

Document: 54 N.J.R. 221(a)

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### RULE PROPOSALS

#### Reporter

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▶ Interested Persons Statement

#### Agency

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AGRICULTURE > DIVISION OF PLANT INDUSTRY

#### Administrative Code Citation

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**Proposed Readoption with Amendments: N.J.A.C. 2:18**

#### Text

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#### Nursery Inspection Fees

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

Authority: N.J.S.A. 4:1-21.5 and 4:7-1 et seq.

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

Proposal Number: PRN 2022-015.

Submit comments by April 8, 2022, to:

Joseph W. Zoltowski, Director  
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The agency proposal follows:

### Summary

The rules proposed for readoption with amendments were scheduled to expire on September 30, 2020. Pursuant to Executive Order No. 127 (2020) 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) was extended through January 1, 2022. Therefore, this chapter has not yet expired and is extended 180 days from the later of the existing expiration date or the date of filing of this notice of proposed readoption, whichever is later, which date is June 28, 2022, pursuant to N.J.S.A. 52:14B-5.1.c, Executive Order No. 244 (2021), and P.L. 2021, c. 103. As the Department of Agriculture (Department) has provided a 60-day comment period for 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.

The purpose of this chapter is to fund costs incurred by the Department of Agriculture in conducting inspections for the certification of nursery stock or other plant material moved intrastate, interstate, and to foreign countries. The rules proposed for readoption with amendments list fee schedules for nursery and dealer inspections, Federal, and special phytosanitary inspections, and post-entry quarantine inspections. The rules proposed for readoption with amendments also provide for when fees are due and the acceptable method of payment. These fees are borne by those businesses and individuals seeking certifications to sell and ship nursery stock and other plant material.

The Department has reviewed the rules and have determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Department is proposing to readopt N.J.A.C. 2:18-1.1, Definitions, 1.5, Post-entry quarantine inspection fee, 1.6, Fees due; method of payment, and 1.7 (Reserved) without amendment. The Department is proposing to readopt N.J.A.C. 2:18-1.2, Nursery inspection fees, 1.3, Dealer fee, and 1.4, Phytosanitary inspection fee, with amendments. The proposed amendments would increase fees, as described in more detail below.

The purpose of the proposed amendments is to fund increased costs incurred by the Department for conducting inspections for the certification of nursery stock or other plant material moved intrastate, interstate, and to foreign countries.

Fees for the inspection of nurseries and dealers, as well as for phytosanitary inspections, were established in 1991. Fees for post-entry quarantine inspections were established in 2002. Inspection fee amounts were last changed in 2002. Recently, the Department analyzed its current cost of conducting nursery and dealer inspection and plant shipment inspection activities and determined that an increase in fees is needed to partially defray the increased costs of operating those inspection and certification activities. Based on this analysis, the Department is now proposing amendments to the fee structure. These proposed amendments will increase the resources available to the Department by an estimated \$ 62,105 compared to the total fees collected for nursery inspections, dealer inspections, and phytosanitary inspections in 2020.

The nursery inspection fees at proposed N.J.A.C. 2:18-1.2 have two categories: nurseries with less than two acres of nursery stock and nurseries containing two or more acres of nursery stock. Nurseries with less than two acres would be charged \$ 85.00 per annual inspection (an increase from the current \$ 75.00); nurseries with two acres or more would be charged \$ 85.00 (an increase from the current \$ 75.00) plus \$ 7.00 for each acre, or part thereof (an increase from the current \$ 4.00 per acre or part thereof). The dealer fees at proposed N.J.A.C. 2:18-1.3 would similarly be changed from \$ 75.00 to \$ 85.00 per location. The phytosanitary inspection fees at proposed N.J.A.C. 2:18-1.4 would continue to be charged on a per shipment basis. The fee for the inspection of a commercial shipment with a value of \$ 1,250 or more, would be changed from \$ 50.00 to \$ 60.00. The fee for the inspection of a commercial shipment with a value of less than \$ 1,250 (referred to as a "low-value" commercial shipment) would be increased from \$ 20.00 to \$ 30.00. The fee for the inspection of a non-commercial shipment shall remain at \$ 20.00.

The Nursery Inspection Program supports the nursery, greenhouse, and landscape industry through the survey of nursery crops to detect plant pests. At least once a year, the Division of Plant Industry (Division) examines and inspects all nurseries or establishments of plant dealers in nursery stock and investigates the nursery stock sources of plant dealers within the State. Once the stock grown or sold by a nursery or plant dealer has been determined to be pest free, a certificate to that effect is provided [page=222] to the nursery or plant dealer. The Nursery Inspection Program enables New Jersey growers to sell nursery stock throughout the State, and it assures consumers that only pest-free stock will be offered for sale. The

phytosanitary inspection program assists growers who ship their horticultural plants and products to other states or countries to obtain the certificates of plant health inspection that are required by the receiving destination.

The proposed fee increases are intended to cover labor, travel, and administrative costs incurred by the Department in order to conduct these inspections, which costs have increased since 2002 when the current inspection fee amounts were established.

### **Social Impact**

The primary purpose of N.J.A.C. 2:18 is to facilitate the orderly marketing of horticultural plants and products by providing assurances that the plants are free of highly injurious insect and disease pests. The social impact of the rules proposed for readoption with amendments will be of great benefit to both farmers and consumers alike. This rulemaking would enable the Department to maintain the quality of plant materials produced since Department inspection programs reduce the possibility of plant materials spreading pest and disease problems to consumer home ground plantings. The issuance of plant phytosanitary certificates also ensures that plant shipments to other states and foreign countries comply with regulations of those destinations. Without such certifications, the plants may be seized and destroyed by the importing state or country.

### **Economic Impact**

The readoption with amendments of N.J.A.C. 2:18 will affect approximately 518 nurseries, 582 plant dealers with 1,653 locations, and 200 plant growers, businesses, or other persons sending plants to other states and countries. According to the U.S. Department of Agriculture (USDA) 2019 Horticulture Census, New Jersey producers reaped \$ 505,000,000 in sales in 2019, which reflects considerable industry growth compared to the 2014 Horticulture Census total of \$ 356,000,000 in sales. The proposed fees would be borne by those businesses and individuals seeking certifications to sell and ship nursery stock and other plant material. The proposed nursery and dealer inspection fee structures are tiered to reflect the amount of acreage in production and locations inspected, respectively, which serve to differentiate between larger and smaller business entities.

The Department believes that the economic impact of imposing fees on nurseries and plant dealers is minimal, based on the increasing growth of the horticultural industry during the past five years and the fact that fees have not been raised since 2002, while the costs of inspections have increased over 40 percent since that time. The base inspection fee for both nurseries and the per-location fee for plant dealers would increase \$ 10.00 from \$ 75.00 to \$ 85.00, and the acreage portion of the fee for nursery locations of two acres or more would be raised \$ 3.00 per acre from \$ 4.00 to \$ 7.00. Smaller nurseries (under two acres) would not pay any additional amount above the base inspection fee.

Fees charged for phytosanitary inspections for the shipment of plants or plant products moved to other states and to foreign countries are based on whether the shipment is a "commercial shipment," a "low-value commercial shipment," or a "non-commercial shipment." The proposed fee increase would only affect commercial shipments; the fee for non-commercial shipments would not change. The fee for the inspection of a commercial shipment with a value of \$ 1,250 or more would increase from \$ 50.00 to \$ 60.00. The fee for the inspection of a commercial shipment with a value of less than \$ 1,250 (a "low-value" commercial shipment) would increase from \$ 20.00 to \$ 30.00. The fee for the inspection of a non-commercial shipment (for example, personal houseplants) would remain the same at \$ 20.00. Federal rates for phytosanitary inspections are currently \$ 106.00 per certificate for a commercial shipment, and \$ 61.00 per certificate for both a low-value commercial shipment and for a non-commercial shipment. 7 CFR 354.3(g)(3).

The issuance of certification for freedom from plant pests and disease assists the nurseries, plant dealers, and other persons or entities in the marketing and/or shipment of their plant stock. Currently, revenue received from fees for inspections conducted by the Nursery Inspection Program supports less than 38 percent of the total cost of conducting inspections by field horticultural staff at various locations throughout the State, and the cost of conducting inspection activities has increased since 2002. Without funds received from inspection fees, the Department would not have sufficient staff to conduct inspections in a timely manner. Plant pests and disease might not be detected during periods when nurseries can control them properly, and certifications would not be issued. This would hamper nurseries, plant dealers, and other persons or entities in marketing and shipping their plant stock.

The costs of the Nursery Inspection Program include the actual employee hourly wage rates involved in travel and inspection time, document preparation and billing, and the administration of the program. Although actual costs of the Nursery Inspection Program exceed the amounts that will be generated by the proposed fees, the Department believes that the proposed fee increases are reasonable and would not discourage use of this important service or otherwise encourage shippers to bypass the laws regarding the movement of plant material.

### **Federal Standards Statement**

Federal law imposes standards for the inspection and issuance of Federal phytosanitary certifications and for post-entry quarantine. The proposed rulemaking does not exceed Federal standards. With respect to Federal

phytosanitary inspections, the rulemaking uses the same criteria for "commercial shipment," "low-value commercial shipment," and "non-commercial shipment" as used by the USDA, Animal and Plant Health Inspection Service at 7 CFR 354.3. There are no Federal standards governing nursery or plant dealer inspections or special/State phytosanitary inspections.

### **Jobs Impact**

The Department of Agriculture does not anticipate that any jobs will be generated or lost by virtue of the rules proposed for readoption with amendments.

### **Agriculture Industry Impact**

This rulemaking should have a positive impact on New Jersey's agricultural industry. Although the increase in certain inspection and certification fees will increase costs to the agricultural industry, this modest cost increase is necessary in order to maintain the Department's Nursery Inspection Program and is outweighed by the benefits the program provides. The proposed amendments to increases in inspection and certification fees are not unreasonable since fees have not been changed for nearly 20 years, yet the costs of conducting the inspections and certification programs have increased substantially during that time. This rulemaking will allow growers to sell and market their horticultural products within the State, and it will facilitate the export of these products to other states and countries. Additionally, the Nursery Inspection Program benefits plant growers and dealers by detecting pest and disease problems in their early stages and preventing their further spread. This results in minimizing control costs and the damage resulting from widespread pest infestations and disease. It also raises the quality of the product for sale to the consumer.

### **Regulatory Flexibility Analysis**

There are approximately 518 nurseries and 582 plant dealers in New Jersey, most of whom are considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments impose no recordkeeping requirements. The major costs of compliance are related to the labor of applying control measures and the costs of insecticide or fungicide materials. Some businesses that do not have employees who are licensed to apply pesticides may have to hire a professional service to conduct such treatments. The Department believes these costs are ordinary costs, since most plant growers would normally conduct treatments to control pest problems in order to market healthy, high quality plant stock.

The nursery inspection fee structure reflects the amount of acreage that is inspected and differentiates between larger and smaller nurseries. This tiered fee system minimizes the impact on the smaller businesses: the larger the acreage, the greater the inspection fee charged. This tiered fee system minimizes the impact on the smaller businesses. However, all plant nurseries and dealers, whether large or small, must comply with the Department's inspection and certification requirements if they grow, sell, or distribute horticultural products within the State.

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### **Housing Affordability Impact Analysis**

The Department finds that the rules proposed for readoption with amendments would impose an insignificant impact on the affordability of housing and that there is an extreme unlikelihood that the rules proposed for readoption with amendments would evoke a change in the average costs associated with housing. The basis for this finding is that the rules proposed for readoption with amendments concern fees charged under the Nursery Inspection Program, which does not affect housing affordability.

### **Smart Growth Development Impact Analysis**

The Department finds that the rules proposed for readoption with amendments would impose an insignificant impact on smart growth and that there is an extreme unlikelihood that the rules proposed for readoption with amendments would evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the rules proposed for readoption with amendments concern fees charged under the Nursery Inspection Program, which does not affect housing production, either within Planning Areas 1 or 2, or within designated centers.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State. Accordingly, no further analysis is required.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:18.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in

brackets [thus]):

## SUBCHAPTER 1. FEE

### 2:18-1.2 Nursery inspection fees

(a) The following fee schedule shall apply to all nursery inspections conducted by the New Jersey Department of Agriculture:

<u>Nursery Acreage</u>	<u>Base Fee</u>	<u>Acreage Assessment</u>
Less than 2.00	\$[75.00] <b>85.00</b>	no additional assessment
2.00 or more	\$[75.00] <b>85.00</b>	plus \$[4.00] <b>7.00</b> for each acre or part thereof

(b)-(e) (No change.)

### 2:18-1.3 Dealer fee

Fees for inspection of dealers shall be \$[75.00] **85.00**. Dealers with more than one place of business in the State shall be charged an additional \$[75.00] **85.00** for each location.

### 2:18-1.4 Phytosanitary inspection fee

(a) There shall be a \$[50.00] **60.00** fee for each Federal or special phytosanitary inspection of a commercial shipment necessary for the issuance of a phytosanitary certificate.

(b) There shall be a \$[20.00] **30.00** fee for each Federal or special phytosanitary inspection of a [non-commercial or] low value commercial shipment necessary for the issuance of a phytosanitary certificate.

**(c) There shall be a \$ 20.00 fee for each Federal or special phytosanitary inspection of a non-commercial shipment necessary for the issuance of a phytosanitary certificate.**

[(c)] **(d)** (No change in text.)

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