

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)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Soil And Water Conservation Project Cost-Sharing

Proposed Amendments: N.J.A.C. 2:76-5

Proposed New Rule: N.J.A.C. 2:76-5.10

Authorized By: State Agriculture Development Committee, Charles Roohr, Executive Director.

Authority: N.J.S.A. 4:1C-5f. and 31.2.

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

Proposal Number: PRN 2025-059.

Submit written comments by August 1, 2025, to:

Charles Roohr, Executive Director
State Agriculture Development Committee
PO Box 330
Trenton, NJ 08625-0330
or through email: SADC@ag.nj.gov.

Summary

The State Agriculture Development Committee (“SADC” or “Committee”) proposes to amend existing rules and to adopt a new rule at N.J.A.C. 2:76-5 governing cost-share grants for soil and water conservation projects available to landowners or farm operators whose land is enrolled in the State’s farmland preservation programs. The purpose of the proposed amendments and new rule is to provide more financial assistance to farmers for soil and water conservation projects, as the complexity and the costs of such projects have increased since the last rulemaking amendments were adopted in 2004. Additionally, the rulemaking provides opportunities for farmers to work with private consultants to implement conservation measures. While the existing rules provide for technical assistance through agreements with the United States Department of Agriculture, Natural Resources Conservation Service (USDA-NRCS), Federal assistance can be limited based on the availability of USDA-NRCS personnel to provide professional conservation planning services.

N.J.A.C. 2:76-5.1 is amended to include lands that have been determined by laws enacted subsequent to 2004 — the last time these rules were revised — to be eligible for cost-share conservation grants. This section is also revised to provide that landowners or farm operators are now eligible to apply for grants to hire approved consultants to assist in the preparation of conservation plans.

N.J.A.C. 2:76-5.2 is amended to add and amend definitions necessary for implementation of the grant program and for consistency with other amendments to the rulemaking.

The SADC proposes to add the definition of “approved consultant” as a result of new N.J.A.C. 2:76-5.7(g), allowing for reimbursement to a landowner of up to 100 percent of the cost for the development of conservation plans by a technical service provider certified by the USDA-NRCS or an individual or entity having the required technical training, education, and experience to perform the level of technical assistance needed for the planning of specific conservation practices; meeting any applicable professional or business licensing or similar qualification standards established by State law or rule; demonstrating, through documentation of training or experience, familiarity with USDA-NRCS guidelines, criteria, standards, and specifications as set forth in applicable USDA-NRCS manuals, handbooks, field office technical guides, and supplements thereto for the planning of specific conservation practices; and that has not been decertified as a technical service provider in any state.

The phrase “common deed ownership” was undefined in the chapter but is now proposed to be defined as all lands preserved together pursuant to a recorded agreement or easement. The proposed definition also accommodates restricted parcels that are consolidated after preservation by providing that common deed ownership means all the lands preserved together by a consolidation deed. “Consolidated premises” is a new definition meaning two or more eligible lands that are combined or permanently associated with each other in a deed approved in advance by the Committee. The purpose of the definition is to treat the parcels as combined for farmland preservation purposes and not to require an applicant to comply with the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., or to necessitate revisions to the municipal tax map.

“Eligible land” is a new definition identifying the preservation programs in which farms that are enrolled can qualify for available soil and water conservation grant funding. Farms enrolled in the following programs would be eligible for such funding: municipally approved farmland preservation programs, in which the landowner enters into a recorded agreement with a municipality to preserve the farm for at least eight years; any other farmland preservation program authorized by law which has as its principal purpose the long-term preservation of significant masses of reasonably contiguous agricultural land within an agricultural development area adopted pursuant to N.J.S.A. 4:1C-19; land subject to a development easement conveyed pursuant to N.J.S.A. 4:1C-24a.(2); land subject to the Burlington County Transfer of Development Rights program pursuant to N.J.S.A. 40:55D-113; land subject to the State Transfer of Development Rights program pursuant to N.J.S.A. 40:55D-137; agricultural land subject to an agricultural restriction approved by the SADC as part of a municipal cluster development pursuant to N.J.S.A. 40:55D-39.1; agricultural land on which Pinelands Development Credits allocated to the premises have been severed and deed restrictions recorded

pursuant to N.J.S.A. 13:18A-30 and N.J.A.C. 7:50-5.41; agricultural land on which Highlands Development Credits allocated to the premises have been severed and deed restrictions recorded pursuant to N.J.S.A. 13:20-13 and N.J.A.C. 7:70-4.1; and any other land the Committee determines eligible, provided the deed restrictions recorded on the land are consistent with those set forth at N.J.A.C. 2:76-6.15. The existing definition of “farmland preservation program” has been revised for consistency with the new definition of “eligible land.”

The existing definition of “fund” has been revised to include the “Preserve New Jersey Farmland Preservation Fund” created by the “Preserve New Jersey Act,” P.L. 2016, c. 12, as a source of funding for soil and water conservation grants.

“Funding partner” is a new definition recognizing that public or nonprofit entities, other than the SADC, can provide financial assistance to preserved farm landowners, for soil and water conservation planning and for the implementation of conservation practices.

“Planning criteria” is a new definition forming the basis by which a resource concern is addressed by a conservation planning and implementation project, and means the United States Department of Agriculture National Resource Concern List and Planning Criteria, which is incorporated into the chapter by reference, as amended and supplemented and available at https://efotg.sc.egov.usda.gov/references/public/NJ/Planning_Criteria_March_2023.pdf.

“Resource concern” is a new definition to help clarify the objectives addressed by conservation planning and implementation projects, and means a soil or water resource that does not meet minimum acceptable condition levels, as established by planning criteria, resulting from the degradation of the soil or water resource base, to the extent that long-term sustainability is impaired.

“Soil and water conservation planning grant” is a new definition meaning a grant awarded to an eligible applicant to develop a conservation plan necessary to facilitate the implementation of conservation practices as part of a soil and water implementation project. The definition also encompasses grants for the preparation of any additional plans necessary for implementation of conservation practices, such as, but not limited to, irrigation water management plans, comprehensive nutrient management plans, forest stewardship plans, engineering plans, or similar plans necessary to address resource concerns on eligible land.

The proposed amendments and proposed new rule allow for grants for the preparation of conservation plans prepared by a “technical service provider,” which is a new definition, meaning a private individual or entity certified by the NRCS as capable of providing technical service activities according to NRCS standards and specifications for specific conservation activities.

N.J.A.C. 2:76-5.3 is amended to update cross-references and to clarify the role of the State Soil Conservation Committee to approve projects that are eligible for cost-sharing through soil and water conservation planning grants.

N.J.A.C. 2:76-5.4 is amended to revise the cost-share formula for soil and water conservation planning grants. N.J.A.C. 2:76-5.4(a) has been revised to provide that the Committee review of an application for a cost-share grant begins when the Committee receives the application, and the subsection has been amended to require that the applicant be eligible for the grant. The formula calculations at N.J.A.C. 2:76-5.4(a), (b), and (c) are deleted and replaced with a new calculation at N.J.A.C. 2:76-5.4(a).

Pursuant to existing N.J.A.C. 2:76-5.4(a), (b), and (c), farms less than 50 acres were eligible for \$600.00 per acre, farms from 50 to 100 acres were eligible for \$30,000 plus \$200.00 per acre for every acre over 50, farms from 100 to 450 acres were eligible for \$40,000 plus \$100.00 per acre for every acre over 100, and farms greater than 450 acres were eligible for \$75,000. The formula criteria were last updated in 2004 and have not been adjusted for subsequent inflation.

The SADC is proposing to increase the maximum amount of funds available to eligible applicants at revised N.J.A.C. 2:76-5.4(a). For projects on farms less than 200 acres, the new formula will be \$50,000, plus \$500.00 per acre. Farms greater than 200 acres will be eligible for a grant of up to \$150,000. The increased grant amounts in the proposed amendments help address the current costs of implementing conservation projects.

The old formula offered insignificant cost-share rates for small farms. For example, pursuant to the old formula, a 10-acre farm would be eligible for up to \$6,000 in grant funds, but this amount would not be enough to cover the current costs of many conservation projects as a result of the inflation since 2004. The new formula would provide a 10-acre farm with up to \$50,000, plus \$500.00 per acre, or a maximum total available grant of \$55,000. The new formula calculation will help ensure that farms of all sizes will have adequate financial capability to implement conservation projects.

Soil and water conservation grant funds approved by the Committee are available to the eligible applicant for a period of eight years. Recodified N.J.A.C. 2:76-5.4(a)1 is revised to reflect that the eight year availability period begins on the date the easement or agreement on the eligible land is fully executed; recodified N.J.A.C. 2:76-5.4(a)2 is amended to provide that the eligibility for cost-share funds after the eight-year period expires and for all subsequent eight-year periods shall be recalculated based on the formula and requirements set forth at N.J.A.C. 2:76-5.4.

New N.J.A.C. 2:76-5.4(b) allows the Committee to furnish up to \$20,000 to an eligible applicant for a conservation planning grant on each portion of eligible land under common deed ownership; the planning grant remains in effect for five years from the date the grant funds are obligated as set forth at N.J.A.C. 2:76-5.4(b)1, and no applicant can receive more than \$20,000 in a five-year period for each portion of eligible land under common deed ownership as set forth at new N.J.A.C. 2:76-5.4(b)2.

Existing N.J.A.C. 2:76-5.4(d) has been revised and relocated to N.J.A.C. 2:76-5.7, with amendments.

N.J.A.C. 2:76-5.5(a) is amended to reflect that “eligible” lands are eligible for soil and water conservation planning and implementation grants.

N.J.A.C. 2:76-5.6(a) is amended to retain the language of the existing section requiring that a grant application be filed with the soil conservation district, deletes “and the board” because county agriculture development boards receive an informational copy of the complete application as set forth at N.J.A.C. 2:90-3.4(d), and adds “for a soil and water conservation project” for clarity; new N.J.A.C. 2:76-5.6(b) directs that an application for a planning grant is to be filed with the Committee.

N.J.A.C. 2:76-5.7, related to Committee approvals of grants for soil and water conservation projects and plans, is proposed for amendment. N.J.A.C. 2:76-5.7(a) has been revised to provide that a Committee grant of up to 75 percent of the project costs applies to the actual “or estimated” cost to implement a project that has been approved by the State Soil Conservation Committee. Proposed new N.J.A.C. 2:76-5.7(a)1 and 2 relate to estimated costs for project implementation. N.J.A.C. 2:76-5.7(a)1 provides that estimated cost share grants will be obligated based on current USDA-NRCS cost estimates for similar conservation system components, in accordance with the State Soil Conservation Committee’s procedural rules at N.J.A.C. 2:90-3. N.J.A.C. 2:76-5.7(a)2 allows the SADC to increase funds obligated in an application based on the lowest of three estimates provided by the applicant. Currently, a funding obligation is based on an estimate at the time of application that is derived from cost tables prepared and approved by county soil conservation districts in consultation with USDA-NRCS. On occasion, projects are more complex or site conditions more difficult than accounted for in the cost table estimates upon which the funding obligation originally was based. For example, an irrigation well might require more steel casing than is typical, or a waterway needs larger stone than was anticipated in an outlet. An increase in the funding obligation can occur if the Committee determines that subsequently submitted estimates by the applicant are reasonable and reflect local prices, or when site-specific conditions of the eligible land support the increase, and if there are sufficient funds for increasing the obligation and unobligated funds exist within the same eight-year term of the project. Allowing the Committee to increase obligations on a case-by-case basis ensures applicants will be compensated for up to 75 percent of actual project costs without requiring an application to obtain multiple estimates for every project.

N.J.A.C. 2:76-5.7(a)2i allows the SADC to require the applicant to provide additional estimates for the project, if the Committee determines the submitted estimates are unreasonable; N.J.A.C. 2:76-5.7(a)2ii provides that the Committee may reduce the number of estimates, in its

sole discretion, if it determines that the estimates provided are reasonable or if the Committee determines that less than three contractors within a reasonable distance of the eligible land are capable of completing the conservation project. N.J.A.C. 2:76-5.7(a)2iii requires that estimates be provided to the Committee for its review and approval prior to the applicant starting installation of the conservation project; N.J.A.C. 2:76-5.7(a)2iv provides that an applicant who completes work prior to the Committee's approval and obligation of additional funds will be ineligible to receive an adjustment of the obligated funds; N.J.A.C. 2:76-5.7(a)2v states that no obligation awarded based on N.J.A.C. 2:76-5.7(a)1 will be reduced as a result of the procedures set forth at N.J.A.C. 2:76-5.7(a)2.

N.J.A.C. 2:76-5.7(b) addresses the procedure for when an applicant furnishes the cost share amount and provides that the application is to be submitted to the State Soil Conservation Committee for its approval and to the appropriate county agriculture development board for informational purposes. The subsection has been revised by replacing "at least 50 percent of" with "entire cost share" for a project and replacing "county" with "any funding partner." Deleting "at least 50 percent of" as it pertains to the grant allows the SADC greater flexibility to change the amount of its cost share based on the applicant's financial participation, and adding "any funding partner" recognizes that no party other than the SADC needs to approve the grant when the applicant provides the entire cost share.

N.J.A.C. 2:76-5.7(c) addresses the procedure for when an applicant receives financial assistance for the conservation project aside from the cost-share grant and receives approval from the local soil conservation district. N.J.A.C. 2:76-5.7(c)1 has been revised by replacing "board" with "funding partner" as the entity that must concur with the application, and N.J.A.C. 2:76-5.7(c)2 is revised for consistency with paragraph (c)1 by replacing "board approval" with "funding partner concurrence" as a precondition for forwarding the application to the State Soil Conservation Committee.

N.J.A.C. 2:76-5.7(e)1 is being revised for consistency with other proposed amendments in this rulemaking, by replacing "part of a municipally approved program or farmland preservation program" with "eligible land."

New N.J.A.C. 2:76-5.7(e)4i, ii, and iii are proposed to provide the Committee with sole discretionary authority to condition grant approval based on, but not limited to, respectively, enrollment of the farmland in a preservation program so that the property can be considered "eligible land"; landowner compliance with the farmland preservation deed of easement; or addressing a resource concern, identified by the SADC, the State Soil Conservation Committee, a soil conservation district, the easement holder, USDA-NRCS or funding partner, and the Committee determines that the applicant needs to address the resource concern to enhance protection of soil and water resources prior to implementing the proposed project.

New N.J.A.C. 2:76-5.7(f) and (g) are provisions applicable to conservation project and planning grants. N.J.A.C. 2:76-5.7(f) and (f)1 provide that funds are obligated for up to three years from Committee approval and shall not exceed the amount determined at N.J.A.C. 2:76-5.4(a), respectively; N.J.A.C. 2:76-5.7(f)1i states that the funding obligation remains associated with and only counts against the eight-year period in which the funds were awarded, even if the eight-year period has expired, but N.J.A.C. 2:76-5.7(f)1ii provides that the funding awards for farms in term preservation programs expire when the term agreement expires, unless the agreement is timely renewed. N.J.A.C. 2:76-5.7(f)2 allows the three-year obligation term to be extended as a result of seasonal constraints or other unavoidable delays, and upon approval of the local soil conservation district, the State Soil Conservation Committee, and the Committee.

New N.J.A.C. 2:76-5.7(g) allows the SADC to provide a planning grant of up to 100 percent of the cost of a plan developed by an approved consultant subject to the availability of funds. In order to approve a planning grant, the Committee must certify that the farmland is eligible land, that the applicant is eligible to apply, and that there are no violations of the easement or agreement recorded on the land, as set forth at new N.J.A.C. 2:76-5.7(g)1i, ii, and iii.

The estimated cost-share award obligation for plan development shall be based on current USDA-NRCS cost estimates for similar plan development activities (N.J.A.C. 2:76-5.7(g)2) and, for planning activities

where similar USDA-NRCS cost-share rates are unavailable, the Committee shall develop a cost-table for planning services in conjunction with the USDA-NRCS, Rutgers Cooperative Extension, or similar agencies (N.J.A.C. 2:76-5.7(g)3).

N.J.A.C. 2:76-5.8 is amended to clarify the procedures for issuing payments for completed soil and water conservation projects and to establish a reimbursement procedure for soil and water conservation planning grants. N.J.A.C. 2:76-5.8(b) is revised by changing "direct payment" to "direct project payment" and that "all funding partners," in addition to the State Soil Conservation Committee, local soil conservation district and board, shall receive written notice of the project payment from the SADC. Documentation of funding, received or anticipated from all funding partners, must be furnished by the applicant to ensure that no more than 100 percent of the actual project cost is being paid for by the Committee (see N.J.A.C. 2:76-5.8(b)1 and (b)1i.) and, at N.J.A.C. 2:76-5.8(b)2, the maximum payment will be based on the actual number of units, such as feet or acres, installed for the project multiplied by the estimated or approved cost per unit, but the payment cannot exceed the total obligation, as approved or revised, as set forth at N.J.A.C. 2:76-5.7(a)2.

New N.J.A.C. 2:76-5.8(c) sets forth the procedures for Committee payment of conservation planning grants. The payment request by the applicant shall be on a form prepared by the Committee that includes a statement verifying that the applicant paid for the cost of planning activities (N.J.A.C. 2:76-5.8(c)1i); a disclosure of any financial assistance from other entities for planning activities (N.J.A.C. 2:76-5.8(c)1ii); copies of all bills or invoices for the planning services provided (N.J.A.C. 2:76-5.8(c)1iii); a copy of all planning documents for which reimbursement is sought, including, but not limited to, conservation plans, environmental analysis, job sheets, engineering plans, and any supporting documentation (N.J.A.C. 2:76-5.8(c)1iv); and any other documentation deemed appropriate by the Committee to support payment (N.J.A.C. 2:76-5.8(c)1v). New N.J.A.C. 2:76-5.8(c)2i and ii, respectively, provide that the Committee shall review the planning documents for conformance with the USDA-NRCS National Planning Procedures Handbook available at <https://directives.nrcs.usda.gov/sites/default/files/201712930121/33148.pdf> and with applicable practice standards and documents available at <https://efotg.sc.egov.usda.gov/#/state/NJ/documents>.

New N.J.A.C. 2:76-5.8(c)3 provides that if the Committee finds that the planning documents comply with N.J.A.C. 2:76-5.8(c)2, then it shall issue payments of up to 100 percent of the plan development costs. If the planning documents are not in compliance with paragraph (c)2, then the Committee shall, within 90 days of receipt of a payment request, provide the applicant with written notice of the deficiencies and a reasonable opportunity for the applicant to submit additional documentation, as set forth at N.J.A.C. 2:76-5.8(c)3i. No reimbursement will be made by the Committee for costs incurred by the applicant for permits or governmental reviews, as set forth at new N.J.A.C. 2:76-5.8(c)4.

N.J.A.C. 2:76-5.9 is amended to address when eligible land subject to a farmland preservation easement or agreement is later subdivided or consolidated.

N.J.A.C. 2:76-5.9(a)3 is amended to correct a grammatical and codification error, as the existing paragraph referred to a nonexistent N.J.A.C. 2:76-5.3(b)3, which is proposed for deletion, and requires a further minor change from "lapse" to "have lapsed." New N.J.A.C. 2:76-5.9(b)1 provides that when farmland parcels are consolidated, the eligibility for soil and water conservation project grants shall be based on the criteria at N.J.A.C. 2:76-5.4(a) at the time of consolidation; the date of consolidation shall be based on the deed by which the parcels were consolidated (N.J.A.C. 2:76-5.9(b)2); and existing grant obligations shall be reduced proportionately if consolidation results in a reduction in funding eligibility. For example, pursuant to the proposed rules, two 20-acre farms are each eligible for a grant of up to \$60,000 [$\$50,000 + (20 \times \$500.00) = \$60,000$]. Consolidated, the farms would be eligible for a grant of up to \$70,000 [$\$50,000 + (40 \times \$500.00) = \$70,000$]. If each farm had existing approved grants of \$40,000, or \$80,000 in total, and the landowner consolidated the farms, the existing obligations would both be reduced to \$35,000.

New N.J.A.C. 2:76-5.10 codifies a written SADC policy prioritizing funding of soil and water conservation projects and planning grants when cost-share funding is limited.

N.J.A.C. 2:76-5.10(a)1 states that first priority consideration will be given to farms permanently preserved by counties, municipalities, and nonprofit organizations with an SADC cost-share grant (N.J.A.C. 2:76-5.10(a)1i); the SADC through acquisition of fee simple title or a development easement (N.J.A.C. 2:76-5.10(a)1ii); the Burlington County Transfer of Development Rights program at N.J.S.A. 40:55D-113 (N.J.A.C. 2:76-5.10(a)1iii); the State Transfer of Development Rights program at N.J.S.A. 40:55D-137 (N.J.A.C. 2:76-5.10(a)1iv); agricultural restrictions approved by the SADC as part of a municipal cluster development approval pursuant to N.J.S.A. 40:55D-39.1 (N.J.A.C. 2:76-5.10(a)1v), but if the agricultural restrictions have not been approved by the SADC, then the premises subject to the restrictions shall be enrolled for a minimum period of 16 years in either of the term farmland preservation programs at N.J.A.C. 2:76-3.1 or 4.1, and the agricultural restrictions imposed on the premises through the municipal cluster development approval are consistent with N.J.A.C. 2:76-6.15 and approved by the SADC (N.J.A.C. 2:76-5.10(a)1vi(1)); counties for farmland preservation purposes pursuant to the Local Lands and Building Law, N.J.S.A. 40A:12-4, and the premises are subsequently approved by the SADC for enrollment in a development easement program pursuant to N.J.S.A. 4:1C-11 and N.J.A.C. 2:76-6.19 (N.J.A.C. 2:76-5.10(a)1vi), but if the premises have not been approved for enrollment pursuant to N.J.S.A. 4:1C-11 and N.J.A.C. 2:76-6.19, then the premises are enrolled for a minimum period of 16 years in one of the term farmland preservation programs at N.J.A.C. 2:76-3.1 or 4.1, and the deed restrictions imposed on the premises through the Local Lands and Building Law are consistent with those set forth at N.J.A.C. 2:76-6.15 and approved by the SADC (N.J.A.C. 2:76-5.10(a)1vi(1)); the Pinelands Development Credits program in which development credits allocated to the premises have been severed and deed restrictions recorded pursuant to N.J.S.A. 13:18A-30 and N.J.A.C. 7:50-5.41; provided the SADC approves the recorded deed restrictions as being consistent with those set forth at N.J.A.C. 2:76-6.15 (N.J.A.C. 2:76-5.10(a)1vii); the Highlands Development Credits program in which development credits allocated to the premises have been severed and deed restrictions recorded pursuant to N.J.S.A. 13:20-13 and N.J.A.C. 7:70-4.1, provided the SADC approves the recorded deed restrictions as being consistent with those set forth at N.J.A.C. 2:76-6.15 (N.J.A.C. 2:76-5.10(a)1viii); conservation restrictions acquired by a charitable conservancy; provided the SADC approves the recorded deed restrictions as being consistent with those set forth at N.J.A.C. 2:76-6.15, and the premises are enrolled for a minimum period of 16 years in one of the term farmland preservation programs at N.J.A.C. 2:76-3.1 or 4.1.

Second priority farms are those enrolled in term farmland preservation programs at N.J.A.C. 2:76-3.1 or 4.1, if enrolled for a period of 16 years pursuant to N.J.S.A. 4:1C-24, as set forth at N.J.A.C. 2:76-5.10(a)2.

New N.J.A.C. 2:76-5.10(a)3 provides that third priority farms are those enrolled in the term farmland preservation programs at N.J.A.C. 2:76-3.1 or 4.1, if enrolled for a period of eight years pursuant to N.J.S.A. 4:1C-24, except that farms enrolled in those programs for a period of eight years prior to December 6, 2018, shall receive a Priority 2 designation until the agreement's next renewal or reformation date, as set forth at N.J.A.C. 2:76-3.9 and 4.9, respectively.

New N.J.A.C. 2:76-5.10(b) states that enrollment of farms pursuant to paragraphs (a)1 through 3 is deemed to have occurred when the SADC issues a grant and the deed of easement, or the cost-sharing grant agreement, has been recorded pursuant to the county easement purchase, county, and municipal planning incentive grant, or nonprofit acquisition programs (N.J.A.C. 2:76-5.10(b)1); the SADC has recorded the fee simple deed or the deed of easement in the SADC fee simple or direct easement acquisition programs, respectively (N.J.A.C. 2:76-5.10(b)2); for the Transfer of Development Rights (TDR) programs, the deed restrictions have been recorded, and the SADC approves the recorded deed restrictions for consistency with N.J.A.C. 2:76-6.15; for municipal cluster development, the SADC has prepared or approved an agricultural restriction template for use by a municipality pursuant to N.J.S.A. 40:55D-39.1 and the agricultural restrictions have been recorded (N.J.A.C. 2:76-5.10(b)4); for county purchases of land for farmland

preservation purposes pursuant to the Local Lands and Building Law, the premises is subsequently enrolled in a development easement program pursuant to N.J.S.A. 4:1C-11, and the SADC has reviewed and approved the enrollment application and executed and recorded an enrollment agreement pursuant to N.J.A.C. 2:76-6.19 (N.J.A.C. 2:76-5.10(b)5); for the Pinelands Development Credit and Highlands Development Credit programs, the deed restrictions have been recorded and the SADC approves the recorded deed restrictions for consistency with N.J.A.C. 2:76-6.15 (N.J.A.C. 2:76-5.10(b)6); for conservation restrictions acquired by a charitable conservancy, all requirements for the creation of a farmland preservation program or a municipally approved farmland preservation program pursuant to N.J.A.C. 2:76-3.1 or 4.1 have been met, including approval of the petition by the board, certification of the petition by the SADC, and the recording of an agreement (N.J.A.C. 2:76-5.10(b)7); for the term farmland preservation programs, all requirements for the creation of a farmland preservation program or a municipally approved farmland preservation program pursuant to N.J.A.C. 2:76-3.1 or 4.1 have been met, including approval of the petition by the board, certification of the petition by the SADC, and the recording of an agreement (N.J.A.C. 2:76-5.10(b)8).

New N.J.A.C. 2:76-5.10(c) provides that individual project applications within the categories at proposed N.J.A.C. 2:76-5.10(a)1, 2, or 3 may be further prioritized should program demand be greater than available funding, in which case, the SADC's further prioritization shall be based on the date of State Soil Conservation Committee approval (N.J.A.C. 2:76-5.10(c)1); date of receipt of the application by the State Soil Conservation Committee (N.J.A.C. 2:76-5.10(c)2); date of local soil conservation district approval (N.J.A.C. 2:76-5.10(c)3); and date of USDA-NRCS approval (N.J.A.C. 2:76-5.10(c)4).

As the SADC 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 amendments and new rule are expected to have a positive social impact. By increasing the grant amount for soil and water conservation projects, farmers may be more inclined to undertake such projects. Soil and water conservation projects benefit farmland and the environment by ensuring that farmland remains productive and by enhancing and conserving natural resources. These benefits enhance the quality of life in New Jersey and ensure the continuation of New Jersey's agricultural heritage. The increase in cost-share grants will also provide incentives for farms that are not currently preserved to enter into New Jersey's farmland preservation programs. In addition, reimbursing applicants for hiring private technical consultants will increase the rate at which conservation measures can be implemented by reducing the time it takes to receive technical assistance from the Federal government for project implementation.

Economic Impact

The rulemaking will benefit owners and operators of farmland that are eligible for grant funding, as they will be able to receive a greater amount of money from the State for soil and water conservation projects. The rulemaking will also benefit private technical consultants who will have the opportunity to be financially compensated for providing services to farmers. Traditionally, a farmer could either hire a technical service provider at their own expense or wait for no-cost assistance from the USDA-NRCS. Modifying the rules to allow the SADC to compensate farmers who hire private consultants will have an economic benefit for both the farmer and the consultant. The proposed amendments and new rule are anticipated to have a positive economic impact on the overwhelming majority of preserved farms by improving agricultural productivity and economic viability.

Federal Standards Statement

A Federal standards analysis is not required because the subject matter of the proposed amendments and new rule is governed by the Act and does not include standards or requirements that exceed those imposed by Federal law, as set forth in the Summary.

Jobs Impact

The proposed amendments and new rule will have some positive impact on jobs in New Jersey. The Committee anticipates an increase in jobs for services related to conservation plan development and implementation, such as professional engineers, soil scientists, farm conservation planners, surveyors, site contractors, and irrigation well drillers, as a result of the proposed amendments and new rule.

Agriculture Industry Impact

For the reasons set forth in the Summary and Social Impact, the proposed amendments and new rule will have a positive impact on the agriculture industry. In addition, providing farmers with opportunities for technical and financial assistance related to soil and water conservation projects will help to maintain positive soil and water quality and improve agricultural viability of eligible farms.

Regulatory Flexibility Statement

The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. (RFA), requires that a notice of proposal of rules that impose reporting, recordkeeping, or other compliance requirements on small businesses include an analysis describing the requirements and costs imposed, and the methods used to minimize any adverse economic impact on small businesses. A small business is any business that is resident in New Jersey, independently owned and operated, and not dominant in its field, which employs fewer than 100 full-time employees.

The rulemaking provides conservation grant opportunities to all of the approximately 2,900 preserved farm properties in this State, a majority of which SADC estimates would be considered small businesses. Additionally, many individuals and entities own and/or operate more than one preserved farm as part of a larger commercial agricultural operation. The SADC is unable to quantify, with certainty, the number of individuals and entities owning and/or operating preserved farms that are small businesses as defined in the RFA.

The USDA-NRCS offers free services for conservation planning. The proposed amendments and new rule will result in some paperwork associated with a small business hiring technical service providers, reviewing these private consultants' plans, and processing bills for consultants' and contractors' services. However, the SADC does not perceive the proposed amendments and new rule to significantly increase recordkeeping, reporting, and compliance requirements beyond those for existing soil and water conservation grant programs.

Housing Affordability Impact Analysis

The proposed amendments and new rule will not result in a change to the affordability or the average cost associated with housing. The proposed amendments and new rule will have no impact on any aspect of housing because the rules deal with cost-share grants for the creation and implementation of conservation plans on preserved farms.

Smart Growth Development Impact Analysis

The proposed amendments and new rule will not result in a change in housing production within Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan. This is because the rules have nothing to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere else in the State of New Jersey. The rules deal with cost-share grants for the creation and implementation of conservation plans on preserved farms.

The proposed amendments and new rule will have a positive impact on smart growth by protecting agricultural soil resources, increasing agricultural production, and improving farm businesses, thus strengthening the long-term viability of farms located primarily in Planning Areas 4 and 5 pursuant to the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The SADC has evaluated the proposed amendments and new rule and determined that they will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

SUBCHAPTER 5. SOIL AND WATER CONSERVATION PROJECT COST-SHARING

2:76-5.1 Applicability

This subchapter identifies State Agriculture Development Committee rules which provide for a landowner, or a farm operator as an agent for the landowner, [whose land is within a municipally approved farmland preservation program or other farmland preservation program, or is subject to a development easement conveyed pursuant to N.J.S.A. 4:1C-24a] **whose land meets the eligibility criteria established in this subchapter**, to apply for and receive grants for soil and water conservation projects. These rules shall be utilized in conjunction with N.J.A.C. 2:90-2 and 2:90-3, promulgated by the State Soil Conservation Committee, which prescribes procedures for development of conservation plans and approval of projects. **This subchapter also sets forth rules to award soil and water conservation planning grants to a landowner, or a farm operator as an agent for the landowner, to hire approved consultants to develop conservation plans for the premises when such plans facilitate applications for soil and water conservation projects pursuant to N.J.A.C. 2:90-3.**

2:76-5.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

"Approved consultant" means a technical service provider certified by the United States Department of Agriculture, Natural Resources Conservation Service (USDA-NRCS), or a consultant approved by the Committee or an individual or entity having the required technical training, education, and experience to perform the level of technical assistance needed for the planning of specific conservation practices; meeting any applicable professional or business licensing or similar qualification standards established by State law or rule; demonstrating, through documentation of training or experience, familiarity with USDA-NRCS guidelines, criteria, standards, and specifications as set forth in applicable USDA-NRCS manuals, handbooks, field office technical guides, and supplements thereto for the planning of specific conservation practices; and that has not been decertified as a technical service provider in any state.

...
"Committee" or **"SADC"** means the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4.

"Common deed ownership" means all the lands preserved together pursuant to a recorded agreement or easement, except that for consolidated premises, common deed ownership shall mean all the lands preserved together by a deed of consolidation.

"Consolidated premises" means two or more eligible lands that are combined or permanently associated with each other in a deed approved in advance by the Committee.

...
"Eligible land" means land within a municipally approved farmland preservation program or other farmland preservation program; land subject to a development easement conveyed pursuant to N.J.S.A. 4:1C-24a(2); land subject to the Burlington County Transfer of Development Rights program pursuant to N.J.S.A. 40:55D-113; land subject to the State Transfer of Development Rights program pursuant to N.J.S.A. 40:55D-137; agricultural land subject to an agricultural restriction approved by the SADC as part of a municipal cluster development pursuant to N.J.S.A. 40:55D-39.1; agricultural land on which Pinelands Development Credits allocated to the premises have been severed and deed restrictions recorded pursuant to N.J.S.A. 13:18A-30 and N.J.A.C. 7:50-5.41; agricultural land on which Highlands Development Credits allocated to the premises have been severed and deed restrictions recorded pursuant to N.J.S.A. 13:20-13 and N.J.A.C. 7:70-4.1; and any other land that the Committee determines eligible, provided the deed restrictions recorded on the land are consistent with those set forth at N.J.A.C. 2:76-6.15.

"Farmland preservation program" means any voluntary farmland preservation program or municipally approved farmland preservation program, the duration of which is at least eight years,

authorized by law enacted subsequent to the effective date of the [“]Farmland Preservation Bond Act of 1981,[”] P.L. 1981, [C.276] c. 276, which has as its principal purpose the [long term] **long-term** preservation of significant masses of reasonably contiguous agricultural land within the agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, [C.32] c. 32, and the maintenance and support of increased agricultural production as the first priority use of that land.

“Fund” means the [“]Farmland Preservation Fund[”] created pursuant to the [“]Farmland Preservation Bond Act of 1981[”], P.L. 1981, [c.276] c. 276, the **Preserve New Jersey Farmland Preservation Fund created pursuant to the Preserve New Jersey Act, P.L. 2016, c. 12**, and any future funds authorized for the purpose of providing grants to landowners for soil and water conservation projects.

“**Funding partner**” means any public or nonprofit entity other than the Committee providing financial assistance for the planning and/or implementation of soil and water conservation practices.

“**Planning criteria**” means the United States Department of Agriculture National Resource Concern List and Planning Criteria, incorporated herein by reference, as amended and supplemented, at https://efotg.sc.egov.usda.gov/references/public/NJ/Planning_Criteria_March_2023.pdf.

“**Resource concern**” means a soil or water resource that does not meet minimum acceptable condition levels, as established by planning criteria, resulting from the degradation of the soil or water resource base to the extent that long-term sustainability is impaired.

“**Soil and water conservation planning grant**” means a grant awarded to an eligible applicant to develop a conservation plan necessary to facilitate the implementation of conservation practices as part of a soil and water implementation project. A grant may also be provided for the preparation of any additional plans necessary for project implementation including, but not limited to, irrigation water management plans, comprehensive nutrient management plans, forest stewardship plans, engineering plans, or similar plans necessary to address resource concerns on eligible land.

“Soil and water conservation project”[, hereinafter referred to as project,] or “**Project**” means any project designed for the control and prevention of soil erosion and sediment damages, the control of pollution on agricultural lands, the impoundment, storage, and management of water for agricultural purposes, or the improved management of land and soil[s] to achieve maximum agricultural productivity.

“**Technical service provider**” means a private individual or entity certified by the USDA-NRCS as capable of providing technical service activities according to USDA-NRCS standards and specifications for specific conservation activities.

2:76-5.3 Approved soil and water conservation projects

The State Soil Conservation Committee, pursuant to procedures established [in] at N.J.A.C. 2:90-2 and 3, shall approve projects that are eligible for cost-sharing **pursuant to soil and water conservation planning grants.**

2:76-5.4 Eligibility for State soil and water conservation cost-share funds

(a) Upon [certification of a farmland preservation program or a municipally approved program] **receipt of an application for a project**, the Committee shall determine the total eligible State soil and water cost-share funds based on **applicant eligibility and** common deed ownership in accordance with the following formula:

<u>Acres</u>	<u>Eligibility for State cost-share funds</u>
[From 0 to 50 acres	= \$600.00/acre
From greater than 50 to 100 acres	= \$30,000 + \$200.00/acre above 50 acres
From greater than 100 to 450 acres	= \$40,000 + \$100.00/acre above 100 acres
Greater than 450 acres	= \$75,000

1. The total eligible amount of cost-share funds as determined above shall remain in effect for the duration of the initial farmland preservation program or municipally approved program.

2. Upon renewal of the farmland preservation program or municipally approved program, the eligibility of cost-share funds shall be based upon the formula current at the time of program renewal set forth in this section.

(b) On land that has had a development easement conveyed from it pursuant to N.J.S.A. 4:1C-24a, the Committee shall determine the total eligible State soil and water cost-share funds based on common deed ownership in accordance with the following formula:

<u>Acres</u>	<u>Eligibility for State cost-share funds</u>
From 0 to 50 acres	= \$600.00/acre
From greater than 50 to 100 acres	= \$30,000 + \$200.00/acre above 50 acres
From greater than 100 to 450 acres	= \$40,000 + \$100.00/acre above 100 acres
Greater than 450 acres	= \$75,000

1. The total eligible amount of cost-share funds as determined above shall remain in effect for a period of eight years from the date the development easement was conveyed to the board.

2. At the end of the eight-year period, the eligibility of cost-share funds shall be based upon the formula current at that time and set forth in this section for subsequent eight-year periods.

(c) Notwithstanding (a) and (b) above, if a governmental body or a not-for-profit corporation is the record owner of land enrolled in a farmland preservation program, municipally approved program or is subject to a development easement conveyed pursuant to the provisions of the Agriculture Retention and Development Act, the owner is eligible for State soil and water project cost-share funds on the basis of the acreage contained in each farm in accordance with the following formula:

<u>Acres</u>	<u>Eligibility for State cost-share funds</u>
From 0 to 50 acres	= \$600.00/acre
From greater than 50 to 100 acres	= \$30,000 + \$200.00/acre above 50 acres
From greater than 100 to 450 acres	= \$40,000 + \$100.00/acre above 100 acres
Greater than 450 acres	= \$75,000]
Less than 200 acres	= \$50,000 + \$500.00/acre
Greater than 200 acres	= \$150,000

1. The total eligible amount of cost-share funds as determined above shall [remain in effect for a period of eight years from the date the easement is conveyed] **begin on the date the easement or agreement on the eligible land is fully executed and shall remain in effect for eight years.**

2. At the end of the **initial** eight-year period **and for all subsequent eight-year periods**, the eligibility for cost-share funds [for subsequent eight-year periods] shall be based upon the **requirements and** formula set forth in this [subchapter that is in effect at the end of the eight-year period] **section.**

[(d) Upon State Soil Conservation Committee approval and recommendation for funding of an application for soil and water project cost-sharing in compliance with N.J.A.C. 2:76-5.7 and upon State Agriculture Development Committee approval, the State Agriculture Development Committee shall obligate funds as approved in the application for up to three years from the date of approval.

1. Approval of funds shall not exceed the amount determined in (a), (b) and (c) above.

2. The term of obligation may be extended due to seasonal constraints or other unavoidable delays only upon the approval of the local soil conservation district, the State Soil Conservation Committee and the State Agriculture Development Committee.]

(b) Upon receipt of an application for a soil and water conservation planning grant, the Committee may approve a grant of up to \$20,000

to an eligible applicant for each portion of eligible land pursuant to common deed ownership.

1. The total eligible amount of soil and water conservation planning grant funds as determined at (b) above shall remain in effect for a period of five years from the date funds are obligated.

2. No applicant shall receive more than \$20,000 in a five-year period for each portion of eligible land under common deed ownership.

2:76-5.5 Eligible applicants

(a) Any landowner or farm operator as an agent for the landowner [who is in a farmland preservation program or a municipally approved program] of eligible land shall be eligible to apply for a grant for projects.

(b) (No change.)

2:76-5.6 Submission of the application

(a) An applicant for a soil and water conservation project shall apply to the soil conservation district [and the board] for a grant for a project pursuant to N.J.A.C. 2:90-3.

(b) An applicant for a planning grant shall apply to the Committee.

2:76-5.7 Approval for project and soil and water conservation planning grant funding

(a) The Committee may provide a cost-share grant of up to 75 percent of the actual or the estimated cost [for] to implement a project approved by the State Soil Conservation Committee pursuant to N.J.A.C. 2:90-2 and 3.

1. Estimated cost-share grants shall be obligated based on current USDA-NRCS cost estimates for similar conservation practice components in accordance with N.J.A.C. 2:90-3.

2. The Committee may increase the cost-share obligation to the lowest of three estimates provided by the applicant if it determines that the estimates are reasonable and reflect local prices or that site-specific conditions on the eligible land support the increase, if sufficient funds are available to adjust obligated funds, and if unobligated funds exist within the same eight-year term pursuant to N.J.A.C. 2:76-5.4.

i. The Committee may require the applicant to provide additional cost-share estimates if it determines that the estimates provided are unreasonable.

ii. The Committee may reduce the number of required estimates at its sole discretion provided it believes that the estimates provided are reasonable or if the Committee determines that less than three contractors within a reasonable distance of the eligible land are capable of completing the project.

iii. Estimates must be provided to the Committee for review and approval prior to the applicant starting the project installation.

iv. An applicant completing work prior to Committee approval and obligation of additional funds shall not be eligible to receive an obligation adjustment.

v. No obligation awarded pursuant to (a)1 above shall be reduced as a result of the procedures in this subsection.

(b) For projects where the applicant provides [at least 50 percent of] the entire cost share for the project [cost] without assistance from [the county] any funding partner, and upon the soil conservation district's approval in accordance with N.J.A.C. 2:90-3, the following procedures shall apply:

1.-2. (No change.)

(c) For projects where the applicant receives financial assistance from [county funds] any funding partner for the cost of projects and upon soil conservation district approval in accordance with N.J.A.C. 2:90-3, the following procedures shall apply:

1. The soil conservation [district approved] district-approved application shall be forwarded to the [board] funding partner for concurrence;

2. Following [board approval] funding partner concurrence, the application shall be forwarded to the State Soil Conservation Committee for approval.

(d) The State Soil Conservation Committee upon review and verification of conformance with this [subchapter,] section and N.J.A.C.

2:90-2 and [2:90-]3, shall recommend funding approval by the [committee] Committee.

(e) The [committee] Committee shall review and approve, conditionally approve, or disapprove applications for project funding; and

1. Certify that the land is [part of a municipally approved program or farmland preservation program] eligible land;

2. (No change.)

3. Notify the soil conservation district of [committee's] the Committee's action [(informational) by providing a copy [sent] of the approval to the State Soil Conservation Committee, all funding partners, and the board[]].

4. The Committee may condition approval of an application for project funding based on, but not limited to:

i. Enrollment of land into a program so that it is considered eligible land;

ii. The landowner or applicant coming into compliance with any or all deed provisions; or

iii. A resource concern identified by the Committee, State Soil Conservation Committee, soil conservation district, easement holder, USDA-NRCS, or funding partner(s), and the Committee determines that the applicant needs to address the resource concern to enhance protection of soil and water resources prior to implementing the proposed project.

(f) Funds as approved in the application shall be obligated for up to three years from the date of approval.

1. Approval of funds shall not exceed the amount determined at N.J.A.C. 2:76-5.4(a).

i. Funds obligated for a project remain associated with and only count against the eight-year period in which they were awarded, even if the eight-year period has expired.

ii. Notwithstanding the foregoing, funds awarded to farms enrolled in term preservation programs expire when the term agreement expires unless the term agreement is renewed in a timely manner.

2. The term of obligation may be extended due to seasonal constraints or other unavoidable delays, and upon the approval of the local soil conservation district, the State Soil Conservation Committee, and the Committee.

(g) The Committee may provide a planning grant of up to 100 percent of the cost of the plan development by an approved consultant, subject to available funds.

1. In order to approve a planning grant, the Committee shall certify that:

i. The land is eligible land;

ii. The applicant is an eligible applicant; and

iii. There are no violations of the easement or agreement recorded on the land.

2. Estimated cost-share planning grant awards shall be obligated based on current USDA-NRCS cost estimates for similar plan development activities.

3. For planning activities where similar Federal cost-share rates are not available, the Committee shall develop a cost table for services in conjunction with USDA-NRCS, Rutgers Cooperative Extension, or similar agencies.

2:76-5.8 Payment

(a) (No change.)

(b) The [committee] Committee, following State Soil Conservation Committee verification of compliance with N.J.A.C. 2:90-2 and [2:90-]3, shall request the Secretary to direct project payment to the applicant. The State Soil Conservation Committee, local soil conservation district, [and] board, and all funding partners shall be [advised to] provided written notice of such action by the Committee.

1. The applicant shall provide documentation of funding received or anticipated from all funding partners.

i. Project payment shall be reduced, if applicable, so that the financial contributions from all funding partners do not total more than 100 percent of the actual project cost.

2. Maximum payment shall be based upon the actual number of units, for example, feet, or acres, installed and multiplied by the estimated cost per unit or approved cost estimate per unit, not to

exceed the total obligation as approved or revised as set forth at N.J.A.C. 2:76-5.7(a)2.

(c) Upon planning grant completion:

1. The applicant shall request payment on a form prepared by the Committee that includes the following:

i. A statement verifying the applicant paid for the cost of planning activities;

ii. A disclosure of any financial assistance from other entities for planning activities;

iii. Copies of all bills or invoices for planning services provided;

iv. A copy of all planning documents for which reimbursement is sought, including, but not limited to, conservation plans, environmental analyses, job sheets, engineering plans, and support documentation; and

v. Any other documentation deemed appropriate by the Committee to support payment to the applicant.

2. The Committee shall review the planning documents for conformance with:

i. The USDA-NRCS National Planning Procedures Handbook, available at <https://directives.nrcs.usda.gov/sites/default/files2/1712930121/33148.pdf>; and

ii. All applicable practice standards and supporting documents available at <https://efotg.sc.egov.usda.gov/#/state/NJ/documents>.

3. If the Committee finds that the planning documents comply with (c)2 above, then it shall issue payments of up to 100 percent of the plan development costs.

i. If the plans do not comply with (c)2 above, the Committee shall, within 90 days of receipt of a payment request, provide the applicant with written notice of the deficiencies and a reasonable opportunity for the applicant to submit additional documentation.

4. The Committee shall not reimburse an applicant for the cost of any permits or governmental reviews.

2:76-5.9 Allocation of soil and water cost-share eligibility after subdivision or consolidation of eligible land

(a) A subdivision for change of ownership of any lands under common deed of ownership shall affect eligibility for soil and water conservation project cost-share grants as follows:

1.-2. (No change.)

3. Funds obligated for specific projects at time of sale or subdivision that [lapse under the provisions of N.J.A.C. 2:76-5.3(b)3] have lapsed shall be reallocated as eligible funds according to (a)2 above.

(b) A consolidation of any lands shall affect eligibility for soil and water conservation project cost-share grants as follows:

1. Consolidated premises shall have eligibility redetermined based on N.J.A.C. 2:76-5.4(a) at the time of consolidation.

2. The date of the consolidation deed shall be used to determine the eight-year eligibility period and subsequent renewals.

3. Existing grant obligations shall be reduced proportionately, if consolidation results in a reduction in funding eligibility.

2:76-5.10 Prioritization of applications for soil and water conservation projects and planning grants

(a) In the event of limited availability of cost-share funds, the Committee shall prioritize applications using the following methodology:

1. First priority (Priority One) shall be given to agricultural lands that are permanently preserved by:

i. Counties, municipalities, and nonprofit organizations with an SADC cost-share grant pursuant to the SADC's county easement purchase program, county or municipal planning incentive grant program, and the nonprofit acquisition program;

ii. The SADC through acquisition of fee simple title or a development easement;

iii. The Burlington County Transfer of Development Rights Program, N.J.S.A. 40:55D-113;

iv. The State Transfer of Development Rights Program, N.J.S.A. 40:55D-137;

v. Agricultural restrictions approved by the SADC as part of a municipal cluster development approval pursuant to N.J.S.A. 40:55D-39.1.

(1) If the agricultural restrictions have not been approved by the SADC pursuant to N.J.S.A. 40:55D-39.1, then the premises shall be enrolled for a minimum period of 16 years in one of the term farmland preservation programs at N.J.A.C. 2:76-3.1 or 4.1, and the agricultural restrictions imposed on the premises through a municipal cluster development approval are consistent with those set forth at N.J.A.C. 2:76-6.15 and approved by the SADC;

vi. Counties for farmland preservation purposes pursuant to the Local Lands and Building Law pursuant to N.J.A.C. 40A:12-4, and the premises are subsequently approved by the SADC for enrollment in a development easement program pursuant to N.J.S.A. 4:1C-11 and N.J.A.C. 2:76-6.19.

(1) If the premises has not been approved for enrollment pursuant to N.J.S.A. 4:1C-11 and N.J.A.C. 2:76-6.19, then the premises are enrolled for a minimum period of 16 years in one of the term farmland preservation programs at N.J.A.C. 2:76-3.1 or 4.1, and the deed restrictions imposed on the premises through the Local Lands and Building Law are consistent with those set forth at N.J.A.C. 2:76-6.15 and approved by the SADC;

vii. The Pinelands Development Credits program in which development credits allocated to the premises have been severed and deed restrictions recorded pursuant to N.J.S.A. 13:18A-30 and N.J.A.C. 7:50-5.41, provided the SADC approves the recorded deed restrictions as being consistent with those set forth at N.J.A.C. 2:76-6.15;

viii. The Highlands Development Credits program in which development credits allocated to the premises have been severed and deed restrictions recorded pursuant to N.J.S.A. 13:20-13 and N.J.A.C. 7:70-4.1, provided the SADC approves the recorded deed restrictions as being consistent with those set forth at N.J.A.C. 2:76-6.15; and

ix. Conservation restrictions acquired by a charitable conservancy, provided the SADC approves the recorded deed restrictions as being consistent with those set forth at N.J.A.C. 2:76-6.15 and the premises are enrolled for a minimum period of 16 years in one of the term farmland preservation programs at N.J.A.C. 2:76-3.1 or 4.1.

2. Second priority (Priority 2) shall be given to farms that are enrolled in the term farmland preservation programs at N.J.A.C. 2:76-3.1 or 4.1, if enrolled for a period of 16 years pursuant to N.J.S.A. 4:1C-24.

3. Third priority (Priority 3) shall be given to farms that are enrolled in the term farmland preservation programs at N.J.A.C. 2:76-3.1 or 4.1, if enrolled for a period of eight years pursuant to N.J.S.A. 4:1C-24, except that farms enrolled in those programs for a period of eight years prior to December 6, 2018, shall receive a Priority 2 designation until the next renewal or reformation date as set forth at N.J.A.C. 2:76-3.9 and 4.9, respectively.

(b) Enrollment in the programs listed at (a) above shall be deemed valid and complete upon the following:

1. For the county easement purchase, county and municipal planning incentive grants, or nonprofit acquisition programs, the SADC has issued a grant and the deed of easement, or the cost-sharing grant agreement, has been recorded;

2. For SADC fee simple or direct easement acquisitions, when the SADC has recorded the fee simple deed or the deed of easement, respectively;

3. For the Transfer of Development Rights (TDR) programs, the deed restrictions have been recorded, and the SADC approves the recorded deed restrictions for consistency with N.J.A.C. 2:76-6.15;

4. For cluster development, the SADC has prepared or approved an agricultural restriction template for use by a municipality pursuant to N.J.S.A. 40:55D-39.1 and the agricultural restrictions have been recorded;

5. For county easement purchases pursuant to the Local Lands and Buildings Law, where the premises is subsequently enrolled in a development easement program pursuant to N.J.S.A. 4:1C-11, the SADC has reviewed and approved the enrollment application and executed and recorded an Enrollment Agreement pursuant to N.J.A.C. 2:76-6.19;

6. For the Pinelands Development Credit and Highlands Development Credit programs, the deed restrictions have been recorded, and the SADC approves the recorded deed restrictions for consistency with N.J.A.C. 2:76-6.15;

7. For conservation restrictions acquired by a charitable conservancy, all requirements for the creation of a farmland preservation program or a municipally approved farmland preservation program pursuant to N.J.A.C. 2:76-3.1 or 4.1 have been met, including approval of the petition by the board, certification of the petition by the SADC, and the recording of an agreement; and

8. For the term farmland preservation programs, all requirements for the creation of a farmland preservation program or a municipally approved farmland preservation program pursuant to N.J.A.C. 2:76-3.1 or 4.1 have been met, including approval of the petition by the board, certification of the petition by the SADC, and the recording of an agreement.

(c) Within the Priority 1, Priority 2, and Priority 3 categories, individual project applications may be further prioritized should program demand be greater than available funding. In such cases, the SADC shall further prioritize projects according to the following operative dates:

1. The date of State Soil Conservation Committee approval;
2. The date the application was received by the State Soil Conservation Committee;
3. The date of local soil conservation district approval; and
4. The date of USDA-NRCS approval.

INSURANCE

(a)

DEPARTMENT OF BANKING AND INSURANCE REAL ESTATE COMMISSION

Proposed Repeals and New Rules: N.J.A.C. 11:5-1.1, 1.3, 3.1, 3.10, 3.11, 3.14, 4.4, and 12.2

Proposed Amendments: N.J.A.C. 11:5-1.5, 2, 3.2 through 3.9, 3.12, 3.13, 3.15, 4.1, 4.5, 5.2, 5.3, 5.5, 6.1, 6.5, 6.6, 6.8, 6.10, 7.1, 7.2, 11.1, 11.10, 12.1, 12.3 through 12.8, 12.11, 12.12, and 12.14

Proposed New Rules: N.J.A.C. 11:5-3.1A and 12.5A

Proposed Repeals: N.J.A.C. 11:5-1.4

Authorized By: New Jersey Real Estate Commission, Aurelio Romero, Executive Director.

Authority: N.J.S.A. 45:15-1 et seq.; and P.L. 2017, c. 200; P.L. 2018, c. 71; P.L. 2019, c. 177; and P.L. 2024, c. 32, § 16.

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

Proposal Number: PRN 2025-057.

Submit comments by August 1, 2025, to:

Denise Illes, Chief
Office of Regulatory Affairs
Department of Banking and Insurance
20 West State Street
PO Box 325
Trenton, NJ 08625-0325
fax: (609) 292-0896
email: rulecomments@dob.nj.gov

The agency proposal follows:

Summary

The New Jersey Real Estate Commission (Commission) in the Department of Banking and Insurance (Department) is proposing to amend N.J.A.C. 11:5 to implement statutory amendments at N.J.S.A. 45:15-1 et seq. (Act), made at P.L. 2017, c. 200; P.L. 2018, c. 71; P.L. 2019, c. 177; and P.L. 2024, c. 32, § 16. The proposed regulatory changes

allow precicensure courses to be completed online, update rules to conform to current practices, and for clarity. A more detailed summary of the proposed changes follows the broad overview below.

The Commission is proposing amendments, repeals, and new rules to implement P.L. 2017, c. 200, which amended N.J.S.A. 45:15-16.2a to add an exemption from the continuing education requirements for licensure renewal for brokers or broker-salespersons who have at least 40 years of experience, including any equivalent experience in any other jurisdiction as determined by the Commission. The Commission proposes a new rule at N.J.A.C. 11:5-12.5A to set forth the process for requesting the exemption pursuant to N.J.S.A. 45:15-16.2a, which is summarized in greater detail below.

The Commission is proposing amendments to implement P.L. 2018, c. 71, which eliminated the referral agent license category from the Act and replaced it by codifying the business practice of real estate brokers housing salespersons engaged in the referral business in real estate referral companies. Accordingly, the Commission proposes amendments throughout the chapter to remove references to persons licensed as “referral agents” and to replace that “referral agents” with “real estate salespersons licensed with a real estate referral company” or “real estate salesperson (referral).” P.L. 2018, c. 71, also made several changes to the Act regarding continuing education requirements, including: (1) eliminating the terms “distance learning” and “correspondence learning” courses, while providing that courses may continue to be delivered by Internet and video modalities; (2) requiring salespersons, broker-salespersons, and brokers to take at least two hours of continuing education in ethics for license renewal; and (3) adding licensee safety and financial literacy and planning as core topics. The Commission is proposing amendments at N.J.A.C. 11:5-12.2 and 12.4 to implement these changes.

The Commission is proposing amendments at N.J.A.C. 11:5-2.1 and 12.4 to implement P.L. 2019, c. 177, which mandates that the precicensure education curricula for salesperson, broker-salesperson, and broker candidates, and the continuing education curriculum, include one hour of study on fair housing and housing discrimination.

The Commission is proposing amendments at N.J.A.C. 11:5-12.4 to implement P.L. 2024, c. 32, § 16, which requires that a continuing education course in the core topic area of agency be completed by brokers, broker-salespersons, and salespersons as a condition for license renewal during each biennial license term.

The Commission is proposing amendments to replace references to “salesmen” with “salespersons” and “he” or “he or she” or “their” to remain gender neutral as a matter of form. The Commission is also proposing amendments to replace the various generic references to the Act, such as the Real Estate License Act, New Jersey Real Estate License Act, the Real Estate Brokers and Salesmen Act, and the Real Estate Licensing Act, with a uniform reference to the Real Estate Brokers and Salespersons Act throughout the chapter.

Lastly, the Commission is proposing amendments throughout the chapter for clarity; these amendments are not noted in the more detailed summary below.

The Commission proposes to amend the heading at N.J.A.C. 11:5-1.1 to “Purpose and scope” to conform with similar rules of the other divisions within the Department of Banking and Insurance.

The Commission proposes to repeal N.J.A.C. 11:5-1.3, as currently written, to omit functions of the Commission and replace it with definitions. The proposed new rule provides definitions for “real estate broker,” “real estate salesperson,” “real estate broker-salesperson,” “real estate salesperson licensed with a real estate referral company,” and “real estate referral company” that are consistent with the definitions of those terms set forth at N.J.S.A. 45:15-3. The proposed new rule also provides definitions for the following terms: “broker of record,” “employing broker,” and “real estate brokerage activity.”

The Commission proposes to merge N.J.A.C. 11:5-1.4 with 1.5, such that the combined rule text is codified at N.J.A.C. 11:5-1.5 and 11:5-1.4 will remain reserved. Accordingly, the Commission proposes to amend N.J.A.C. 11:5-1.5 to add the content of N.J.A.C. 11:5-1.4, and to amend the section heading to “Records open to public inspection; files not open for inspection.” As proposed, this section would provide contact information for the public to request records maintained by the