

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF MARKETING AND DEVELOPMENT Public Notice Regarding Proposed Rulemaking Adopted Amendment: N.J.A.C. 2:1-3.3

Proposed: February 21, 2023, at 55 N.J.R. 255(a).
Adopted: June 28, 2023, by the State Board of Agriculture and
Douglas H. Fisher, Secretary, Department of Agriculture.
Filed: June 30, 2023, as R.2023 d.090, **without change**.
Authority: N.J.S.A. 4:1-11, 52:14B-3, and 52:14B-4.
Effective Date: August 7, 2023.
Expiration Date: October 29, 2028.

Summary of Public Comment and Agency Response:

In response to the notice of proposed amendments at N.J.A.C. 2:1-3.3, the Department of Agriculture (“Department” or “NJDA”) received comments from a Jean Public.

COMMENT: In her comment on the notice of proposal, Jean Public states that there currently isn’t enough notice for new rule publications and suggests that the rule proposal should be amended to include a rule that any member of the public can sign up for an email list to receive direct notifications of any proposed rule publications. She also asks what penalties there are if the Department fails to notify public.

RESPONSE: The Department endeavors to inform the public of all of its rulemaking activity, including rulemaking proposals on which public comment is sought, and the Department takes seriously its legal obligation to do so.

The Department provides multiple forms of notice to the public of pending rulemakings. The Department posts its rulemaking proposals to the NJDA website in order to inform the public of the text of each proposal and in order to advise the public of the opportunity to submit comments on the proposal. Information on pending NJDA rule proposals, and on rule adoptions and readoptions, can be found at <https://www.nj.gov/agriculture/rule/>. After a proposed rule is adopted, the link to the proposed rulemaking is removed from the website, at which time a copy of the Notice of Adoption is posted on that webpage. No new rules are adopted, and no substantive changes are made to existing regulations, without notice and information concerning the proposed rulemaking first appearing on the NJDA rules webpage noted above.

In addition to rulemaking proposals appearing on our website, the Department also places a timely Legal Notice in at least three newspapers of general circulation within the State as another means by which the Department advises members of the public of the promulgation of a rulemaking proposal and the opportunity to submit comments during the public comment period. Further, as required by law, the NJDA distributes the notice of proposal to news media maintaining a press office in the State House Complex, and the Office of Administrative Law submits the notice to the Senate and General Assembly. Those additional measures are intended to further the goal of providing the public with the opportunity to be informed of and comment on rulemaking proposals. All of these notices are in addition to publication of each proposed rulemaking and the adoption of each rulemaking in the New Jersey Register, which itself serves as a notice to the public.

Finally, the commenter’s request for an amendment is unnecessary, as N.J.A.C. 1:30-5.2(a)3 provides that the Department will mail or email a notice of proposal to those persons who have asked the NJDA to provide them with notice of its rule proposals. Any rule proposal that violates the notice requirements can potentially be challenged for its legality.

Federal Standards Statement

The adopted amendments are authorized pursuant to the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1, and its implementing rules at N.J.A.C. 1:30 and are not subject to any Federal standards or requirements. Therefore, no further analysis is required.

Full text of the adoption follows:

SUBCHAPTER 3. RULES OF PRACTICE

2:1-3.3 Public notice regarding proposed rulemaking

(a) The Department shall provide for the following four types of public notice for all rule proposals in accordance with the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30:

1. (No change.)

2. The notice of proposal shall be posted and made available electronically on the Department’s website no later than the date of publication of the notice in the New Jersey Register;

3. (No change.)

4. The notice of proposal, as filed with the Office of Administrative Law, or a statement of the substance of the proposed rulemaking, shall be made available to the public by an additional manner reasonably calculated to inform those persons most likely to be affected or interested in the proposed rulemaking.

i. (No change.)

ii. The additional method of publicity with regard to all rule proposals shall be by one or more of the following:

(1) (No change.)

(2) Distribution of a press release to the news media;

(3) Trade, industry, government, or professional publications; or

(4) Notice published on the Department’s website consistent with (a)2 above.

(b) Notice pursuant the methods described at (a)2, 3, and 4 above shall be provided at least 30 days prior to the close of the public comment period.

(b)

DIVISION OF ANIMAL HEALTH Disease Control Program Quarantines and Embargoes on Animals Readoption with Amendments: N.J.A.C. 2:5 Adopted New Rules: N.J.A.C. 2:5-1, 5, and 6.3

Proposed: March 20, 2023, at 55 N.J.R. 515(a).
Adopted: June 28, 2023, by the State Board of Agriculture and
Douglas H. Fisher, Secretary, Department of Agriculture.
Filed: June 30, 2023, as R.2023 d.091, **without change**.
Authority: N.J.S.A. 4:1-11.1, 4:1-17, 4:1-18, 4:1-21.5, and 4:5-1 et seq.

Effective Dates: June 30, 2023, Readoption;
August 7, 2023, Amendments and New Rules.
Expiration Date: June 30, 2030.

Summary of Public Comment and Agency Response:

In response to the notice of proposed readoption of N.J.A.C. 2:5 with amendments and new rules, the Department of Agriculture (“Department” or “NJDA”) received two separately submitted comments from a Jean Public.

COMMENT: In her comments on the proposal, Jean Public states that: (1) she opposes changing the word “horses” to “Equidae” because it is not a commonly used term, and its use may be an attempt to confuse or deceive the public; (2) she opposes providing quarantine authority to the Board as too broad, and she expresses great distrust of governmental decisions regarding health matters; (3) she opposes any expanded reach of embargoes on the importation of animals; (4) she opposes any reliance on animal health information coming from Federal or foreign government sources because she believes that the recent pandemic demonstrates that government agencies cannot be trusted; (5) she likewise opposes any

expansion of the rules regarding the specific equine diseases that are addressed in the rules, favoring the involvement of the public at large on any action that is taken by the Department to harm or hurt any animal in New Jersey because government agencies cannot be trusted to properly evaluate health data and protocols concerning infectious diseases; and finally (6) she asserts that the proposed rulemaking does not promote animal health, that the rules should provide for the humane treatment of livestock, and that the public at large should be called on decide what is to be done with “allegedly diseased” animals.

RESPONSE: The Department does not agree with the commenter.

The substitution of the word “Equidae” for “horses” is done to make clear that the rules readopted with amendments and new rules reach more than just horses, as that word is commonly understood, because some of the diseases that are the subject of these readopted rules with amendments and new rules are not limited to horses but can affect all equids. Contrary to the assertion by the commenter, the substitution of the word “Equidae” for “horses” is not being done to hide the fact that horses are a subject of the rule, but rather to make clear that more than horses are covered by the provisions where the term is used.

The State Board of Agriculture (Board) has had the authority to impose quarantines for reasons of animal health pursuant to N.J.S.A. 4:5-1 since at least 1916. The Board oversees and closely monitors the implementation of that authority by the Department’s Division of Animal Health as set forth in the existing rules and in the rules readopted with amendments and new rules. The Department exercises its quarantine authority judiciously as circumstances warrant, guided by real-time data and the science concerning animal diseases. Likewise, with respect to embargoes on the importation of animals due to disease concerns, the Department has exercised that authority based on its evaluation of all available information and the latest science concerning infectious and contagious animal diseases, and the Department will continue to do so pursuant to this rulemaking.

The Department believes that this rulemaking will reduce the transmission of animal diseases and thereby promote animal health. The rules readopted with amendments and new rules on quarantines and embargoes provide the Department with the necessary tools to contain and prevent the spread of infectious animal diseases. A proper and timely response to outbreaks of animal disease is not something that can include public input on a case-by-case basis as seems to be urged by the commenter.

Lastly, while the Department agrees that NJDA rules should provide for the humane treatment of livestock, the Department notes that such rules are set out at N.J.A.C. 2:8. Since those rules already exist separately from N.J.A.C. 2:5, they are beyond the scope of this rulemaking, which concerns quarantines and embargoes of animals due to infectious or contagious animal diseases.

Federal Standards Statement

N.J.S.A. 52:14B-23 requires State agencies that adopt, readopt, or amend any rules to include a statement as to whether the rule or regulation in question contains any standards or requirements that exceed the standards or requirements imposed by Federal law. A Federal standard analysis is not required for this rulemaking because the subject matter of this readoption with amendments and new rules is in accordance with, and does not exceed, applicable Federal requirements or standards. However, a number of provisions in the chapter do reference and incorporate Federal guidance. 9 CFR 93.300-93.301, and the requirements and procedures of USDA, APHIS, VS Guidance 13406.2 dated October 18, 2019, as amended and supplemented, address the equine disease Contagious Equine Metritis (CEM). That USDA guidance document sets forth procedures for testing certain imported horses for CEM after they arrive at approved quarantine facilities in the United States, as well as the approval criteria for such CEM quarantine facilities. Newly readopted N.J.A.C. 2:5-5 implements those requirements in New Jersey by establishing the New Jersey CEM Program and by adopting those Federal rules, regulations, and procedures as the official rules of the New Jersey CEM Program.

The USDA APHIS publication Equine Infectious Anemia: Uniform Methods and Rules (APHIS-91-55-064 January 10, 2007) sets forth a testing protocol by which an equid that has had possible exposure to EIA

would cease to be considered as an “exposed equidae” and would then be permitted to move from quarantine without restriction. Adopted N.J.A.C. 2:5-4.1 incorporates that protocol in the definition of “exposed equidae,” which then affects the quarantine and movement restrictions set forth at N.J.A.C. 2:5-4.2.

The amendments and new rules that have been adopted also incorporate new terms that are now used in Federal regulations, including “cleaned and disinfected,” as defined at N.J.A.C. 2:5-1.1 and used at N.J.A.C. 2:5-6.2, and “USDA Category II Accredited Veterinarian,” as defined at N.J.A.C. 2:5-1.1 and used at N.J.A.C. 2:5-4.1.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 2:5.

Full text of the adopted amendments and new rules follows:

SUBCHAPTER 1. GENERAL PROVISIONS

2:5-1.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Cleaned and disinfected” means free of organic matter and disinfected, as described at 9 CFR 71.7, 71.10, 71.11, and 71.12, which are incorporated herein by reference.

“Department” means the New Jersey Department of Agriculture.

“Equidae” means members of the family Equidae, including, but not limited to, horses, ponies, donkeys, hinnies, mules, and miniature breeds.

“Livestock” means cattle, equidae, swine, small ruminants, rabbits, and poultry.

“State Veterinarian” means the Director, Division of Animal Health, New Jersey Department of Agriculture, or his or her designee.

“USDA Category II Accredited Veterinarian” means a state-licensed veterinarian accredited by the United States Department of Agriculture to perform certain functions of Federal and cooperative state-Federal programs in accordance with the provisions at 9 CFR Parts 160 through 162.

SUBCHAPTER 2. DELEGATION OF QUARANTINE AUTHORITY

2:5-2.1 State Board Approval

(a) At least once each calendar year, and at any other time deemed necessary, the State Veterinarian shall advise the State Board of Agriculture of any contagious or infectious animal diseases as may be present in the State.

1. If, in the opinion of the State Veterinarian, a disease is persistent and difficult to eradicate, authority may be requested from the State Board of Agriculture for the State Veterinarian to issue prospective quarantines and violations and assess penalties for that disease, without prior Board approval for a period not to exceed 12 months.

2. If a quarantine is issued pursuant to this authority, at the next regularly scheduled State Board of Agriculture meeting, the State Veterinarian shall notify the Board of the quarantine and any violations issued, penalties assessed, or any other actions taken.

SUBCHAPTER 3. LIVESTOCK AND POULTRY PROHIBITION

2:5-3.1 Livestock and poultry prohibition

(a) Premises, areas, counties, states, countries, provinces, territories, U.S. territories, or tribal nations suspected or found positive for a contagious or infectious disease may be embargoed by the Department.

(b) Once official laboratory confirmation is received that a premises, area, county, state, country, province, territory, U.S. territory, or tribal nation is positive for a contagious or infectious disease, such premises, areas, counties, states, countries, provinces, territories, U.S. territories, or tribal nations shall remain embargoed until the State Veterinarian is satisfied that the risk of disease exposure no longer exists.

2:5-3.2 Vesicular stomatitis

(a) The following words or terms, as used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

“Vesicular stomatitis positive location” shall mean any state, country, province, territory, U.S. territory, or tribal nation in which vesicular stomatitis is currently identified as being present in any livestock or wild

or exotic animals by state, Federal, or other appropriate animal health officials, or in which there is a quarantine for vesicular stomatitis.

(b) All livestock and wild and exotic animals to be imported from any vesicular stomatitis positive location:

1. Shall be accompanied by a Certificate of Veterinary Inspection in accordance with N.J.A.C. 2:3-1.4, issued within 72 hours of shipment, which includes the following statements:

- i. The animals have been inspected and found free of evidence of vesicular stomatitis within 72 hours of shipment; and
- ii. The animals have not been on any premises on which vesicular stomatitis has been currently identified or exposed to any animal that has been vaccinated for vesicular stomatitis during the 30 days prior to the inspection date.

(c) In addition to (b) above, all livestock and wild and exotic animals to be imported from any vesicular stomatitis positive location must first obtain a permit number for entry from the Department. A permit number may be requested by telephone at (609) 671-6400 or by fax at (609) 671-6413 or by email at State.veterinarian@ag.nj.gov (non-holiday weekdays, 8:45 A.M. to 4:45 P.M., ET).

1. These animals must be accompanied by a negative test for vesicular stomatitis performed by an International Organization for Standardization (ISO), or American Association of Veterinary Laboratory Diagnosticians (AAVLD)-accredited or National Animal Health Laboratory Network (NAHLN)-approved laboratory within 10 days prior to shipment; and

2. Animals imported into New Jersey under such a permit shall be automatically quarantined for 14 days, and shall be isolated from other livestock and susceptible species until the quarantine expires or the animal(s) is released by the State Veterinarian.

3. Based on epidemiological risk, areas of a state, country, province, territory, U.S. territory, or tribal nation may be exempted from the requirements in this subsection by the State Veterinarian. Such epidemiological risk evaluation may consider factors associated with the risk of the presence and transmission of vesicular stomatitis in such areas, including, but not limited to, the consideration and assessment of the nature of the disease, the means or methods of its transmission, the proximity to an identified outbreak of the disease, mitigation methods that may have been used, and the species involved.

(d) New Jersey premises suspected or found positive by official laboratory confirmation for vesicular stomatitis shall be quarantined by the State Veterinarian.

(e) Once official laboratory confirmation of vesicular stomatitis exists, such premises shall remain under quarantine until the State Veterinarian is satisfied that the risk of disease exposure no longer exists.

SUBCHAPTER 4. EQUINE INFECTIOUS ANEMIA

2:5-4.1 Definitions

The following words and terms, as used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

“Approved laboratory” means a laboratory meeting all requirements and procedures of USDA, MRP, APHS, VS Guidance Document No. 15201.1, dated April 5, 2019, incorporated herein by reference, as amended and supplemented. A copy of these documents are on file in the State Veterinarian’s Office, Division of Animal Health, New Jersey Department of Agriculture, NJPHEAL, 3 Schwarzkopf Drive, Ewing, NJ 08628.

“Exposed equidae” means equidae that may have been exposed to EIA through direct/indirect association with an equine or equines having tested positive on approved diagnostic tests. “Direct/indirect association” includes, but is not limited to, association by way of contact, physical proximity, common ownership, or the likelihood of common fomites. An equidae will continue to be an exposed equidae until such time as it has tested negative pursuant to the USDA APHIS, Equine Infectious Anemia: Uniform Methods and Rules (APHIS-91-55-064 January 10, 2007), incorporated by reference, as amended and supplemented. A copy of that document is on file in the State Veterinarian’s Office, Division of Animal Health, New Jersey Department of Agriculture, NJPHEAL, 3 Schwarzkopf Drive, Ewing, NJ 08628.

“Official test for equine infectious anemia” means:

1. The equine infectious anemia agar gel immuno-diffusion (AGID) test or the Enzyme Linked Immunosorbent Assay (ELISA) test;

2. The test shall be conducted at a United States Department-approved laboratory for EIA testing; and

3. The blood sample shall be collected and submitted by a USDA Category II Accredited Veterinarian.

“Official test report” means a report that includes the following:

1. A complete description of the animal including name, registration number, microchip number, if any, breed, brand, tattoo, if any, sex, age, and color;

2. The name and address of the owner;

3. The location of the animal at the time of sample collection;

4. The date the sample was collected;

5. The name and location of the laboratory that conducted the test;

6. The date the laboratory test was conducted;

7. Signature of the USDA Category II Accredited Veterinarian who collected the sample; and

8. An endorsed or otherwise certified result of an official test for equine infectious anemia from an approved laboratory.

The owner, transferee, or transferor shall keep an official test report for a minimum of two years, or as otherwise required by law. Upon request, an unaltered copy or original copy of said report shall be furnished to the State Veterinarian.

“Reactor” means any equidae that has been subjected to an official test for equine infectious anemia whose result is positive for EIA and confirmed by the AGID test.

2:5-4.2 Quarantining and branding of reactor and exposed equidae; branding of reactor

(a) When the disease of equines known as EIA exists or is suspected to exist in any equidae or stable of equidae based on epidemiological investigation, the Department may require the quarantine and testing of all such equidae to ascertain the presence or absence of EIA.

(b) All equidae having a positive official test for EIA will be quarantined to the premises. Authorized veterinary agents of the Department will properly identify the positive equidae and rebleed them to confirm the diagnosis and make sure the proper equidae has been quarantined.

(c) The owner or custodian shall confine, present, control, and restrain such equidae for examination tests and identification, as necessary.

(d) Equidae during the testing period shall be confined and not moved from the premises. Identification marks or devices affixed for the purpose of the test shall not be altered or defaced.

(e) Reactors shall be officially identified pursuant to 9 CFR 75.4.

(f) Reactors may be humanely destroyed or moved on a permit issued by an authorized agent under the direction of the State Veterinarian. Permits will be required to move exposed equidae to a new location, provided the location meets the requirements of the Department.

(g) Reactors that are not to be destroyed shall be quarantined to the premises and must be kept separate and apart from all other equidae on the premises in tightly screened quarters to prevent contact with vectors known to transmit EIA and be supplied with separate equipment, as approved by the State Veterinarian.

(h) The Department will not be liable for any loss of value of the branded equidae or for any indemnity for an equidae that is voluntarily destroyed.

2:5-4.3 Test requirements for transport

(a) No equidae six months or more of age, unless exempted by the provisions at N.J.A.C. 2:5-4.4 or 4.5, shall be ridden, driven, led, or otherwise moved and/or transported on any public highway or place of public area or take part in an event or occasion of any kind or format in which equidae from different premises are commingled within the State, unless the custodian of such animal has in his or her possession during the period of such movement a valid negative official test report for such animal.

1. Said official test report shall be valid for 24 months from the date of sample collection.

2:5-4.4 Test requirements for sale or other exchange of ownership

(a) No equidae six months or more of age, unless exempted by provisions of this section or N.J.A.C. 2:5-4.5 shall be sold, adopted, rescued, seized, rehomed, exchanged, bartered, given away, or otherwise have a change of ownership or custody, unless such animal has a negative official test for EIA with the sample collected within 90 days prior to such transfer.

1. At the time of such transfer, the transferor shall deliver personally or by certified mail to the transferee, an unaltered copy of the official test report.

2:5-4.5 Other authorized movement or transfer

(a) The provisions at N.J.A.C. 2:5-4.3 and 4.4 shall not apply to:

1. Any equidae imported for purposes of immediate slaughter or immediate veterinary care;

2. Equidae younger than six months and accompanied by a dam that has a negative official test for EIA within the past 12 months; or

3. Other authorized purpose, provided written authorization for such movement or transfer is obtained in advance thereof from the State Veterinarian.

4. (No change in text.)

(b) The provisions at N.J.A.C. 2:5-4.4(a) shall not apply to any horse claimed in any claiming race conducted by any race track licensed by the New Jersey State Racing Commission and such horse need not be retested for EIA, provided such horse and all other horses admitted to said track have been tested and found negative for the disease within 24 months prior to the date of the claim.

SUBCHAPTER 5. CONTAGIOUS EQUINE METRITIS PROGRAM

2:5-5.1 Program requirements

(a) The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicate otherwise.

“Approved laboratory” means a State or Federal laboratory approved for Equine Viral Arteritis (EVA) testing by the United States Department of Agriculture (USDA), or a National Animal Health Laboratory Network (NAHLN) laboratory.

“Contagious equine metritis (CEM)” means a venereal disease of horses caused by *Taylorella equigenitalis*, a gram-negative coccobacillus.

“The New Jersey Contagious Equine Metritis Program” means a program meeting 9 CFR 93.300 through 93.301 and all requirements and procedures of USDA, APHIS, VS Guidance 13406.2, dated October 18, 2019, incorporated herein by reference, as amended and supplemented. A copy of these documents are on file in the State Veterinarian’s Office, Division of Animal Health, New Jersey Department of Agriculture, NJPHEAL, 3 Schwarzkopf Drive, Ewing, NJ 08628.

(b) The Department adopts the rules and regulations at 9 CFR 93.300-93.301, and all requirements and procedures of USDA, APHIS, VS Guidance 13406.2, dated October 18, 2019, incorporated herein by reference, as amended and supplemented, as the official rules and regulations of the New Jersey CEM Program for imported equidae at approved quarantine facilities.

1. In addition, the Department shall require the approved quarantine facility to arrange for the following procedures to be completed upon arrival for each imported equidae:

i. An official test for equine infectious anemia (EIA), as described at N.J.A.C. 2:5-4.1;

ii. An EVA Serum Neutralization test performed by an approved laboratory; and

iii. A microchip that complies with International Organization of Standardization (ISO) 11784/11785.

(c) On an as-needed basis, as determined by the State Veterinarian, the Department may request and evaluate applications for a new CEM Quarantine facility in order to serve the interests of the New Jersey CEM Program.

1. Applicants for Department approval to operate a new CEM facility will be selected or denied based upon multiple factors including, but not limited to, their qualifications and ability to comply with the requirements described at (b) above, the suitability of the proposed premises, and the

availability of Department resources to provide the necessary oversight for the proposed new CEM facility.

SUBCHAPTER 6. LIVESTOCK AND POULTRY

2:5-6.1 Quarantine of premises containing livestock and poultry

(a) Premises suspected or found positive by official laboratory confirmation for a contagious or infectious disease shall be quarantined by the State Veterinarian.

(b) If official laboratory confirmation is received that a premises is positive for a contagious disease, such premises shall remain under quarantine until the State Veterinarian is satisfied that the risk of disease exposure no longer exists.

(c) At the time of quarantine, the State Veterinarian will outline the conditions of quarantine based on the specific disease.

(d) The quarantine will be lifted when the premises are found to be free from a contagious or infectious disease based on official laboratory confirmation and epidemiological evaluation by the State Veterinarian.

2:5-6.2 Biosecurity

Any premises, vehicles, protective clothing, equipment, conveyance, container, or other fomites that may have been contaminated due to an outbreak of infectious or contagious disease shall be cleaned and disinfected and/or disposed of in accordance with a clean-up plan approved by the State Veterinarian to prevent disease transmission.

2:5-6.3 Examination and testing to confirm existence of diseases or agents affecting livestock or poultry or premises

When there is reason to believe that any livestock or poultry or premises is affected by a disease or agent, described at N.J.A.C. 2:2-1.1, the Department may undertake appropriate examination and testing to confirm the existence of such disease or agent, and the Department may enter any property for that purpose. Owners of livestock or poultry or premises to be examined and tested pursuant to this section, and their agents, shall grant access and provide assistance to the Department, as requested, and instructed by the Department and its representatives, including assistance by restraining, handling, and making available any animals involved until completion of the examination and testing. No person shall interfere with or otherwise obstruct any agent of the Department in the performance of their duties authorized by this section.

SUBCHAPTER 7. PENALTIES

2:5-7.1 Penalties for violations of this chapter

(a) Any person who shall violate the provisions of this chapter shall be liable for a penalty of not less than \$1,000 per unit or violation nor more than \$2,000 per unit or violation for a first offense.

(b) For a second or subsequent offense, the penalty shall be \$2,000 per unit or violation or may subject the offender to imprisonment for not more than one year, or both.

(c) A unit is any division or quantity accepted as a standard of measurement or exchange. Where it is possible to determine the number of animals (livestock or poultry), including by use of a reasonable estimate, the Department will use that number as the basis for calculating a penalty. Where a reasonable estimate of the number of animals involved has been relied upon as the basis for a penalty calculation, the Department will describe the evidence supporting its estimate. The evidence upon which a reasonable estimate of the number of animals involved will depend on the circumstances and may include, but is not limited to, reliance on one or more of the following: actual count(s); commercial or transportation documents; investigator and/or witness statements; standard operating procedures and/or other customary practices; standard sizes of shipping crates or transport vehicle capacity; or any other identifiable means that can provide an evidentiary basis to determine the number of animals involved for penalty calculation purposes.

(d) (No change.)

(e) The State Veterinarian shall make an initial determination as to whether a violation exists and the amount of the penalty to be assessed.

(f) Any person who is aggrieved by the determination of the State Veterinarian pursuant to (e) above shall, upon written request transmitted to the Department within 20 days of the notice of violation, be afforded the opportunity for a hearing thereon in the manner provided for contested

cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

1. Requests for hearings shall be sent to Director, Division of Animal Health, New Jersey Department of Agriculture, PO Box 400, Trenton, New Jersey 08625-0400.

2. An informal prehearing conference with the State Veterinarian shall occur within 30 calendar days after the Department receives the written request for a hearing.

(g)-(h) (No change.)

COMMUNITY AFFAIRS

(a)

DIVISION OF CODES AND STANDARDS

Maintenance of Hotels and Multiple Dwellings

Adopted Amendments: N.J.A.C. 5:10-1.3, 1.4, 1.10, 1.11, 1.12, 1.15, 1A.4, 1B.1, 2.1, 2.2, 4.2, 5.2, 7.7, 14.1, 14.4, 14.7, 19.1, 19.2, 27.1, 27.4, and 28.1

Proposed: July 5, 2022, at 54 N.J.R. 1225(a).

Adopted: May 16, 2023, by Lt. Governor Sheila Y. Oliver, Commissioner, Department of Community Affairs.

Filed: June 28, 2023, as R.2023 d.089, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 55:13A-1 et seq.

Effective Date: August 7, 2023.

Expiration Date: January 30, 2030.

Summary of Public Comments and Agency Responses:

Comments were received from Nicholas Kikis, Vice President of Legislative and Regulatory Affairs of the New Jersey Apartment Association (NJAA) and Mitchell Malec, retired former employee of the Department of Community Affairs (Department).

Comments Received from Nicholas Kikis, Vice President of Legislative and Regulatory Affairs of the New Jersey Apartment Association

1. COMMENT: The commenter notes that the proposed changes would increase the registration fees and impose a new annual recertification fee. The commenter accepts the increase in costs of registration fees due to the fee not being adjusted since 1967, however, they believe the income from fees should equal the costs of the Department supporting these services. The commenter questions how much revenue the fees bring to the Department under the current schedule and how much revenue the Department anticipates receiving when the new fee schedule is implemented. Additionally, the commenter requests to know how much the Department spent in Fiscal Year 2022 on administering the registration program and how much the Department expects annual recertification to impact its expenditures in the future.

RESPONSE: The Department developed these fees pursuant to inflation rates since 1967; this also took into account the requirements established pursuant to P.L. 2019, c. 202, which authorized the Department to establish a fee for recertification. These fees were established to appropriately cover the cost of the Department's administration of the rules. Revenue comes not only from the registration of buildings, but also from the cyclical inspections, and the recertification fee is a new fee established pursuant to the tiered inspections law this rulemaking seeks to implement. The Department is unable to project fees to match program costs as the Department does not know prospectively the inspection cycles each multiple dwelling will fall within, which will change the way the Bureau of Housing Inspection receives its revenue. Furthermore, the costs to operate the program fluctuate yearly based upon variances in program staffing.

2. COMMENT: The commenter notes the Department proposes extending the heating season from October 1st through May 1st to October 1st through June 1st, thus including the entire month of May in the heating

season. The commenter understands that cold weather may occur during May, however, they note that by extending the heating season, the Department is shortening the air conditioning season and due to the timeframe needed to switch over heating and air conditioning systems, residents will experience delays in properly air-conditioned units. The commenter states that temperatures vary considerably in the month of May but during the last half of the month there is a greater need for air conditioning, as climate data shows higher temperatures in late May. The commenter suggests making mid-May the end of heating season, as this would be a greater benefit for residents and ensures air conditioning systems are in place in time for the higher degree days in late May and in the beginning of June.

RESPONSE: The Department thanks the commenter for the recommendation. Upon adoption, a change is made to only require heating through May 15th.

Comments Received from Mitchell Malec

3. COMMENT: The commenter notes a few grammatical errors regarding a referenced standard and asks if the Department could include the edition of the ANSI/BHMA standard used for this rulemaking.

RESPONSE: The Department agrees that the reference to ANSI A156.2 should be updated to appropriately cite the title standard. However, the Department respectfully disagrees that a year should be included. This is because any lock built using any edition of ANSI/BHMA A156.2 is acceptable; there is no reason to require owners to update their locks any time a new edition of the standard is issued.

Federal Standards Statement

No Federal standards analysis is required for the adopted amendments because the amendments are not being adopted in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates, or refers to Federal law, standards, or requirements.

Full text of the adoption follows (additions to the proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 1. ADMINISTRATION AND ENFORCEMENT

5:10-1.3 Administration and enforcement

(a) (No change.)

(b) Each municipality and county of the State may be authorized by the Commissioner to enforce the provisions of this chapter within the corporate limits thereof, subject to the supervision and control of the Commissioner. Any such authorization shall be in accordance with the following terms and conditions:

1.-16. (No change.)

17. The Bureau shall credit the municipality or county, as follows:

i. The Bureau shall annually establish and distribute to authorized municipalities or counties a regular payment schedule, which shall set forth the payments to be made by the Bureau to each municipality or county for registration, administrative hearings and court appearances, and units inspected and reinspected and for inspection and reinspection of common areas. Maximum payments per building or per project may be established. The municipality or county shall be credited with an amount of \$10.00 for each first inspection and \$10.00 for each reinspection when the inspection is performed, as a result of a complaint received by the Bureau, and when the building that is the subject of the complaint has been issued a valid Certificate of Inspection by the Bureau. In the event that the building for which a complaint has been filed has not been issued a Certificate of Inspection, the municipality will be credited, in accordance with the regular inspection payment schedule.

ii. (No change in text.)

18.-28. (No change.)

(c)-(f) (No change.)

(g) The Office of the Director of the Division of Codes and Standards shall serve as the agent for the Bureau of Housing Inspection for the purpose of administering the licensing and training of housing officials, inspectors, and trainees.