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RULE PROPOSALS

**AGRICULTURE
DIVISION OF MARKETING AND DEVELOPMENT**

43 N.J.R. 1291(a)

Proposed New Rules: N.J.A.C. 2:35A

[Click here to view Interested Persons Statement](#)

New Jersey Wine Promotion Account Grants Program

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

Authority: N.J.S.A. 4:1-11, 4:10-76, 77 and 78 and 33:1-10.

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

Proposal Number: PRN 2011-126.

Submit written comments by August 5, 2011 to:

Alfred W. Murray, Director
Division of Marketing and Development
New Jersey Department of Agriculture
P.O. Box 330
Trenton, NJ 08625-0330

The agency proposal follows:

Summary

The Department of Agriculture (Department) proposes new rules to establish the New Jersey Wine Promotion Account Grants Program ("Program" or "Account"). These rules set forth the guidelines to be followed by the

Department in administering the Program and the procedures to be followed by applicant entities in applying for grant funds from this Account. The rules provide that awards can only be used by entities for research and development concerning the viticultural and wine-making processes in the State and for the promotion of New Jersey wine, consistent with the recommendations of the New Jersey Wine Industry Advisory Council and the approval of the State Board of Agriculture. These rules are authorized by P.L. 1985, c. 233 (N.J.S.A. 4:10-76 et seq.), which provided for the New Jersey Wine Promotion Account in the Department of Agriculture. This law provided for the establishment of an account that is to be credited annually, in an appropriation by law, from the alcoholic beverage excise tax, with an amount equal to \$ 0.47 per gallon on all sales of wines, vermouth and sparkling wines sold by plenary winery and farm winery licensees licensed pursuant to N.J.S.A. 33:1-10. The account must also be credited with any monies made available to it from the General Fund or any non-State public or private source. The law also established in the Department the New Jersey Wine Industry Advisory Council (Council) to assess the condition of the wine industry of the State and advise the Secretary of Agriculture on expenditures necessary for research, development and promotion of the New Jersey wine industry.

The Council has provided public notice and communications to plenary winery and farm winery licensees to make known the availability of financial assistance for the purposes of research and development concerning the viticultural and wine-making processes in the State and for the promotion of New Jersey wine, consistent with the recommendations of the New Jersey Wine Industry Advisory Council. Applications have been received and grants have been made in accordance with criteria available on the Department's website and in the public notice. While there has been notice of the Program on the Department's website and through the above referenced public and individual notices to advise of the application process and the selection criteria and to invite applications for grants for projects for research and development concerning the viticultural and wine-making processes in the State and for the promotion of New Jersey wine, consistent with the recommendations of the New Jersey Wine Industry Advisory Council, there has been increasing interest in the New Jersey wine industry, which necessitates greater formality in application procedures. Consistent with the Department's continuing statutory obligations to further New Jersey wine research and development and promotion and the Department's commitment to transparency, as well as clarity for potential applicants, these rules are proposed. The requirements incorporated in these rules do not replace the requirements of Circular Letter 07-05-OMB, which is incorporated into the rules at N.J.A.C. 2:35A-1.2, as amended and supplemented, which these rules are meant to reaffirm. The Department will continue to adhere to Circular Letter 07-05-OMB, as amended and supplemented, which establishes State policy regarding grant agreements and/or agency contracts entered into by State agencies.

A summary of each section of the chapter proposed for adoption follows:

N.J.A.C. 2:35A-1 outlines the general provisions of the rules. In particular, this subchapter's provisions provide as follows:

N.J.A.C. 2:35A-1.1 sets forth the purpose of the rules.

N.J.A.C. 2:35A-1.2 describes the scope of the rules.

N.J.A.C. 2:35A-1.3 sets forth the legal authority for the rules.

N.J.A.C. 2:35A-1.4 sets forth the definitions of terms used in this chapter.

N.J.A.C. 2:35A-2 describes how the Department administers the program and sets forth the notification procedure and application components. In particular, this subchapter's provisions provide as follows:

N.J.A.C. 2:35A-2.1 sets forth allowable uses of and limitations placed upon grant funds.

N.J.A.C. 2:35A-2.2 describes the process of notifying potential applicants of the availability of grant funds and establishes that awards will be made annually. Applicants will receive notice when application for the program can be

made online.

N.J.A.C. 2:35A-2.3 provides that applicants must timely file applications in order to be eligible for funds.

[page=1292] N.J.A.C. 2:35A-2.4 establishes the minimum components of an application for grant funds.

N.J.A.C. 2:35A-3 prescribes applicant selection criteria, the grant calculation and award process. In particular, this subchapter's provisions provide as follows:

N.J.A.C. 2:35A-3.1 provides for annual program grants to be made after the certification by the Director of the Division of Taxation to the Council of the number of taxable gallons sold.

N.J.A.C. 2:35A-3.2 identifies the selection criteria used to determine eligible applicants and requires the Department to notify ineligible applicants of that fact and the reasons.

N.J.A.C. 2:35A-3.3 provides an opportunity for ineligible applicants to request reconsideration and it also prohibits appeals of grant awards.

N.J.A.C. 2:35A-3.4 sets forth the grant award process.

N.J.A.C. 2:35A-3.5 provides that grant awards will be forwarded to the chief financial officer of each applicant entity's governing body for deposit into an appropriate account. It also prohibits using grant funds for indirect costs or unapproved administrative expenses.

N.J.A.C. 2:35A-4 outlines grantee accountability and reporting requirements. In particular, this subchapter's provisions provide as follows:

N.J.A.C. 2:35A-4.1 requires each grant recipient to expend the award within one year of receipt and authorizes the Department to require a grantee to return grant funds that remain unexpended one year after receipt, unless good cause is shown to retain the funds.

N.J.A.C. 2:35A-4.2 provides reporting requirements for grant recipients.

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 proposed new rules will have a positive social impact by implementing legislation that established the New Jersey Wine Promotion Account. This account provides grants to entities for research and development concerning the viticultural and wine-making processes in the State and for promotion of New Jersey wine. This research, development and promotion protect the prosperity of New Jersey's wine industry.

Economic Impact

The proposed new rules will have a positive economic impact on New Jersey's wine industry by providing an efficient mechanism to distribute, through a grant process, funds for research and development concerning the viticultural and wine-making processes in the State and for promotion of New Jersey wine. Specifically, New Jersey's viticulturists and wine makers will see a positive economic impact because they are sharing the financial burden of research, development and promotion of their agricultural sector. The proposed new rules foster a marketing infrastructure conducive to the maintenance of viticultural operations. New Jersey's viticulturists are important to the State's economy, particularly for rural communities. The proposed new rules will have an economic benefit to New Jersey consumers, as well, by ensuring the continued production of New Jersey wines.

The proposed new rules will not have any adverse economic impact on the public because they do not impose any fees or charges.

Federal Standards Statement

Executive Order No. 27 (1994) and P.L. 1995, c. 65 require administrative agencies that adopt, readopt or amend any State rules that exceed any Federal standards or requirements to include in the rulemaking a comparison between the two sets of standards and an explanation of the costs and benefits associated with adopting a State standard that exceeds a Federal standard.

A Federal standards analysis is not required because the proposed new rules are not being proposed under the authority of, or in order to implement, comply with or participate in any program established under Federal law or a State law that incorporates or refers to Federal law, standards or requirements.

Jobs Impact

It is not anticipated that the proposed new rules will result in the creation or loss of jobs.

Agriculture Industry Impact

The proposed new rules will have a positive impact on New Jersey agriculture by helping to maintain a viable agriculture industry in the Garden State as described in the Social and Economic Impact statements above.

Regulatory Flexibility Analysis

The proposed new rules have an impact on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules impose application procedures and reporting and recordkeeping requirements, as stated in the Summary above, on those participating in these programs. The reporting and recordkeeping requirements, include maintaining a bookkeeping system, records, invoices and separate grant files in accordance with the requirements of Circular 07-05-OMB. However, these rules are designed to set forth formal, consistent procedures for applicants applying for grant funds from the New Jersey Wine Promotion Account. This assures a level playing field for applicants and compliance with Circular 07-05-OMB. Therefore, it is the Department of Agriculture's position that although these proposed new rules may be more costly for a small business to implement, they are necessary for the equitable administration of this program.

The Department of Agriculture has determined that since applying for these grant funds is voluntary, these proposed new rules do not impose unduly burdensome recording, recordkeeping or compliance requirements on either large or small businesses. These proposed new rules formalize the distribution of grant funding critical for the research, development and promotion of New Jersey's wine industry and protect the interests of New Jersey's viticulturists. There is no professional assistance required nor initial capital outlays to any business by these proposed rules. Given the preponderance of small producers and the Program's purpose to promote the New Jersey Wine Industry, the Department has provided no lesser or differing requirements or exceptions based on business size.

Smart Growth Impact

The proposed new rules are consistent with the economic strategies as outlined within the Department's Smart Growth Plan. The proposed new rules are consistent with the State's smart growth goals as they encourage the continued viability of the State's farmers. Therefore, the Department anticipates that there will be a positive impact on the State's Development and Redevelopment Plan.

Housing Affordability Impact Analysis

The proposed new rules 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 concern the distribution of funds through a grant program for research and development concerning the viticultural and wine-making processes in the State and for promotion of New Jersey wine.

Smart Growth Development Impact Analysis

The proposed new rules 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 concern the distribution of funds through a grant program for research and development concerning the viticultural and wine-making processes in the State and for promotion of New Jersey wine.

Full text of the proposed new rules follows:

[page=1293] CHAPTER 35A

NEW JERSEY WINE PROMOTION ACCOUNT GRANTS PROGRAM

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

2:35A-1.1 Purpose

This chapter describes the process to award grants from the New Jersey Wine Promotion Account established pursuant to P.L. 1985, c. 233. It establishes guidelines for the receipt of funds and procedures to ensure grantee accountability. The program is established in order to make grants for research and development concerning the viticultural and wine-making processes in the State and for the promotion of New Jersey wine, consistent with the recommendations of the New Jersey Wine Industry Advisory Council.

2:35A-1.2 Scope

The rules contained in this chapter shall govern the award of grants from the New Jersey Wine Promotion Account for research and development concerning the viticultural and wine-making processes in the State and for the promotion of New Jersey wine, consistent with the recommendations of the New Jersey Wine Industry Advisory Council. These rules incorporate by reference Circular 07-05-OMB, effective September 7, 2006, as amended and supplemented. The Circular may be accessed at <http://www.state.nj.us/infobank/circular/circindx.htm>.

2:35A-1.3 Legal authority

The Secretary of Agriculture or his or her designee will administer this program and establish the rules deemed necessary to effectuate the purposes of the Account as established under P.L. 1985, c. 233 (N.J.S.A. 4:10-76 et seq.).

2:35A-1.4 Definitions

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

"Account" means the New Jersey Wine Promotion Account, credited annually in an appropriation by law with an amount equal to \$ 0.47 per gallon on all sales of wines, vermouth and sparkling wines sold by plenary winery and farm winery licensees licensed pursuant to N.J.S.A. 33:1-10. The account must also be credited with any monies made

available to it from the General Fund or any non-State public or private source.

"Applicant" means any entity that makes application for a wine promotion grant.

"Chief financial officer" means the director of revenue and finance, comptroller, treasurer, collector or other financial officer of an entity applying for the grant.

"Council" means New Jersey Wine Industry Advisory Council.

"Department" means New Jersey Department of Agriculture.

"Eligible applicant" means an applicant that timely files a completed application with the Council and the Department to request a grant for research or development concerning the viticultural and wine-making processes in the State or for promotion of New Jersey wine and certifies that it will utilize grant funds for these limited purposes.

SUBCHAPTER 2. WINE PROMOTION ACCOUNT

2:35A-2.1 Account uses and limitations

(a) All of the monies appropriated to the Account from the preceding State taxable year shall be available annually for grants for activities benefitting the entire New Jersey wine industry for research and/or development concerning the viticultural and wine-making processes in the State and/or for promotion of New Jersey wine. Such activities may not exclude any plenary and/or farm wine licensees whose sales of New Jersey wine contribute to the Wine Promotion Account and who wishes to participate.

(b) All funds received by a grantee shall be used exclusively for the purposes identified in (a) above.

2:35A-2.2 Notification of availability and award of grants

(a) Pursuant to N.J.S.A. 4:10-78, by March 1 of each year, the Council receives from the Division of Taxation a certification of the number of taxable gallons of wine sold by plenary winery and farm winery licensees during the preceding taxable year. The Department shall file with the Office of Administrative Law, not more than 10 days after receipt of the certification a notice of anticipated availability of funds for publication in the New Jersey Register. At the same time, the Department will provide public notice of grant applications in three newspapers and on its website at <http://www.state.nj.us/agriculture/>.

(b) The Department shall make grant applications available on its website no later than March 1 each year and shall mail grant applications upon requests received at:

New Jersey Department of Agriculture/New Jersey Wine Industry Advisory Council
Division of Marketing and Development
40 E. Broad Street
Suite 201
Bridgeton, New Jersey 08302

(c) Program grants shall be awarded once annually.

2:35A-2.3 Application for funds

To apply for funds, each applicant shall submit a completed application to the Department by the deadline date specified in the notice of availability of funds published in the New Jersey Register.

2:35A-2.4 Application components

(a) A completed application for program funds shall include the following minimum information:

1. The applicant entity and specific designation of entity type (individual, organization, cooperative, partnership, corporation, association or any other multi-member entity);
 2. The name, address and contact information for the applicant entity and its head;
 3. The name, address and contact information of the agency's governing body and its chief financial officer;
 4. For multi-member entity applicants of any kind, a list of members and major stakeholders (holding ownership or control of 10 percent or more of profits or assets of a firm, association or partnership or stock of a corporation for profit). This requirement does not apply to universities, school boards, institutions or government entities;
 5. Status of prior grants received;
 6. Physical address, email address, telephone, fax and Vendor Federal ID number;
 7. Winery affiliation (if any);
 8. Wine project activities proposed to be undertaken and related costs projected in one or more of the following: research or development concerning the viticultural and wine-making processes in the State or for promotion of New Jersey wine; and
 9. A certification signed by the applicant agency head and the governing body's chief financial officer that the information contained in the application is true to the best of their knowledge and belief, and that all grant funds will be used exclusively for the purpose specified in the grant award.
- (b) The Department may require additional information from an applicant beyond that requested in the application form, as needed.

SUBCHAPTER 3. PROGRAM GRANTS

2:35A-3.1 Grants

Grants to eligible applicants will be determined on the basis of the selection criteria score and availability of funds. Following the Council's receipt and review of the Director of the Division of Taxation Certification the appropriated available funds shall be awarded pursuant to N.J.S.A. 4:10-76 and in accordance with Circular Letter 07-05-OMB.

2:35A-3.2 Selection criteria

(a) Each applicant that submits a completed application by the deadline date specified in the notice of availability of funds shall be eligible for review of its grant proposal. Such application will be considered against the selection criteria by the Council, which will make recommendations of grant awards to the State Board of Agriculture.

(b) The selection criteria in (a) above is as follows:

1. A description of the project, including information as to the goals and objectives to be accomplished, implementation

strategy, estimated [page=1294] cost of the project (including an estimated budget) and an estimated completion date of the project;

2. How the project will benefit the research, development and promotional efforts of the wine industry, including how quickly the benefit will occur;
3. Statewide benefits of the project;
4. Individuals or entities that will benefit from the project;
5. The project's benefit to agriculture;
6. All other sources or potential sources of matching funding;
7. The need for the project and whether there are any other similar projects that address the same needs or provide the same or a similar benefit as the proposed project; and
8. Any other information that may be relevant to the evaluation of the proposed project.

(c) The Department shall provide written notice to any applicant who has submitted an incomplete application or who has been determined to be ineligible to receive an award, of that fact and the reasons within 30 days.

2:35A-3.3 Requests for reconsideration; no appeal of awards

(a) Within 10 days after receipt of notification of a determination of ineligibility to receive a grant, an applicant may submit additional information to the Council and the Department, which shall reconsider the grant application.

(b) No appeal shall be considered of any award made to a grantee.

2:35A-3.4 Grant award process

(a) Each eligible application will be reviewed and scored in accordance with the required application components and the selection criteria identified.

(b) Consistent with the implementing legislation, the Council shall make recommendations to the State Board of Agriculture concerning each eligible application.

(c) Each applicant shall be timely notified of its grant award or denial within 30 days of the State Board of Agriculture action.

(d) The State Board of Agriculture reserves the right to adjust, in a subsequent year, any individual grant award upon determination that the applicant's prior grant award was based upon a computational or informational error. Applicants shall cooperate in all requests by the Department for information.

2:35A-3.5 Deposit of grant monies; unallowable expenses

(a) The grant award shall be forwarded to the chief financial officer for deposit into an appropriate account.

(b) No unapproved administrative expenses and no indirect costs shall be deducted from these grant awards by a grantee or its governing body.

SUBCHAPTER 4. GRANTEE ACCOUNTABILITY

2:35A-4.1 Expenditure of funds; return of unexpended funds

- (a) Each entity that receives a grant shall make every reasonable effort to expend the award within one year of receipt.
- (b) The Department shall require the return of all funds not expended within one year of receipt, unless the grantee demonstrates that good cause exists to retain the funds.

2:35A-4.2 Reporting requirements

Applicants shall maintain a bookkeeping system, records, invoices and separate grant files in accordance with the requirements of Circular 07-05-OMB, to account for all grant monies received and expended and they shall be made available to Department upon request.