

during the Public Health Emergency originally declared in Executive Order No. 103 (2020) is extended through January 1, 2022. Therefore, this chapter has not yet expired and the 30-day filing date pursuant to N.J.S.A. 52:14B-5.1.c has not yet occurred, therefore, pursuant to Executive Order No. 244 (2021), and P.L. 2021, c. 103, this notice of readoption is timely filed.

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. Organizations that have not sent delegates to the Annual Agricultural Convention (Convention) for three consecutive years will lose their right to send delegates thereafter, provided they have not been statutorily granted permission to send delegates to the Convention. Organizations may reapply any subsequent year, provided they meet the criteria set forth at N.J.A.C. 2:1-1.2 and follow the application procedures at N.J.A.C. 2:1-1.3. The Annual State Agricultural Convention is governed by Roberts' Rules of Order.

Subchapter 2 delineates the responsibilities of the Department of Agriculture (Department), lists and prescribes the functions of its departmental units, and sets forth the Department's table of organization. Specifically, Subchapter 2 describes the roles of the following departmental units: the State Board of Agriculture, the Office of the Secretary, the Division of Animal Health, the Division of Marketing and Development, the Division of Plant Industry, the Division of Agricultural and Natural Resources, the Division of Food and Nutrition, and the State Agriculture Development Committee, which is independent of, but allocated within, the Department of Agriculture.

Subchapter 3 primarily describes the purpose and development of rules by the Department and sets forth the procedures to petition the Department for a new rule, amendment, or repeal in a manner 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 and requests for extensions to the public comment period. N.J.A.C. 2:1-3.10 grants an opportunity for any person aggrieved by an action or inaction of the Department to receive a hearing, which may be referred to the Office of Administrative Law if it is determined to be a contested case. 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 exempt from these provisions. The Department routinely provides a 60-day public notice for any new rule proposals. N.J.A.C. 2:1-3.6 delineates the criteria for when the public comment period may be extended. Finally, N.J.A.C. 2:1-3.13 and 14 prescribe the procedure for accessing public records and sets forth the fees associated therewith.

Subchapter 4 sets forth the disability discrimination grievance procedure required pursuant to the Americans with Disabilities Act (ADA). ADA prohibitions against discrimination found at 28 CFR 35.130(a), are cited at, and have been added to N.J.A.C. 2:1-4.3, which provides notice of the necessary procedures. Subchapter 4 includes ADA notice requirements, the designation of an ADA coordinator within the Department, and complaint procedures.

Therefore, pursuant to N.J.S.A. 4:1-11, and in accordance with N.J.S.A. 52:14B-5.1.c(1), these rules are readopted without amendment and shall continue in effect for a seven-year period.

(a)

DIVISION OF ANIMAL HEALTH

Notice of Readoption Avian Influenza

Readoption: N.J.A.C. 2:9

Authority: N.J.S.A. 4:1-11, 4:1-21.2, 4:1-21.5, 4:5-1 et seq., and 4:5-94 et seq.

Authorized By: The State Board of Agriculture and Douglas H.

Fisher, Secretary, Department of Agriculture.

Effective Date: October 29, 2021.

New Expiration Date: October 29, 2028.

Take notice that pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 2:9 were scheduled to expire on May 15, 2021. Pursuant to Executive Order Nos. 127 (2020) and 244 (2021) 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) is extended through January 1, 2022. Therefore, this chapter has not yet expired and the 30-day filing date pursuant to N.J.S.A. 52:14B-5.1.c has not yet occurred, therefore, pursuant to Executive Order No. 244 (2021), and P.L. 2021, c. 103, this notice of readoption is timely filed.

N.J.A.C. 2:9-1.1 and 1.2 deal with the payment of indemnities and disposal costs, including language intended to limit the number of times a stakeholder is entitled to indemnity and disposal costs. This language is intended to protect businesses and individuals who effectively follow biosecurity measures, but still suffer from an outbreak through no fault of their own. However, individuals or businesses that test positive for avian influenza twice within the registration year are not entitled to indemnification and disposal costs.

Subchapter 2, General Provisions, delineates the definitions to be used in Chapter 9 and establishes a registration system for live bird markets, poultry distributors, and production/supplier flocks. N.J.A.C. 2:9-2.2 sets forth the annual registration requirements for live bird markets, poultry distributors, and production/supplier flocks operating in New Jersey. As part of this registration process, applicants will be required to permit the New Jersey Department of Agriculture's (NJDA) authorized agents access to their premises for inspection and testing.

Subchapters 3, 4, and 5 describe the sanitation, biosecurity, and surveillance measures required for live bird markets, poultry distributors, and production/supplier flocks, respectively. Minimum biosecurity measures, including routine cleaning and disinfecting requirements, periodic testing, and periodic closures are imposed under these subchapters. These subchapters also set forth the quarantine procedures that will be implemented if avian influenza is found in a live bird market, poultry distributor, and/or production/supplier flock. Finally, these subchapters describe the requirements for the sale of poultry to, and movement of poultry into, live bird markets and movement of poultry into qualified poultry auctions. Recordkeeping responsibilities have been imposed in connection with these subchapters.

Specifically, Subchapter 3 requires poultry invoices to accompany all poultry entering live bird markets. Live bird markets are also required to undergo quarterly testing, closure, and inspection. Subchapter 4 requires poultry distributors to obtain a poultry inspection certificate for all poultry moved into a live bird market. In addition, poultry distributors are required, pursuant to Subchapter 4, to maintain a logbook certifying that they have complied with approved biosecurity measures. Poultry distributors must also undergo inspection and testing. Subchapter 5 prohibits unregistered production/supplier flocks from selling poultry directly to live bird markets. Random testing and inspection of production/supplier flocks is authorized pursuant to Subchapter 5, and production/supplier flocks are required to maintain records of bird transfers, flock test records, and biosecurity records.

Subchapter 6 addresses penalties to be imposed for violations of this chapter. The penalty for a first offense shall be not less than \$100.00, nor more than \$200.00 per unit or violation, while the penalty for any subsequent offense shall be \$200.00 per unit or violation or imprisonment for not more than one year, or both. In addition, after the second offense, the live bird market, poultry distributor, or production/supplier flock could lose their registration for the remainder of the registration year. Any person aggrieved by the findings of the Division of Animal Health will be afforded the opportunity for a hearing thereon in the manner provided for in contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Subchapter 6 also makes clear that the Division of Animal Health may quarantine any poultry found in violation of Chapter 9. Such quarantine will not be lifted until the owner can establish proof of compliance or the poultry have tested negative for avian influenza.

Therefore, pursuant to N.J.S.A. 4:1-11, 4:1-21.2, 4:1-21.5, 4:5-1 et seq., and 4:5-94 et seq., and in accordance with N.J.S.A. 52:14B-5.1.c(1),

these rules are readopted without amendment and shall continue in effect for a seven-year period.

(a)

DIVISION OF PLANT INDUSTRY

**Notice of Readoption
Seed Control**

Readoption: N.J.A.C. 2:21

Authority: N.J.S.A. 4:1-11.1 and 4:8-17.13 et seq., specifically 4:8-17.23 and 17.24.

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

Effective Date: October 29, 2021.

New Expiration Date: October 29, 2028.

Take notice that pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 2:21 were scheduled to expire on September 30, 2020. Pursuant to Executive Order Nos. 127 (2020) and 244 (2021) 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) is extended through January 1, 2022. Therefore, this chapter has not yet expired and the 30-day filing date pursuant to N.J.S.A. 52:14B-5.1.c has not yet occurred, therefore, pursuant to Executive Order No. 244 (2021), and P.L. 2021, c. 103, this notice of readoption is timely filed.

The purpose of the rules is to facilitate the orderly marketing and sale of seed by providing the seed user with necessary and uniform information for buying seed. The following issues are addressed in the chapter: labeling requirements for treated seed, untreated seed, and hermetically sealed seed; seed testing methods; identification and regulation of noxious weed seeds found in all types of seed sold for planting purposes; minimum germination standards for vegetable and flower seed; and seed testing fees.

Subchapter 1 describes how seed is to be labeled to assure it is done in a uniform manner as to kind and variety name, and that comparable information is available for each lot. The subchapter lists labeling requirements for seed distributed to wholesale seedsmen, combination seed and products, and preplanted containers, mats, tapes, coated seed, and other devices. This subchapter also provides for relabeling seed in original containers.

Subchapter 2 identifies the methods used in testing seed to determine whether it is in compliance with the New Jersey State Seed Law, N.J.S.A. 4:8-17.13 et seq. Those methods are standardized and are prescribed by the Association of Official Seed Analysts in their "Rules for Testing Seed."

Subchapter 3 specifies the labeling requirements for treated seed. Seeds treated with a pesticide must be labeled with the appropriate signal word as is required on the pesticide label and must bear the caution statement, "Do not use for food or oil purposes." Seed treated with an inoculant must be labeled to show the inoculant and the expiration of the inoculant's effectiveness. Seed treated with other materials or processes must be labeled to reflect the name, date, and purpose of the treatment or process; if the material or process is harmful to humans or vertebrate animals, it must be labeled as such.

Subchapter 4 establishes lists of plants that have been found to be detrimental or difficult to control in farm fields, gardens, and lawns. Seeds of these plants are divided into two categories -- prohibited noxious weed seeds and restricted noxious weed seeds. No prohibited noxious weed seeds will be allowed in agricultural, vegetable, flower, tree, shrub, or lawn and turf seed. Restricted noxious weed seeds must be identified by number and name on the label; amounts exceeding the labeled number will be considered in violation of the law. The rules identify 10 species of seeds that are considered to be restricted noxious weeds when occurring in lawn and turf seed and mixtures. These 10 species are not considered restricted noxious weeds when occurring in pasture, forage, hay, conservation, or soil bank reclamation usage mixtures.

Subchapter 5 establishes germination standards for different kinds of vegetable seed. Labelers may use the words "Packed for (calendar year)" in lieu of germination percentages when germination rates meet or exceed the listed standards. Germination rates of vegetable seed that are less than two-thirds of the established standard shall be considered unfit for planting. Below standard rates that exceed two-thirds of the standard shall be considered fit for planting only if the label indicates the words "below standard." The rules establish a standard of 50 percent germination for any vegetable or herb not listed.

Subchapter 6 establishes germination standards for different kinds of flower seed. Labelers may use the words "Packed for (calendar year)" in lieu of germination percentages when germination rates meet or exceed the listed standards. Germination rates of flower seed that are less than two-thirds of the established standard shall be considered unfit for planting. Below standard rates that exceed two-thirds of the standard shall be considered for planting only if the label indicates the words "below standard." The subchapter includes a list of kinds of flowers with standards and establishes a standard of 50 percent germination for any kind not listed.

Subchapter 7 describes the fees to be charged for testing services performed by the New Jersey State Seed Laboratory. New Jersey commercial producers of agricultural and horticultural products are permitted two free germination tests within a fiscal year.

Subchapter 8 describes the procedures to be followed when samples are submitted to the laboratory for testing. Official testing for regulatory purposes is given priority at all times, and permits little other work during the spring and summer months. The rules allow the laboratory to reject samples submitted for testing if the time is not available. The rules also specify the amount of seed needed for testing, the fact that the sample should be representative of the lot of seed, and the information to be supplied with the sample. A noxious weed seed examination is conducted on all seed submitted for purity analysis, including lawn grasses.

Subchapter 9 establishes standards for seeds packaged in containers labeled as hermetically sealed. The subchapter sets standards for maximum percent moisture content of agricultural and vegetable seeds.

Subchapter 10 provides the penalties for violations of this chapter. Penalties include a fine of not less than \$500.00, nor more than \$1,000 for the first offense and a fine of not less than \$1,000, nor more than \$5,000 for each subsequent offense.

Therefore, pursuant to N.J.S.A. 44:1-11.1 and 4:8-17.13 et seq., specifically 4:8-17.23 and 17.24, and in accordance with N.J.S.A. 52:14B-5.1.c(1), these rules are readopted without amendment and shall continue in effect for a seven-year period.

(b)

**STATE TRANSFER OF DEVELOPMENT RIGHTS
BANK**

**Notice of Readoption
Transfer of Development Rights**

Readoption: N.J.A.C. 2:77

Authority: N.J.S.A. 4:1C-52f.

Authorized By: State Transfer of Development Rights Bank, Douglas H. Fisher, Chairman.

Effective Date: October 25, 2021.

New Expiration Date: October 25, 2028.

Take notice that, pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 2:77 were scheduled to expire on November 12, 2020. Pursuant to Executive Order Nos. 127 (2020) and 244 (2021) 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) is extended through January 1, 2022. Therefore, this chapter has not yet expired and the 30-day filing date pursuant to N.J.S.A. 52:14B-5.1.c has not yet occurred, therefore, pursuant to Executive Order No. 244 (2021), and P.L. 2021, c. 103, this notice of readoption is timely filed.