3(a)3* pertaining to the Office of Operations functions, as those functions have been subsumed by the Office of the Secretary; to add some of those functions to paragraph (a)2, as further examples of the functions of the Office of the Secretary, to amend paragraph (a)2 to state that the functions of the office include, but are not limited to, the delineated functions; and to add to recodified paragraph (a)4, the organic program, which did not become effective until after these rules were adopted.

Subchapter 3 describes the purpose and development of rules by the Department and sets forth the procedures to petition the Department for a new rule or rule amendment. The language is consistent with the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. In addition, Subchapter 3 sets forth the procedures for submitting public comments to the Department concerning rule proposals, requests for extensions to the public comment period, and the standards applicable to public hearings. *N.J.A.C. 2:1-3.2(c)* includes other methods, in addition to advisory groups, that may be used to facilitate public participation in rule development activities. While *N.J.S.A. 52:14B-1* et seq. and *N.J.A.C. 1:30* require the provision of a quarterly rulemaking calendar, most of the rules promulgated by the Department are excepted from these provisions. This exception is based on the Department routinely providing a 60-day comment period, or adopting an emergency rule, both of which are excepted from the aforementioned rules. Amendments to *N.J.A.C. 2:1-3.4* are proposed to provide the Department's website address for proposed rules and to include the email address for public comment on each specific proposal. The addition of the website and email address is also proposed at *N.J.A.C. 2:1-3.8* and *3.11*. *N.J.A.C. 2:1-3.6* delineates the criteria for when the public comment period may be extended. *N.J.A.C. 2:1-3.7* provides the criteria for when a public hearing is conducted. Finally, *N.J.A.C. 2:1-3.14* delineates the procedure for accessing public records and amendments to the fees associated therewith are proposed to reflect the amendment to *N.J.S.A. 47:1A-5*, reducing the fees to be more nearly equivalent to actual costs.

N.J.A.C. 2:1 Appendix, showing the organizational structure of the Department of Agriculture, is proposed for repeal and replacement, showing the current organizational structure and, in particular, reflecting the elimination of the Division of Operations.

As the Department has provided a 60-day comment period on 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 in Chapter 1 authorize the State Board of Agriculture to designate additional organizations to be represented by one delegate each at the annual State Agricultural Convention. They specify further avenues of public participation in the Department's rulemaking activities. These rules will have a positive social impact by allowing the greatest amount of industry participation in agricultural policy making activities and the greatest amount of public participation in the rulemaking process. Additional amendments provide the Department website address and email address for questions and information requests. In addition, the reduced fees for public records requests will have a positive social impact by lowering costs associated with public records requests and being consistent with those

permitted under the Open Public Records Act (OPRA), *N.J.S.A. 47:1A-1* et seq. These rules provide the public with a clear understanding of the Department and its organization, function, and [page=2292] structure, including procedures for rulemaking and access to public records. The public will benefit from these rules because they allow for better public understanding of the Department's rulemaking process and how the public may participate. This understanding may lead to greater public participation.

Economic Impact

The proposed amendments to *N.J.A.C. 2:1-2.3* are expected to have no economic impact on the members of the agricultural community as they only identify a consolidation of functions in the Office of the Secretary and are updated to include an additional program, which is subject to different rules. Rules related to convention delegates will be economically beneficial to the extent that policies are set at the Convention that affect the bottom line of certain sectors of the agricultural industry because all industry sectors who want to regularly send a delegate will be able to, without having overrepresentation by any one industry sector.

Proposed amendments to *N.J.A.C. 2:1-3.14(b)* have a positive economic impact because they reduce the fees associated with provision of documents upon request under the Open Public Records Act in accordance with a statutory change. The rules impose fees for the rapid communication of information, if such service is requested. The imposition of such fees upon the users of these services conserves taxpayers' funds and allows the Department to serve more people. The costs for transmittal by other means are consistent with OPRA. The Department sees little economic impact from the remaining rules proposed for readoption at *N.J.A.C. 2:1-1, 2, and 3*, either to the Department or to the general public, since the rules simply detail departmental organization, structure, and practice.

Federal Standards Statement

A Federal standards analysis is not required because the rulemaking requirements of the Department and the procedure by which organizations are granted the ability to send delegates to the Convention are not subject to any Federal requirements or standards.

Jobs Impact

The rules proposed for readoption with amendments will neither create nor cause a loss of any jobs.

Agriculture Industry Impact

Subchapter 1 defines the criteria for agricultural organizations seeking membership in the New Jersey Agricultural Convention. These criteria allow for the broadest representation possible of New Jersey agricultural organizations at the agricultural convention while providing requirements for any interested New Jersey agricultural organization that would like to apply for representation. There is no cost for application, and it is not expected that any technical assistance will be required for preparation of the application.

Subchapters 2 and 3 will not have an impact on the agriculture industry. These subchapters clarify the functions of the Department's operating units and illustrate the Department's governance in the Department's table of organization.

Regulatory Flexibility Analysis

The Department believes many farmers in the State are small businesses under the definition of the New Jersey Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq.

Some "agricultural organizations" eligible to apply for membership in the annual convention under *N.J.A.C. 2:1-1* may be small businesses as defined under the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. The rules proposed

for readoption with amendments impose compliance requirements and costs on those businesses. Applicants for approval to participate in the annual convention must obtain, complete, and file applications by no later than July 1 in any year. As long as an approved applicant continues to meet the eligibility criteria under *N.J.A.C. 2:1-1.2*, it shall remain eligible to participate in future conventions.

Costs that may be incurred by agricultural organizations in applying for approval to participate in the convention are those of an administrative nature concerned with obtaining and filing the membership application. No professional services shall be required for compliance. Differing requirements are not provided for applicants based on business size due to the minimal nature of the application requirements, which are necessary to ensure the eligibility criteria are satisfied.

The remainder of the rules proposed for readoption with amendments found at *N.J.A.C. 2:1-2* and 3 do not impose reporting, recordkeeping, or other compliance requirements on small businesses as defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq., and thus, a regulatory flexibility analysis is not required as to those subchapters. The Department notes that the majority of the rules proposed for readoption with amendment deal with internal procedures and processes of the Department, which have a minimal impact on the public.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules proposed for readoption with amendments provide for the administration of the duties and functions of the Department.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments 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 the administration of the duties and functions of the Department.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at *N.J.A.C. 2:1-1*, 2, and 3.

Full text of the rule proposed for repeal may be found in the New Jersey Administrative Code at *N.J.A.C. 2:1* Appendix.

Full text of the proposed amendments and new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. DESIGNATION OF ADDITIONAL ORGANIZATIONS TO THE ANNUAL STATE AGRICULTURAL CONVENTION

2:1-1.3 Procedure for making application

(a) An organization shall make application, on forms provided by the Department of Agriculture, by no later than July 1 in any year. Forms may be obtained by contacting the Office of the Secretary, Department of Agriculture, P.O. Box 330, Trenton, NJ 08625-0330 **or on the Department website at** <http://www.state.nj.us/agriculture>.

(b)-(d) (No change.)

SUBCHAPTER 2. ORGANIZATION

2:1-2.3 Functions of departmental units

(a) Functions of the various units within the State Department of Agriculture are as follows:

1. (No change.)

2. The Office of the Secretary is responsible for [the], **including but not limited to**, executive management, policy development, **personnel, budget, information technology, facilities management**, legislative liaison, public information programs, and legal services for the Department and the State Board of Agriculture.

[3. The Office of Operations provides personnel, budget, accounting, training, information technology, facilities management and administrative support services to the Divisions.]

[4.] **3.** (No change in text.)

[5.] **4.** The Division of Marketing and Development: operates programs which foster a stable and competitive dairy industry; conducts quality assurance programs for agricultural inputs; regulates credit buyers of perishable agricultural products; performs agricultural product grading and inspection; and promotes food safety by conducting [third party] **third-party** audits on fresh produce. **The Division of Marketing and Development is accredited by USDA's National Organic Program to certify growers and handlers wishing to sell agricultural products [page=2293] under the organic designation and administers an organic registration program, which monitors all sectors of the organic industry in New Jersey.** The Division of Marketing and Development also provides market development services[.]; market news[.]; support for agricultural cooperatives, fairs, and shows[.]; equine programs[.]; and product promotions.

Recodify existing 6.-9. as **5.-8.** (No change in text.)

2:1-3.4 Public comments regarding existing rules and proposed rulemaking

(a) (No change.)

(b) Public comments are specifically sought regarding existing Department rules [which] **that** may be perceived as being not necessary, adequate, reasonable, efficient, understandable, or responsive to the purposes for which they were promulgated. Public comments regarding existing rules should be submitted in writing and addressed to either the specific relevant division of the Department or the Department at:

New Jersey Department of Agriculture
Office of the Secretary
PO Box 330
Trenton, New Jersey 08625-0330

or at ContactAg@ag.state.nj.us

(c) The Department invites the public to utilize the opportunity to be heard during the official public comment period following the publication of a notice of pre-proposal or proposal in the New Jersey Register by means of submitting in writing, data, views, or arguments to the name and unit **and mailing address or email address** specified in the notice, **which is also provided with the proposed rule at** <http://www.state.nj.us/agriculture/rule>.

2:1-3.8 Procedure to petition for a rule

(a)-(b) (No change.)

(c) Petitions shall be addressed to [either] the specific relevant Division of the Department [or the Department] at:

(Insert Division Name) New Jersey Department of Agriculture
[Office of the Secretary]
PO Box 330
Trenton, New Jersey 08625-0330

or the Department at ContactAg@ag.state.nj.us

2:1-3.11 Instructions for department forms on file

A description and instructions for use of the forms used in carrying out the Department's responsibilities may be obtained from the Office of the Secretary, Department of Agriculture, PO Box 330, Trenton, NJ 08625-0330 **or** <http://www.state.nj.us/agriculture>.

2:1-3.13 Information available to public

(a) The public may obtain complete information or make submissions or requests concerning any Departmental programs by contacting the Office of the Secretary, Department of Agriculture, PO Box 330, Trenton, NJ 08625-0330, ContactAg@ag.state.nj.us, **or through** <http://www.state.nj.us/agriculture>.

(b) An annual report of all Department activities is made to the Governor and Legislature. Copies are available from the Public Information Office, N.J. Department of Agriculture, PO Box 330, Trenton, NJ 08625-0330 **or** <http://www.nj.gov/agriculture/pub/general.html>.

2:1-3.14 Public records; copies; fees

(a) (No change.)

(b) Any person may obtain copies of public records by written request upon payment of a fee as set forth below. If the actual cost for duplication of the records exceeds the rates set forth in this subsection, the person will be charged the actual cost of duplicating the record.

[1. First page to 10th page: \$ 0.75 per page;

2. Eleventh page to 20th page: \$ 0.50 per page;

3. All pages over 20: \$ 0.25 per page.]

1. \$.05 per page that is letter size or smaller; and

2. \$.07 per page that is legal size or larger.

(c) (No change.)

(d) Records may be requested for transmittal by a telefacsimile machine upon payment, for cost reimbursement, at the

[rate of \$ 5.00 per page] **same rate as in (b) above.**

(e) Records may be requested for transmittal by a [computer diskette] **data storage device** upon payment, for **actual** cost reimbursement[, at the rate of \$ 15.00 per diskette].

(f)-(g) (No change.)

[page=2294] APPENDIX

[Click here for image](#)