

# RULE PROPOSALS

## INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

## AGRICULTURE

### (a)

#### DIVISION OF PLANT INDUSTRY

##### Certification

##### Proposed Readoption: N.J.A.C. 2:16

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

Authority: N.J.S.A. 4:1-11.1, 4:1-21.2, 4:1-21.7, and 4:8-17.13 et seq.

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

Proposal Number: PRN 2020-019.

Submit written comments by May 1, 2020, to:  
Joseph Zoltowski, Director  
Division of Plant Industry  
PO Box 330  
Trenton, New Jersey 08625  
Email: [proposedrulesPlantIndustry@ag.nj.gov](mailto:proposedrulesPlantIndustry@ag.nj.gov)

The agency proposal follows:

##### Summary

The rules proposed for readoption without change set forth certification procedures by the New Jersey Department of Agriculture (Department) for various varieties of seeds, grasses, and propagating plant material, as well as for blueberry plant growers. The purpose of certification is to maintain and make available to the public, high quality seed, sod, and propagating material of superior crop varieties so grown and distributed as to ensure genetic identity, genetic and mechanical purity, and to minimize seed-borne diseases and plant maladies, such as weeds, injurious insects, diseases, and plant parasites for New Jersey farmers. An interagency certification system is also provided for maintaining the genetic and mechanical purity of certified seeds when repacking or combining mixtures of kinds or varieties. The rules proposed for readoption are necessary to ensure that New Jersey farmers and growers are receiving the high-quality seed that the seed manufacturers are claiming to provide. The certification programs found in the rules are entirely voluntary and are beneficial to those growers, conditioners, plant breeders, and blueberry farmers who choose to participate. Pursuant to N.J.S.A. 52:14B-5.1.c, N.J.A.C. 2:16 was scheduled to expire on January 25, 2020; however, as the Department filed this notice of readoption prior to that date, the expiration date is extended 180 days to July 23, 2020, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Department has reviewed the rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated, as required by

Executive Order No. 66 (1978), and consistent with Executive Order No. 4 (2010) and Executive Order No. 63 (2019).

The following summarizes the rules proposed for readoption:

Subchapter 1 requires all blueberry growers selling propagating wood, rooted cuttings, or plants to be certified and describes the certification requirements. This subchapter provides standards for mother plants and nursery plants and sets forth requirements for inspection, insecticide application, plant cutting, and the issuance of inspection certificates.

Subchapter 2 sets forth the standards for all crops eligible for certification for genetic purity and identity. Specifically, this subchapter delineates the procedures for certification, the standards for classes and sources of certificated seed, the limitations on generations of seed varieties, and the eligibility requirements for various plant varieties. In addition, this subchapter sets forth the requirements for seed storage, seed labeling, seed appearance, and the control and eradication of seed contaminants and disease.

Subchapter 3 describes the requirements established by the State Board of Agriculture for interagency certification of turfgrass seed. In particular, Subchapter 3 sets forth procedures for general certification and for certification of conditioners. It also sets forth requirements governing the facilities and recordkeeping of conditioners who participate in the certification process. Standards for sampling and testing, mixing, and labeling turfgrass are also set forth in Subchapter 3.

Subchapters 4 through 6 are reserved.

Subchapter 7 sets forth the certification standards that are applicable to all species of turfgrass sod grown in New Jersey. This subchapter also delineates the requirements for labeling sodgrass, pest control, field standards, and sod quality, as well as standards for seeds and other propagating materials in sodgrass.

Subchapter 8 describes the certification standards established by the State Board of Agriculture for vegetatively propagated grasses. Specifically, it sets forth the procedures for certification, the requirements for handling crops, field inspection, field standards, and plant stock standards.

Subchapter 9 sets forth the fees charged by the Department for general certification services, certification of cultivated sod and vegetatively propagated turfgrass and interagency certification. This subchapter also permits the certification fees to be waived for participating governmental agencies.

Penalties for violations of this chapter are set forth at N.J.S.A. 4:8-17.29 and include a penalty of not less than \$50.00, nor more than \$100.00, for a first offense, a penalty of not less than \$100.00, nor more than \$500.00, for a subsequent offense committed within a 12-month period, seizure of all seeds and plant propagating material that violates this chapter and/or requiring the plant breeder to withdraw from distribution.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

#### **Social Impact**

The rules proposed for readoption at N.J.A.C. 2:16 will continue to have a positive social impact. Continued implementation of the rules will be beneficial both to plant growers and consumers by ensuring that growers start out with high quality seeds and plant propagating material, which, in turn, will result in a superior agricultural product for consumers. The quality of the plants and seeds produced under Department certification programs will be monitored and enhanced through the implementation of the rules proposed for readoption and the public will benefit directly from the higher degree of quality in both plant and plant products.

#### **Economic Impact**

The rules proposed for readoption at N.J.A.C. 2:16 will continue to have a positive impact on the quality of blueberry plants, seed, turfgrass seed, turfgrass sod grasses, and vegetatively propagated grasses grown and distributed in the State.

Continuing established standards for certification will ensure uniformity of plants and seeds and enable growers to get a higher price for their products. The imposition of fees upon the users of these services conserve taxpayers' funds and allows the Department flexibility to set fees that accurately reflect the cost of performing inspections for certification purposes. The Department's certification program increases the value of the product to the grower from 10 percent to 15 percent and offsets the economic impact of the fees charged. Certification pursuant to this chapter permit New Jersey growers to remain competitive in the plant industry since some buyers require certification by the Department before they will purchase a grower's product.

#### **Federal Standard Analysis**

Federal Seed Act regulations at 7 CFR 201.1 through 201.78 establish minimum standards and procedures as conditions for certification of seed. According to those regulations, in order to qualify as a seed-certifying agency for purposes of the Federal Seed Act, an agency, such as the New Jersey Department of Agriculture, must enforce standards and procedures as conditions for its certification of seed that meet or exceed the standards and procedures specified in the Federal Seed Act regulations. The standards established at N.J.A.C. 2:16 exceed the Federal regulations at Subchapters 2, 3, 7, and 8 by imposing specific certification standards for seed, sod, turfgrass, and vegetative grasses.

New Jersey's standards, however, are consistent with those standards recommended by the Association of Seed Certifying Agencies (AOSCA). That organization's membership is composed of associations and agencies from 42 states and six countries that certify seed and are dedicated to establishing genetic standards and certification procedures, and promoting uniform standards, procedures, and policies among its members. Information about AOSCA can be found at [www.aosca.org](http://www.aosca.org). Due to the wide acceptability of AOSCA's standards, local and national buyers have assurance that seed certified under their standards have met acceptable purity standards. In addition, since the majority of other states participate in AOSCA, the rules proposed for readoption are necessary for New Jersey feed providers to remain competitive in the marketplace. Using the higher AOSCA standards results in superior seed and sod, this brings higher prices to the farmers and growers and greater satisfaction by the consumers. As a result, the benefits to the consumer and farmer or grower of using AOSCA standards far outweigh the cost of meeting the additional requirements.

These rules are also consistent with the rulemaking requirements of the Department regarding the certification of agricultural seeds, tubers, grass sod, grass sod plugs, and grass stolons grown in this State, dictated by N.J.S.A. 4:1-21.7, and the requirements for seed labeling and distribution, found at N.J.S.A. 4:8-17.13 et seq.

#### **Jobs Impact**

The rules proposed for readoption are not expected to result in the generation or loss of jobs in the State.

#### **Agriculture Industry Impact**

The rules proposed for readoption at N.J.A.C. 2:16 continue to have a positive impact on New Jersey's agriculture industry. The rules allow growers and consumers to select the highest quality seed and plant products based on uniform standards as established by State, Federal, and seed certifying agencies.

#### **Regulatory Flexibility Analysis**

The majority of nurseries and plant dealers qualify as small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The chapter applies to all nurseries and plant dealers that wish to grow and sell certified seed and other plant products. To the extent that the rules proposed for readoption add a better-quality product to the stream of commerce and decrease the number of poor quality seed, plants, and grasses, the rules proposed for readoption will be beneficial to both small businesses and consumers, alike.

There are currently six participants in the program and most of the certification costs are absorbed by the Department through inspection of plant stock and supervision of seed mixing to ensure compliance with the rules. Furthermore, in order to consistently enforce the requirements of this "truth in labeling" rule, the Department has chosen not to differentiate between small or large businesses since all must meet the requirements. All seed sold to the public must have product labeled accurately to insure quality and safeguard against abuse. No professional services are required to be retained to comply with the rules proposed for readoption.

Subchapter 1 imposes reporting, recordkeeping, and compliance requirements upon blueberry growers selling propagating wood, rooted cuttings, or plants. To obtain certification, blueberry growers are required to apply to the Division of Plant Industry (Division) to participate in the year prior to the establishment of the cutting bed, to apply necessary pesticides, to maintain records of pesticide applications, to utilize varietal markings, to procure new cutting wood from fields approved for certification and to present on demand bills of sale relating to the purchase thereof, to isolate uncertifiable plants from certified plants, to pay nursery inspection fees, to take steps to prevent the spread of disease, to remove cuttings and plants identified by State inspectors as diseased, and to remove any diseased cuttings and plants found by the grower to be diseased.

Subchapters 2, 3, 7, and 8 impose reporting, recordkeeping, and compliance requirements upon breeders wishing to participate in the Division's voluntary program to obtain certification as to genetic purity and identity of, respectively, seed and sod, turfgrass, turfgrass sod, and vegetatively propagated grasses. These subchapters establish specific procedures to which breeders of these crops must conform in the selection, planting, layout, fertilization, weed and pest deterrence and elimination, handling in the event of emergency, pre-inspection maintenance, harvesting, and identification of their crops; and establishes maximum variation tolerances.

Subchapter 9 establishes the certification fee schedules.

#### **Housing Affordability Impact Analysis**

The rules proposed for readoption will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules proposed for readoption would evoke a change in the average costs associated with housing because the rules proposed for readoption provide the means to maintain and make available to the public, high quality seed, sod, and propagating material of superior crop varieties and of blueberry plants free of known virus diseases.

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

The rules proposed for readoption 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 provide the means to maintain and make available to the public, high quality seed, sod, and propagating material of superior crop varieties, and of blueberry plants free of known virus diseases.

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

The rules proposed for reoption 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 reoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:16.

## COMMUNITY AFFAIRS

### (a)

#### DIVISION OF CODES AND STANDARDS

#### Uniform Construction Code Responsibilities

#### Proposed Amendment: N.J.A.C. 5:23-3.4

Authorized By: Lieutenant Governor Sheila Y. Oliver,  
Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-124.

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

Proposal Number: PRN 2020-020.

Submit written comments by May 1, 2020, to:

Geraldine Callahan  
Department of Community Affairs  
PO Box 800  
Trenton, New Jersey 08625  
Fax No. (609) 984-6696  
[Geraldine.callahan@dca.nj.gov](mailto:Geraldine.callahan@dca.nj.gov)

The agency proposal follows:

#### Summary

The proposed amendments to N.J.A.C. 5:23-3.4, Enforcement responsibilities, are made necessary by the Department of Community Affairs' (Department) adoption of the model codes effective September 3, 2019 (see 51 N.J.R. 285(a); 1399(a)). The model codes adopted were the 2018 editions of the International Building Code (IBC), International Residential Code (IRC), International Mechanical Code (IMC), International Fuel Gas Code (IFGC), and International Energy Conservation Code (IECC) as the building, one- and two-family dwelling, mechanical, fuel gas, and energy subcodes, respectively, of the UCC, the 2018 edition of the National Standard Plumbing Code (NSPC) as the plumbing subcode, and the 2017 edition of the National Electrical Code (NEC) as the electrical subcode.

There are five types of changes in this rulemaking:

- The section numbers are updated to reflect changes in the section numbers of the adopted subcodes without a change in substance;
- New sections in the model codes are included in the table and assigned appropriately.
- The responsibilities are amended to be listed in alphabetical order where multiple subcode officials are included;
- With the changing technology and the recent update of the model codes, the assignments in some sections were not precise enough to clearly define which subcode officials should be responsible. For efficiency's sake, the amendments delineate assignments more appropriately, based on the subject matter of the regulations and the expertise of the code official. For example, there are times when a matter concerning the fire subcode should also be reviewed by the building subcode official. These changes reflect the appropriate application of the code based on the knowledge of the subcode officials; and
- For the mechanical and fuel gas sections of the one- and two-family dwelling subcode, some sections have been amended to mirror the assignment of responsibilities found in the mechanical subcode and the fuel gas subcode. This is to reflect the exemption listed at N.J.A.C. 5:23-3.4(d), which permits certain work done in an

existing one- or two-family dwelling to be inspected by the mechanical inspector or plumbing inspector when there is no electrical inspector. As such, a number of changes are made to Chapter 13, General Mechanical System Requirements, of the one- and two-family dwelling subcode. Each of these changes creates consistency across subcodes.

A section by section summary of the proposed amendments follows.

#### Building Subcode

1. At Section 403.4.8.3, Standby power loads, the fire protection subcode official would be removed from the inspection responsibility. Because this section only deals with electrical loads, only the electrical subcode official needs to inspect; it is still appropriate to have the fire protection subcode official perform joint plan review with the electrical subcode official.

2. Section 403.4.8.4, Emergency power loads, would be consolidated in the table with 403.4.8.3. This would mean that the fire protection subcode official would be responsible for plan review along with the electrical subcode official. This appropriately reflects the application of the code.

3. Section 403.6, Elevators, deals with elevators in high rise buildings. Amendments would add the fire protection and building subcode officials to the responsibilities for plan review.

4. Sections 403.6.1, Fire service access elevator, and 403.6.2, Occupant evacuation elevators, deal with elevators in high rise buildings. Amendments would add the building subcode official to the responsibilities for plan review.

5. Section 406.2.9, Equipment and appliances, was added in the 2018 code; it deals with the installation of appliances in garages, which has traditionally been a fire protection responsibility. Amendments would add this section to the table and assign plan review and inspection to the fire protection subcode official. Preceding and proceeding lines would be renumbered accordingly.

6. Section 406.3.6, Automatic garage door openers, would be deleted because that Section was deleted from the 2018 International Building Code (IBC).

7. Sections 406.4-406.4.5 would be amended to 406.4-406.4.3 to reflect changes in numbering to the 2018 IBC. These sections contain the requirements for public parking garages, and the assignments would not be changed. Section 406.4.6, Mixed Occupancy Standards, would be deleted because that Section was deleted from the 2018 IBC.

8. Section 406.8.1, Ventilation, would be assigned to the building subcode official for plan review and inspection because it was determined that the fire protection subcode official does not need to review plans for ventilation in repair garages. The preceding line in the table would be renumbered accordingly.

9. Sections 406.8.2, Gas detection system, and 406.8.3, Automatic sprinkler system, would be assigned to the fire protection subcode official for plan review and inspection to appropriately reflect the application of the code. As a result of the renumbering within the IBC, Sections 406.8.4 through 406.8.8 have been absorbed into other sections and deleted from the IBC and are, thus, proposed for deletion from the table.

Section 407, 1-2, would be broken down into smaller sections to more specifically delineate responsibilities as described below in items 10 through 14:

10. Sections 407.1-407.2.5 would be assigned to the building and fire protection subcode officials for plan review and the building subcode official for inspection. These sections address the general requirements for Group I-2 occupancies, including corridors, care stations, and nursing home housing units.

11. Section 407.2.6, Nursing home cooking facilities, would be assigned to the fire protection subcode official for plan review and inspection.

12. Sections 407.3-407.4.4.5 #1 and #2 would be assigned to the building and fire protection subcode officials for plan review and the building subcode official for inspection. These sections address corridor wall construction, means of egress, and care suits.

13. Section 407.4.4.5 #3, which addresses automatic smoke detection systems in care suites containing sleeping rooms, would be assigned to the building and fire protection subcode officials for plan review and the fire protection subcode official for inspection.