

TITLE 2
AGRICULTURE

CHAPTER 1

ADMINISTRATION

Authority

N.J.S.A. 4:1-11, 52:14B-3 and 4.

Source and Effective Date

R.2006 d.379, effective September 28, 2006.
See: 38 N.J.R. 1896(b), 38 N.J.R. 4687(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 1, Administration, was extended by gubernatorial directive from March 27, 2014 to September 26, 2014. See: 46 N.J.R. 759(a).

Subchapter 4, Disability Discrimination Grievance Procedure, is exempt from expiration under the operation of Executive Order No. 66(1978) and N.J.S.A. 52:14B-5.1.

Chapter Historical Note

Chapter 1, Administration, was adopted prior to September 1, 1969.

Pursuant to Executive Order 66(1978), Subchapter 2, Organization, was readopted as R.1983 d.528, effective November 1, 1983. See: 15 N.J.R. 1538(a), 15 N.J.R. 1939(d).

Pursuant to Executive Order No. 66(1978), Chapter 1, Administration, expired on September 3, 1990.

Chapter 1, Administration, was adopted as new rules by R.1990 d.579, effective November 19, 1990. See: 22 N.J.R. 2865(a), 22 N.J.R. 3478(b).

Subchapter 4, Disability Discrimination Grievance Procedure, was adopted as new rules by R.1993 d.274, effective June 7, 1993. See: 25 N.J.R. 1314(a), 25 N.J.R. 1338(a), 25 N.J.R. 2247(b), 25 N.J.R. 2859(a).

Pursuant to Executive Order No. 66(1978), Subchapter 2, Organization, and Subchapter 3, Rules of Practice, were readopted as R.1995 d.566, effective October 4, 1995. See: 27 N.J.R. 2825(a), 27 N.J.R. 4279(b).

Subchapter 1, Designation of Additional Organizations to the Annual State Agricultural Convention, was adopted as R.1998 d.483, effective September 21, 1998. See: 30 N.J.R. 2549(a), 30 N.J.R. 3459(a).

Pursuant to Executive Order No. 66(1978), Subchapter 1, Designation of Additional Organizations to the Annual State Agricultural Convention, Subchapter 2, Organization, and Subchapter 3, Rules of Practice, expired on October 4, 2000.

Subchapter 1, Designation of Additional Organizations to the Annual State Agricultural Convention, Subchapter 2, Organization, and Subchapter 3, Rules of Practice, were adopted as new rules by R.2001 d.115, effective April 2, 2001. See: 33 N.J.R. 149(a), 33 N.J.R. 1081(a).

Administrative Change: Pursuant to Reorganization Plan No. 003-2002, the Division of Markets were renamed Division of Marketing and Development, effective February 17, 2003. See: 35 N.J.R. 3(a), 35 N.J.R. 1539(b).

Chapter 1, Administration, was readopted as R.2006 d.379, effective September 28, 2006. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 1, Administration, was scheduled to expire on September 28, 2013. See: 43 N.J.R. 1203(a).

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 1, Administration, was scheduled to expire on March 27, 2014. See: 45 N.J.R. 2291(a).

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SUBCHAPTER 1. DESIGNATION OF ADDITIONAL ORGANIZATIONS TO THE ANNUAL STATE AGRICULTURAL CONVENTION

2:1-1.1 Purpose and scope

(a) This subchapter sets forth the criteria and approval procedure for additional agricultural organizations to participate in the annual New Jersey Agricultural Convention pursuant to P.L. 1997, c.312.

(b) This subchapter applies to any agricultural organization seeking approval to participate in the annual convention.

2:1-1.2 Criteria for agricultural organizations seeking membership in the New Jersey Agricultural Convention

(a) An organization seeking membership in the New Jersey Agricultural Convention shall have as its primary purpose the advancement of an agricultural interest, an agricultural sector, or agricultural production and marketing in the State.

(b) The organization shall be incorporated for a minimum of one year prior to membership application, and maintain its headquarters in New Jersey.

(c) The organization shall include a membership that is Statewide or regional in area, or serve Statewide or regional agricultural interests.

(d) The organization shall have a majority of its membership based in New Jersey.

(e) The organization shall have been organized and active in the State of New Jersey for three years.

(f) The organization shall not represent the identical interest, commodity, or membership as is represented by a current member of the State Agricultural Convention.

2:1-1.3 Procedure for making application

(a) An organization shall make application, on forms provided by the Department of Agriculture, by no later than July 1 in any year. Forms may be obtained by contacting the Office of the Secretary, Department of Agriculture, P.O. Box 330, Trenton, NJ 08625-0330.

(b) An organization shall provide the following information in its application, as characterized in N.J.A.C. 2:1-1.2:

1. The name, address and telephone number of the organization;
2. The primary purpose of the organization;
3. The date the organization was organized, its date of incorporation and where it is headquartered; and
4. Where the majority of its membership live.

(c) The State Board shall determine and report, within 60 days of a request based on a complete application, its decision to the applicant organization.

(d) Approval of an application shall make the organization eligible for a delegate to all future agricultural conventions provided it continues to meet the criteria set forth in N.J.A.C. 2:1-1.2. An organization that does not send delegates for a period of three consecutive years or more will lose its right to send delegates. Any organization losing its right to send delegates pursuant to this subsection may reapply any subsequent year according to the procedures set forth in (a) through (c) above.

Amended by R.2006 d.379, effective November 6, 2006.
See: 38 N.J.R. 1896(b), 38 N.J.R. 4687(a).

In (a), inserted the last sentence; and in (d), inserted the last two sentences.

2:1-1.4 Rules of governance at the State Agricultural Convention

All sessions held during the Annual State Agricultural Convention will be governed by Roberts' Rules of Order.

New Rule, R. 2006 d.379, effective November 6, 2006.
See: 38 N.J.R. 1896(b), 38 N.J.R. 4687(a).

SUBCHAPTER 2. ORGANIZATION

2:1-2.1 Department responsibilities

The State Department of Agriculture is responsible for development, regulatory, service, promotion and information programs in support of agriculture and agribusiness and those natural and renewable resources associated with agriculture and open lands for the benefits of all citizens as prescribed in Titles 4, 5, 13, 24, 54 and other applicable titles in the New Jersey Statutes Annotated.

2:1-2.2 Tables of organization

Tables showing the organization of the Department and the major sections within each Division are appended to the end of this chapter.

2:1-2.3 Functions of departmental units

(a) Functions of the various units within the State Department of Agriculture are as follows:

1. The State Board of Agriculture is the head of the Department and consists of eight farmers of the State engaged in the production of farm crops or livestock. The State Board of Agriculture, with the approval of the Governor, appoints the Secretary of Agriculture who serves as the principal executive officer of the Department and secretary to the Board. The Board has the authority to establish rules and regulations for its own proceedings and for the government, control and program performance of the Department.

2. The Office of the Secretary is responsible for the executive management, policy development, legislative liaison, public information programs and legal services for the Department and the State Board of Agriculture.

3. The Office of Operations provides personnel, budget, accounting, training, information technology, facilities management and administrative support services to the Divisions.

4. The Division of Animal Health is responsible for programs for the monitoring, prevention, control and

eradication of livestock and poultry diseases affecting such livestock, livestock products, and human health.

5. The Division of Marketing and Development operates programs which foster a stable and competitive dairy industry; conducts quality assurance programs for agricultural inputs; regulates credit buyers of perishable agricultural products; performs agricultural product grading and inspection; and promotes food safety by conducting third party audits on fresh produce. The Division of Marketing and Development also provides market development services, market news, support for agricultural cooperatives, fairs and shows, equine programs, and product promotions.

6. The Division of Plant Industry is responsible for programs to detect, prevent, control and eradicate pests and diseases of plants, trees and bees; conducts beneficial insect development and production; and provides seed certification and control.

7. The Division of Agricultural and Natural Resources provides programs and services to support farming, agricultural and rural development, soil and water conservation, agricultural statistics, agricultural economic viability, aquaculture/fish/seafood development, and agricultural education and youth agricultural leadership.

8. Functions of units assigned to the State Department of Agriculture are as follows:

i. The State Agriculture Development Committee is independent of, but allocated within, the Department of Agriculture. It administers the State Farmland Preservation Program, which permanently protects farmland by funding easement purchases, largely in cooperation with county and local governments and nonprofit organizations. The Committee also administers a soil and water cost sharing program for owners of preserved farms, staffs the Transfer of Development Rights Bank and operates the Farm Link Program which matches farm sellers with potential buyers; and administers the Right-to-Farm program.

9. The Division of Food and Nutrition distributes Federal donated food to schools, institutions and qualified individuals. State and Federal reimbursements are paid to school districts for part of the cost of school lunches and Federal funds are paid to offset part of the cost of school breakfasts.

Amended by R.1995 d.566, effective November 6, 1995.

See: 27 N.J.R. 2825(a), 27 N.J.R. 4279(b).

Amended by R.2003 d.7, effective December 3, 2002.

See: 35 N.J.R. 217(a).

Rewrote the section.

Amended by R.2006 d.379, effective November 6, 2006.

See: 38 N.J.R. 1896(b), 38 N.J.R. 4687(a).

In (a)3, inserted “, facilities management”; in (a)4, inserted “, monitoring”; and in (a)7, substituted “Agricultural and Natural” for “Rural”.

SUBCHAPTER 3. RULES OF PRACTICE

2:1-3.1 Purpose of rules of practice

The State Board of Agriculture and the New Jersey Department of Agriculture, in order to more fully represent and carry out their duties and functions, adopts this subchapter as its rules of practice.

2:1-3.2 Development of rules

(a) Rules shall be clear and concise to encourage the maximum amount of voluntary compliance by those who are regulated.

(b) Rules may be established by the Board for its own proceedings, for the governing and control of the Department, its programs, and the officers and employees of the Department.

(c) The Department shall provide the maximum amount of public participation in the review of existing or establishment of proposed rules. This shall include, but not be limited to, the use of advisory groups in rule development activities.

Amended by R.1995 d.566, effective November 6, 1995.

See: 27 N.J.R. 2825(a), 27 N.J.R. 4279(b).

Amended by R.2006 d.379, effective November 6, 2006.

See: 38 N.J.R. 1896(b), 38 N.J.R. 4687(a).

In (c), inserted “, but not be limited to,”.

2:1-3.3 Public notice regarding proposed rulemaking

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

1. The notice of proposal shall be filed with the Office of Administrative Law for publication in the New Jersey Register;

2. The notice of proposal, as filed with the Office of Administrative Law, or a statement of the substance of the proposed rulemaking, shall be posted and made available electronically on the Department’s website;

3. The news media maintaining a press office in the State House Complex shall be provided notice of the proposal, as posted and made available electronically on the Department’s web site; and

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

i. The additional method of publicity shall include information on the time, place and manner in which interested persons may present comments and any of the following:

(1) The full text of the proposed rulemaking;

(2) A statement of the substance of the proposed rulemaking; or

(3) A description of the subject and issues involved.

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

(1) Mailing to a distribution list, when known, organized entities exist that are the subject of or significantly related to the proposed rulemaking;

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

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

Repeal and New Rule, R.2002 d.158, effective May 20, 2002.

See: 34 N.J.R. 3(a), 34 N.J.R. 1853(a).

Section was “Procedure to petition for a rule”.

Amended by R.2006 d.379, effective November 6, 2006.

See: 38 N.J.R. 1896(b), 38 N.J.R. 4687(a).

In (a)1, substituted “notice of” for “rule”; in (a)2 and (a)4, deleted “the rule” preceding “proposal”; in (a)2, substituted “website” for “web site”; in (a)3, deleted “rule” preceding “proposal”; and in (a)4ii, substituted “one or more of the following” for “either”.

2:1-3.4 Public comments regarding existing rules and proposed rulemaking

(a) The Department conducts an ongoing regulatory review and invites public comments regarding all Department rules (N.J.A.C. Title 2). The Department's rulemaking includes all rules adopted after the official public comment period and emergency rules in accord with the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30, and all rules effective immediately upon filing with the Office of Administrative Law in accord with specific legislative authority.

(b) Public comments are specifically sought regarding existing Department rules which may be perceived as being not necessary, adequate, reasonable, efficient, understandable, or responsive to the purposes for which they were promulgated. Public comments regarding existing rules should be submitted in writing and addressed to either the specific relevant division of the Department or the Department at:

New Jersey Department of Agriculture
Office of the Secretary
PO Box 330
Trenton, New Jersey 08625-0330

(c) The Department invites the public to utilize the opportunity to be heard during the official public comment period following the publication of a notice of pre-proposal or proposal in the New Jersey Register by means of submitting in writing, data, views, or arguments to the name and unit specified in the notice.

New Rule, R.2002 d.158, effective May 20, 2002.
See: 34 N.J.R. 3(a), 34 N.J.R. 1853(a).

Former N.J.A.C. 2:1-3.4, Hearings, recodified to N.J.A.C. 2:1-3.10.

2:1-3.5 Department rulemaking calendar

(a) In compliance with the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30, the Department shall publish a quarterly rulemaking calendar in the New Jersey Register setting forth a schedule of the Department's anticipated rulemaking proposal activities for the next six months. The calendars shall be published in the first New Jersey Register for the months of January, April, July and October. The provisions of this subsection shall not apply to rulemakings where one of the exceptions exist, as set forth in N.J.A.C. 1:30-3.3.

(b) The rulemaking calendar shall include:

1. The name of the Department;
2. The name of the Commissioner, as agency head;
3. Specific citation to the rules to be affected;
4. Citation to the legal authority authorizing the rulemaking action;

5. A synopsis of the rulemaking and its objective or purpose; and

6. The month and year in which publication of the notice of proposal in the New Jersey Register is anticipated.

(c) Calendar amendments and exceptions shall be handled by the Department in accord with the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30.

(d) The Department rulemaking calendar, as filed with the Office of Administrative Law, as with notices of rule proposals in accord with N.J.A.C. 2:1-3.2(a)3, shall be posted and made available electronically on the Department's web site.

(e) The additional method of publicity with regard to availability of the Department's rulemaking calendar shall be by providing notice of the rulemaking calendar, as posted and made available electronically on the Department's web site, to the major news media maintaining a press office in the State House Complex.

New Rule, R.2002 d.158, effective May 20, 2002.

See: 34 N.J.R. 3(a), 34 N.J.R. 1853(a).

Former N.J.A.C. 2:1-3.5, Instructions for departmental forms on file, recodified to N.J.A.C. 2:1-3.11.

Amended by R.2006 d.379, effective November 6, 2006.

See: 38 N.J.R. 1896(b), 38 N.J.R. 4687(a).

In (a), inserted the last sentence.

2:1-3.6 Extension of the public comment period

(a) The Department, in accord with the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30, may extend the time for submission of public comments on a proposed rulemaking, at its discretion, without the need for a specific request or the demonstration of sufficient public interest.

(b) The Department, in accord with the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30, shall extend the time for submission of public comments for an additional 30-day period, if, within 30 days of the publication of a notice of proposal, sufficient public interest is demonstrated in an extension of time to submit comments.

(c) Sufficient public interest is demonstrated in an extension of the comment period when the following occurs:

1. When one or more agricultural organizations having representation by a delegate to the Annual State Agricultural Convention, in accordance with N.J.S.A. 4:1-6, have expressed the need for the extension of the comment period; or

2. When 10 or more persons have expressed the need for the extension of the comment period.

New Rule, R.2002 d.158, effective May 20, 2002.

See: 34 N.J.R. 3(a), 34 N.J.R. 1853(a).

Former N.J.A.C. 2:1-3.6, Information required from the public, recodified to N.J.A.C. 2:1-3.12.

Amended by R.2006 d.379, effective November 6, 2006.

See: 38 N.J.R. 1896(b), 38 N.J.R. 4687(a).

In (c)1, substituted "having" for "have".

2:1-3.7 Conducting a public hearing

(a) The Department, in accord with the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30, may conduct a public hearing on a proposed rulemaking, at its discretion, without the need for a specific request or the demonstration of sufficient public interest.

(b) The Department, in accord with the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30, shall conduct a public hearing on a proposed rulemaking at the request of a Legislative Committee, a State agency, or a county, local or municipal government entity, if such request is made to the Department within 30 days following publication of the proposed rulemaking, or if sufficient public interest is demonstrated.

(c) Sufficient public interest is demonstrated with regard to the conducting of a public hearing when the following occurs:

1. When two or more agricultural organizations having representation by a delegate to the Annual State Agricultural Convention, in accordance with N.J.S.A. 4:1-6, have expressed the need for a public hearing; or

2. When 25 or more persons have expressed the need for a public hearing.

(d) The Department shall not consider, in the calculation of the number of comments received, those comments that relate to specific recommended changes in the rule that the Department has agreed to make or does not have the legal authority to make.

New Rule, R.2002 d.158, effective May 20, 2002.

See: 34 N.J.R. 3(a), 34 N.J.R. 1853(a).

Former N.J.A.C. 2:1-3.7, Information available to public, recodified to N.J.A.C. 2:1-3.13.

Amended by R.2006 d.379, effective November 6, 2006.

See: 38 N.J.R. 1896(b), 38 N.J.R. 4687(a).

In (c)1 and (c)2, substituted "a public hearing" for "the extension of the comment period".

2:1-3.8 Procedure to petition for a rule

(a) The Department shall take appropriate action with regard to petitions for rulemaking to ensure compliance with the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30.

(b) An interested person may petition the Department, in writing, to adopt a new rule or amend or repeal an existing rule. All petitions shall be clearly and concisely worded and include the following:

1. The substance or nature of the rulemaking which is requested (proposed text material may be provided);
2. The reasons for the request and the petitioner's interest in the request;
3. References to the authority of the Department to take the requested action; and
4. The full name and address of the petitioner.

(c) Petitions shall be addressed to either the specific relevant Division of the Department or the Department at:

New Jersey Department of Agriculture
Office of the Secretary
PO Box 330
Trenton, New Jersey 08625-0330

New Rule, R.2002 d.158, effective May 20, 2002.

See: 34 N.J.R. 3(a), 34 N.J.R. 1853(a).

Former N.J.A.C. 2:1-3.8, Public records; copies; fees, recodified to N.J.A.C. 2:1-3.14.

2:1-3.9 Department action upon receipt of petition

(a) Any material submitted to the Department that is not in substantial compliance with these rules shall not be deemed to be a petition for rulemaking requiring further Department action pursuant to this subchapter, the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30.

(b) The Department shall take appropriate, timely action upon receipt of a petition for rulemaking in accord with the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30. This action shall include the following:

1. The petition shall be date stamped and logged;
2. The petition shall be referred to the relevant Division or handled at the Department level as deemed appropriate;
3. Within 15 days of initial receipt, notice of receipt of the petition shall be filed with the Office of Administrative Law for publication in the New Jersey Register. The notice of petition shall include:
 - i. The name of the petitioner;
 - ii. The substance or nature of the rulemaking action which is requested;
 - iii. The problem or purpose which is the subject of the request; and
 - iv. The date the petition was received.

4. The Department action on a petition shall be either to:

- i. Deny the petition;
- ii. Grant the petition and initiate a rulemaking proceeding within 90 days of the granting of the petition; or
- iii. Refer the matter for further deliberations which shall conclude within 90 days of such referral. Upon conclusion of such further deliberations, the Department shall either deny the petition or grant the petition and initiate a rulemaking proceeding within 90 days. The Department shall mail the results of these further deliberations to the petitioner and submit results to the Office of Administrative Law for publication in the New Jersey Register.

(c) The Department shall mail to the petitioner, and file with the Office of Administrative Law for publication in the New Jersey Register, a notice of action on the petition within 60 days of initial receipt of the petition. The notice of action shall include:

1. The name of the petitioner;
2. The Register citation for the notice of petition;
3. The signature of the Commissioner, as agency head, signifying that the petition was duly considered pursuant to law;
4. The nature or substance of the Department action upon the petition; and
5. A brief statement of reasons for the Department action.

New Rule, R.2002 d.158, effective May 20, 2002.
See: 34 N.J.R. 3(a), 34 N.J.R. 1853(a).

2:1-3.10 Hearings

(a) Any person who feels aggrieved by any action or inaction of the Department may request an informal meeting with the Department to settle any dispute, or seek clarification of the Department's rules and regulations. The Department shall respond, in writing, as to the results of such a meeting stating the reasons for its determination.

(b) If any dispute is required by law or regulation to be heard formally, or if the Department determines the matter a contested one, the matter shall be treated in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Such disputes will be referred to the Office of Administrative Law for hearing.

Amended by R.1995 d.566, effective November 6, 1995.
See: 27 N.J.R. 2825(a), 27 N.J.R. 4279(b).
Recodified from N.J.A.C. 2:1-3.4 by R.2002 d.158, effective May 20, 2002.
See: 34 N.J.R. 3(a), 34 N.J.R. 1853(a).

2:1-3.11 Instructions for departmental forms on file

A description and instructions for use of the forms used in carrying out the Department's responsibilities may be obtained from the Office of the Secretary, Department of Agriculture, PO Box 330, Trenton, NJ 08625-0330.

Amended by R.1995 d.566, effective November 6, 1995.
See: 27 N.J.R. 2825(a), 27 N.J.R. 4279(b).
Recodified from N.J.A.C. 2:1-3.5 by R.2002 d.158, effective May 20, 2002.
See: 34 N.J.R. 3(a), 34 N.J.R. 1853(a).

2:1-3.12 Information required from the public

In the performance of its duties, the Department may require from affected members of the public certain information for the purposes of establishing a unique means of identifying its records. This unique identifying information shall be deemed confidential and not a public record and is not accessible for public examination, review or reproduction pursuant to the Open Public Records Act (N.J.S.A. 47:1A-1 et seq.).

New Rule, R.1995 d.566, effective November 6, 1995.
See: 27 N.J.R. 2825(a), 27 N.J.R. 4279(a).
Recodified from N.J.A.C. 2:1-3.6 by R.2002 d.158, effective May 20, 2002.
See: 34 N.J.R. 3(a), 34 N.J.R. 1853(a).
Amended by R.2006 d.379, effective November 6, 2006.
See: 38 N.J.R. 1896(b), 38 N.J.R. 4687(a).
Substituted "Open Public Records Act" for "'Right to Know Law'".

2:1-3.13 Information available to public

(a) The public may obtain complete information or make submissions or requests concerning any Departmental programs by contacting the Office of the Secretary, Department of Agriculture, PO Box 330, Trenton, NJ 08625-0330.

(b) An annual report of all Department activities is made to the Governor and Legislature. Copies are available from the Public Information Office, N.J. Department of Agriculture, PO Box 330, Trenton, NJ 08625-0330.

Recodified from 2:1-3.6 and amended by R.1995 d.566, effective November 6, 1995.
See: 27 N.J.R. 2825(a), 27 N.J.R. 4279(b).
Recodified from N.J.A.C. 2:1-3.7 by R.2002 d.158, effective May 20, 2002.
See: 34 N.J.R. 3(a), 34 N.J.R. 1853(a).

2:1-3.14 Public records; copies; fees

(a) All records which are required by law to be made, maintained, or kept on file shall be considered public records. This includes records of all public meetings of the New Jersey State Board of Agriculture and all other Boards, Committees or Councils of the Department. Such records are available for reasonable inspection, under supervision, during regular working hours at the main offices of the New Jersey Department of Agriculture, John Fitch Plaza, Trenton, New Jersey.

(b) Any person may obtain copies of public records by written request upon payment of a fee as set forth below. If

the actual cost for duplication of the records exceeds the rates set forth in this subsection, the person will be charged the actual cost of duplicating the record.

1. First page to 10th page: \$0.75 per page;
2. Eleventh page to 20th page: \$0.50 per page;
3. All pages over 20: \$0.25 per page.

(c) The Department may charge the costs of any delivery service over and above ordinary Postal Service rates for any requested overnight, express or other special delivery service.

(d) Records may be requested for transmittal by a telefacsimile machine upon payment, for cost reimbursement, at the rate of \$5.00 per page.

(e) Records may be requested for transmittal by a computer diskette upon payment, for cost reimbursement, at the rate of \$15.00 per diskette.

(f) Records may be requested for transmittal by electronic mail upon payment, for cost reimbursement, equal to the cost of preparing the document for transmittal.

(g) Payment shall be made by check payable to the New Jersey Department of Agriculture.

Recodified from N.J.A.C. 2:1-3.7 and amended by R.1995 d.566, effective November 6, 1995.

See: 27 N.J.R. 2825(a), 27 N.J.R. 4279(b).

Recodified from N.J.A.C. 2:1-3.8 by R.2002 d.158, effective May 20, 2002.

See: 34 N.J.R. 3(a), 34 N.J.R. 1853(a).

Amended by R.2006 d.379, effective November 6, 2006.

See: 38 N.J.R. 1896(b), 38 N.J.R. 4687(a).

In the introductory paragraph of (b), substituted "as set forth below" for "follows" and inserted the last sentence; in (b)1, substituted "10th" for "tenth" and "\$0.75" for "\$0.50"; in (b)2, substituted "\$0.50" for "\$0.25"; and in (b)3, substituted "\$0.25" for "\$0.10".

SUBCHAPTER 4. DISABILITY DISCRIMINATION GRIEVANCE PROCEDURE

2:1-4.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. § 12101 et seq.

"Agency" means the New Jersey Department of Agriculture.

"Designated decision maker" means the Secretary of Agriculture or his or her designee.

2:1-4.2 Purpose

(a) These rules are adopted by the agency in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, 28 C.F.R. 35.107.

(b) The purpose of these rules is to establish a designated coordinator whose duties shall include assuring that the agency complies with and carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaint filed with the agency pursuant to N.J.A.C. 2:1-4.5 through 4.8.

2:1-4.3 Required ADA notice

In addition to any other advice, assistance or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the agency's compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency.

AGENCY NOTICE OF ADA PROCEDURE

The agency has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the Americans with Disabilities Act. Title II states, in part, that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination" in programs or activities sponsored by a public entity. 28 CFR 35.130(a).

Rules describing and governing the internal grievance procedure can be found in the New Jersey Administrative Code, N.J.A.C. 2:1-4. As those rules indicate, complaints should be addressed to the agency's designated ADA coordinator, who has been designated to coordinate ADA compliance efforts, at the following address:

ADA Coordinator
New Jersey Department of Agriculture
PO Box 330
Trenton, New Jersey 08625-0330

1. A complaint may be filed in writing or orally, but should contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator. In cases of employment related complaints, the procedures established by the Department of Personnel, N.J.A.C. 4A:7-1.1 et seq. will be followed where applicable.

2. A complaint should be filed promptly within 20 days after the complainant becomes aware of the alleged violation. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered on a case-by-case basis).

3. An investigation, as may be appropriate, will follow the filing of a complaint. The investigation will be conducted by the agency's designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if

any, an opportunity to submit evidence relevant to a complaint.

4. In most cases a written determination as to the validity of the complaint and a description of the resolution, if any, will be issued by the designated decision maker and a copy forwarded to the complainant no later than 45 days after its filing.

5. The ADA coordinator will maintain the files and records of the agency relating to the complaints filed.

6. The right of a person to a prompt and equitable resolution of the complaint filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA complaint with the responsible Federal department or agency or the New Jersey Division on Civil Rights. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.

7. The rules will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to assure that the agency complies with the ADA and implementing Federal rules.

Amended by R.2001 d.115, effective April 2, 2001.

See: 33 N.J.R. 149(a), 33 N.J.R. 1081(a).

In address, substituted "PO Box" for "CN" and inserted "-0330".

Amended by R.2006 d.379, effective November 6, 2006.

See: 38 N.J.R. 1896(b), 38 N.J.R. 4687(a).

At the end of the first paragraph of the "AGENCY NOTICE OF ADA PROCEDURE", inserted CFR reference.

2:1-4.4 Designated ADA coordinator

(a) The designated coordinator of ADA compliance and complaint investigation for the agency is:

ADA Coordinator
New Jersey Department of Agriculture
PO Box 330
Trenton, New Jersey 08625-0330

(b) All inquiries regarding the agency's compliance with the ADA and the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency should be directed to the designated coordinator identified in (a) above.

(c) All complaints alleging that the agency has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this section, in accordance with the procedures set forth in N.J.A.C. 2:1-4.5 through 4.8.

Amended by R.2001 d.115, effective April 2, 2001.

See: 33 N.J.R. 149(a), 33 N.J.R. 1081(a).

In address, substituted "PO Box" for "CN"; inserted "-0330".

2:1-4.5 Complaint procedure

A complaint alleging that the agency has failed to comply with the ADA or has acted in a way that is prohibited by the

ADA shall be submitted either in writing or orally to the designated ADA coordinator identified in N.J.A.C. 2:1-4.4. A complaint alleging employment discrimination will be processed pursuant to the rules of the Department of Personnel, N.J.A.C. 4A:7-1.1 through 3.4, if those rules are applicable.

2:1-4.6 Complaint contents

(a) A complaint submitted pursuant to this subchapter may be submitted in or on the form set forth at N.J.A.C. 2:1-4.7.

(b) A complaint submitted pursuant to this subchapter shall include the following information:

1. The name of the complainant, and/or any alternate contact person designated by the complainant to receive communication or provide information for the complainant;
2. The address and telephone number of the complainant or alternate contact person; and
3. A description of manner in which the ADA has not been complied with or has been violated, including times and locations of events and names of witnesses if appropriate.

2:1-4.7 Complaint form

The following form may be utilized for the submission of a complaint pursuant to this subchapter:

Americans with Disabilities Act Grievance Form

Date: _____

Name of grievant: _____

Address of grievant: _____

Telephone number of grievant: _____

Disability of grievant: _____

Name, address and telephone number
of alternate contact person: _____

Agency alleged to have denied access:

Department: _____

Division: _____

Bureau or office: _____

Location: _____

Incident or barrier:

Please describe the particular way in which you believe you have been denied the benefits of any service, program or activity or have otherwise been subject to discrimination. Please specify dates, times and places of incidents, and names and/or positions of agency employees involved, if any, as well as names, addresses and telephone numbers of any witnesses to any such incident. Attach additional pages if necessary.

Proposed access or accommodation:

If you wish, describe the way in which you feel access may be had to the benefits described above, or that accommodation could be provided to allow access.

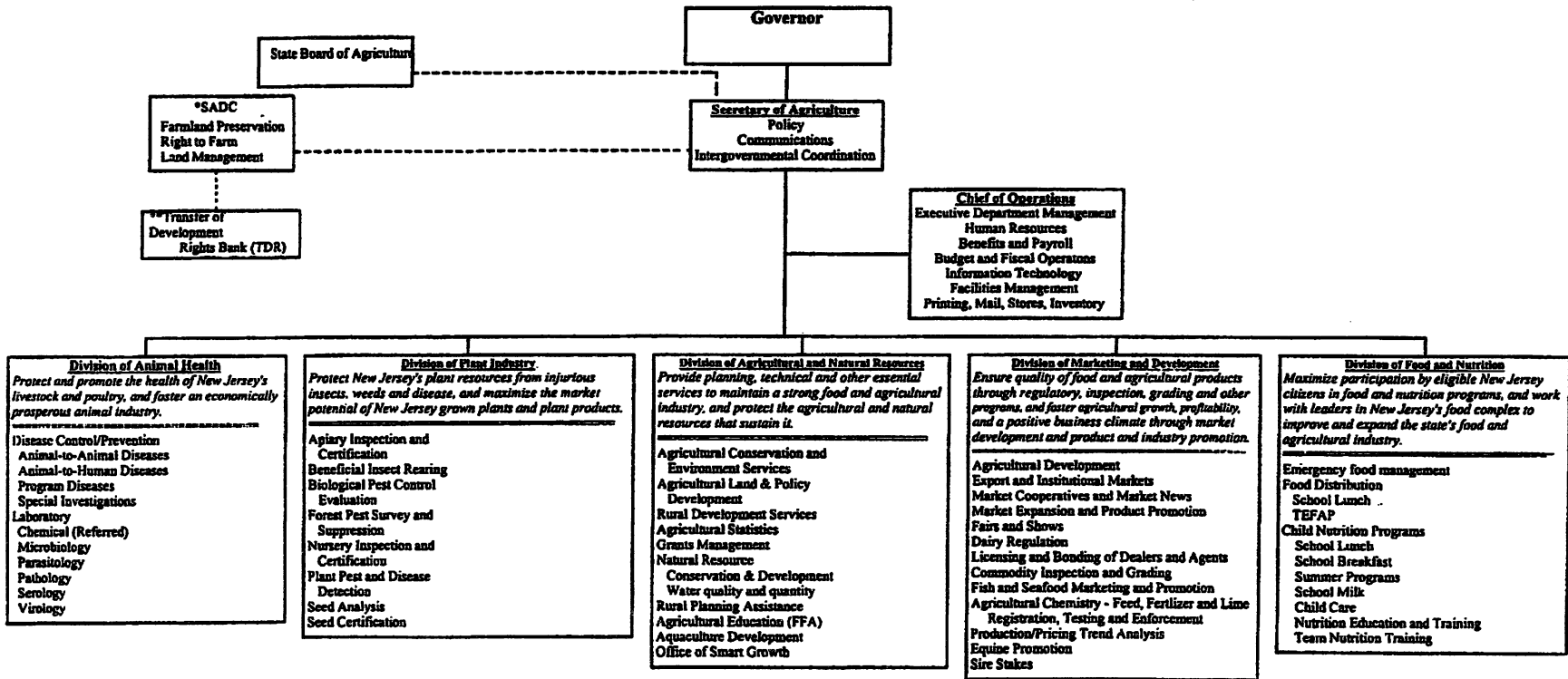
A copy of the above form may be obtained by contacting the designated ADA coordinator identified at N.J.A.C. 2:1-4.4.

2:1-4.8 Investigation

(a) Upon receipt of a complaint submitted pursuant to this subchapter, the designated ADA coordinator will notify the complainant of the receipt of the complaint and the initiation of an investigation into the matter. The designated ADA coordinator will also indicate a date by which it is expected that the investigation will be completed, which date shall not be later than 45 days from the date of receipt of the complaint, unless a later date is agreed to by the complainant.

(b) Upon completion of the investigation, the designated ADA coordinator shall prepare a report for review by the designated decision maker for the agency. The designated decision maker shall render a written decision within 45 days of receipt of the complaint, unless a later date is agreed to by the complainant, which decision shall be transmitted to the complainant and/or the alternate contact person if so designated by the complainant.

New Jersey Department of Agriculture



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APPENDIX

*In but not of the Department of Agriculture
 **In but not of the State Agriculture Development Committee (SADC)
 3/27/03

Repeal and New Rule, R.2003 d.174, effective April 14, 2003.
See: 35 N.J.R. 1891(a).