

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendment will have no effect on small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but regulate only the Director of the Division of Investment.

Housing Affordability Impact Analysis

The proposed amendment will have no impact on the affordability of housing in the State of New Jersey. The proposed amendment will modify investment in high yield securities thereby providing an opportunity for increased risk-adjusted returns of the State-administered funds.

Smart Growth Development Impact Analysis

The proposed amendment is not anticipated to have an impact on the availability of affordable housing or housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The proposed amendment will modify investment in high yield securities thereby providing an opportunity for increased risk-adjusted returns of the State-administered funds.

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

17:16-58.2 Permissible investments

(a)-(b) (No change.)

(c) Notwithstanding the restrictions in (b) above, the Director may invest and reinvest the moneys of Common Pension Fund B in corporate obligations of **U.S. based corporations**, international corporate obligations, collateralized notes and mortgages, [bank loans] **global diversified credit opportunity investments**, non-convertible preferred stock, and mortgage backed passthrough securities that do not meet the minimum credit ratings set forth in N.J.A.C. 17:16-12.2, 16.2, 19.2, 23.2, 40.2, and this section, respectively; provided, however, the market value of such investments shall not exceed [five] **eight** percent of the combined assets of all of the Pension and Annuity Funds.

(d) (No change.)

(a)

STATE INVESTMENT COUNCIL

Common Pension Fund E

Limitations

Proposed Amendment: N.J.A.C. 17:16-69.9

Authorized By: State Investment Council, Timothy M. Walsh,
Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

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

Proposal Number: PRN 2012-141.

Submit comments by November 30, 2012 to:

Timothy M. Walsh
Administrative Practice Officer
Division of Investment
PO Box 290
Trenton, New Jersey 08625-0290

The agency proposal follows:

Summary

N.J.A.C. 17:16-69 governs Common Pension Fund E, a common trust fund, the purpose of which is to invest in alternative investments.

The proposed amendment to N.J.A.C. 17:16-69.9(a) will delete the reference to direct bank loans, which is necessitated by a concurrently proposed amendment to N.J.A.C. 17:16-23, published elsewhere in this issue of the New Jersey Register, which deletes Common Pension Fund E as an eligible fund.

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

Social Impact

The proposed amendment shall have no social impact.

Economic Impact

The proposed amendment is not expected to have any economic impact since the Pension and Annuity Funds may still invest in bank loans through Common Pension Fund B.

Federal Standards Statement

A Federal standards analysis is not required because the investment policy rules of the State Investment Council are not subject to any Federal requirements or standards.

Jobs Impact

The State Investment Council and the Division of Investment do not anticipate that any jobs will be generated or lost by virtue of the proposed amendment.

Agriculture Industry Impact

The proposed amendment will have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendment will have no effect on small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but regulate only the Director of the Division of Investment.

Housing Affordability Impact Analysis

The proposed amendment will have no impact on the affordability of housing in the State of New Jersey. The proposed amendment will delete the Common Pension Fund E as an eligible fund that may invest in bank loans.

Smart Growth Development Impact Analysis

The proposed amendment is not anticipated to have an impact on the availability of affordable housing or housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The proposed amendment will delete Common Pension Fund E as an eligible fund that may invest in bank loans.

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

17:16-69.9 Limitations

(a) For all investments (other than the State of New Jersey Cash Management Fund, United States Treasury Obligations, commercial paper, common and preferred stocks, issues convertible into common stock and exchange-traded funds, [direct bank loans,] and forward, option, and swap transactions) made in Common Pension Fund E, the following shall occur:

1.-4. (No change.)

(b)-(f) (No change.)

TREASURY — TAXATION

(b)

DIVISION OF TAXATION

Farmland Assessment

Proposed Amendments: N.J.A.C. 18:15-1.1, 2.2, 2.7, 2.8, 2.10, 2.13, 3, 4.5, 6.1, 6.2, 6.4, 7.3, 7.4, 7.5, 7.6, 8.1, 8.2, and 12

Proposed Repeal: N.J.A.C. 18:15-2.14

Authorized By: Michael Bryan, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:4-23.1.

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

Proposal Number: PRN 2012-130.

Submit written comments by November 30, 2012 to:

Mitchell Smith
Administrative Practice Officer
Division of Taxation
P.O. Box 269
50 Barrack Street
Trenton, NJ 08695-0269

The agency proposal follows:

Summary

The Division proposes amendments and a repeal to its rules dealing with the Farmland Assessment Act. The proposed changes are summarized as follows:

Amendments to N.J.A.C. 18:15-1.1 are proposed changes to definitions of existing terms or new definitions for new terms due to statutory provisions, updating of certain farming practices for clarification purposes. The following terms have amendments: “actively devoted to agricultural or horticultural use” (to include an actual definition, rather than merely a cross-reference to Subchapter 6), “agricultural use” (to include biomass, solar, or wind energy generation), “assessor” (to include additional persons that may be considered the assessor), “change in use” (to clarify what change of use means), “farmland assessment” (to update the statutory reference and to add an exception), and “horticultural use” (to include examples of what “horticultural use” includes). New definitions are added for “biomass,” “conservation plan,” “contiguous,” “cover crop,” “crop rotation,” “cropland harvested,” “cropland pastured,” “devoted to agricultural or horticultural use,” “fallow land,” “land used for biomass, solar, or wind energy generation,” “non-appurtenant woodland,” “pasturing of livestock or poultry,” “single-use agricultural or horticultural facility,” “supportive and subordinate wetlands,” “permanent pasture,” “preserved farmland,” “ratio of one-to-five acres or portion, thereof,” “State Forester,” “two megawatts of power,” and “unified title or single ownership.”

New subsection (b) explains that the reason for the annual filing of an application is to reflect any changes in farming or woodland management activity from year to year and revisions to cropland, pasture, or woodland acreage or the number of livestock. This amendment also makes clear that it is the responsibility of the landowner to complete the FA-1 form and/or WD-1 form and activity map and to sign the application. An incomplete application is grounds for denial. New subsection (c) would obligate the landowner applicant to provide the assessor, if requested, proof of all the prerequisites necessary to show the land is eligible for farmland assessment. New subsection (d) would make clear that approval or denial of the FA-1 form is the responsibility of the tax assessor and the WD-1 form is the responsibility of the State Forester. Applications filed after August 1 of the pre-tax year will be denied. Finally, this subsection would make clear that even though land is in a farmland preservation program, it still must meet the requirements of the Farmland Assessment Act for it to be taxed at its productivity value.

Amendments to N.J.A.C. 18:15-2.7 change the term “supportive and subordinate woodland” to “appurtenant woodland.” The amendments also propose to delete references to how often a submission of the woodland management plan must be made in subsection (a) since this is now to be dealt with in N.J.A.C. 18:15-2.10(a)lvii. The amendments also provide that the plan may be modified or supplemented. Furthermore, the amendments to paragraph (a)3, provide that information to be provided on the woodland data form (Form WD-1) shall apply to the entirety of the pre-tax year and include the following: activities and practices carried out or to be carried out (deleting reference to the pre-tax year as that will now be part of the main paragraph), a statement as to the type and quantity of tree and forest products sold or to be sold (as opposed to just those products sold), the amount of income received and an estimate of additional income anticipated to be received (merely clarifying subparagraph (a)3iii), the activities and practices reported for the pre-tax year, that they are being carried out in compliance with the plan, along with a certification signed by the landowner stating that the income

reported on the form as received or anticipated to be received from the sale of trees and forest products is valid and true and, if any activities and practices reported on the form have not been completed at the time of form submission, that they will be completed within the pre-tax year. The amendments also make clear that if the documentation required is not submitted annually to the assessor, the application shall be denied. Further, the assessor will not approve an application for farmland assessment where a woodland management plan is required but has not been prepared and approved by the State Forester and the owner has not managed the woodland in accordance with the approved plan for at least the two successive years immediately preceding the tax year for which valuation, assessment, and taxation under the Farmland Assessment Act is requested. The two-year requirement is in conformity with the holding in *Alexandria Tp. v. Urban*, 21 N.J.Tax 298 (2004).

Amendments to N.J.A.C. 18:15-2.8 change the term “wooded” to “woodland” for consistency with the more widespread use of the latter term in the rule, and propose to include wetlands along with woodlands in determining when certain land is supportive and subordinated to farmland qualifying for agricultural or horticultural uses, when its area is equal to or less than the area of the farmland property qualifying for agricultural or horticultural uses other than the production for sale of trees and forest products, exclusive of Christmas trees.

Proposed amendments to N.J.A.C. 18:15-2.10 state criteria requirements for woodland management plans. Under N.J.S.A. 54:4-23.3, when land is devoted exclusively to the production for sale of tree and forest products (other than Christmas trees) and is not appurtenant woodland, the landowner must file a woodland management plan, which must comply with policies, guidelines, and practices of the Division of Parks and Forestry in the Department of Environmental Protection in order to qualify for agricultural use for farmland assessment purposes. However, the Division of Land Use Regulation in the Department of Environmental Protection has adopted Freshwater Wetlands Protection Act rules under N.J.A.C. 7:7A and 7:13, which set forth additional criteria for woodland management plans. Provided these plan criteria are met, in addition to the criteria in N.J.A.C. 18:15-2.10, these rules authorize a landowner with a woodland management plan to qualify for exemption from permitting requirements for a range of forestry activities in freshwater wetlands, and for a permit-by-rule for a range of forestry activities in flood hazard areas. Accordingly, references directing landowners to those Division of Land Use Regulation rules are included in the Division of Taxation rule. Specifically, subsection (a) is amended and adds requirements for including in the woodland management plan, starting and ending dates for new plans not to exceed 10 years with an implementation schedule that lists the activities and practices to be carried out each year. Implementation time references were removed from paragraph (a)6 and set forth in a new subparagraph (a)lvii instead, which deals solely with time period coverage. New subsection (b) directs owners who have woodlands in freshwater wetlands or a flood hazard area and who want to utilize their woodland management plan to qualify for an exemption from the permitting requirements of the Freshwater Wetlands Protection Act rule at N.J.A.C. 7:7A or for a permit-by-rule under the Floor Hazard Area Control Act at N.J.A.C. 7:13 to those Department of Environmental Protection rules to determine the additional criteria their plans must meet to be used for these purposes.

Proposed amendments to N.J.A.C. 18:15-2.13 change the notice of woodland noncompliance to the assessor from five to 30 days, which is a more reasonable period of time. Due to staffing reductions, five days was insufficient time to allow for review and notice.

N.J.A.C. 18:15-2.14 is proposed for repeal because it is no longer applicable as this was a transition provision when the additional woodland statutes were adopted.

N.J.A.C. 18:15-3.1(a) is proposed to be amended at example 1 regarding the two-year period devoted to agricultural or horticultural use, to make the dates current.

An amendment to N.J.A.C. 18:15-3.2(a) is proposed to include fallow land and land in rotation as land actively devoted to agricultural or horticultural use in conformity with the opinion in *Wilson v. Hopewell Tp.*, 23 N.J.Tax 240 (2006).

An amendment to N.J.A.C. 18:15-3.3(b) proposes to permit the tax assessor or county board of taxation to deny or nullify a farmland

assessment application if a change in land use occurs between August 1 and December 31 of the pre-tax year, and to determine the full and fair value of said land under the valuation standard applicable to other land in the taxing district and assess the same. The amendment also adds that if the land is valued, assessed, and taxed in the ensuing year, the assessor is to enter this as an added assessment which, however, shall not affect the roll-back taxes, if any, under N.J.S.A. 54:4-23.8. This is to conform to the statutory provisions in N.J.S.A. 54:4-23.13.

Proposed amendments to N.J.A.C. 18:15-3.4(b) make clear that the practice of on-site inspections of land that is the subject of a farmland assessment application is to be done at least once every three years by the assessor's office as required by N.J.S.A. 54:4-23.13.

Proposed amendments to N.J.A.C. 18:15-3.5(a) are clarifying in nature. Paragraph (b)1 is proposed for amendment to clarify the term "ownership" to make clear that it means only unified title or single ownership. Amendments are also proposed that allow the assessor to require a farmland assessment applicant to furnish proof of prerequisites necessary to show the land is eligible for farmland assessment, such as agricultural and horticultural uses (clarifying and replacing paragraph (b)4), substantiated evidence of gross sales of agricultural or horticultural products, sufficient to meet the minimum requirements for qualification (paragraph (b)5), and proof of enrollment and payments in an approved soil conservation program from an agency of the Federal government (new paragraph (b)7). These changes are in keeping with recommendations contained in the Office of Legislative Services/Office of the State Auditor report (OLS/OSA) of 2008 to tighten up the farmland assessment program and to provide better data for assessors.

An amendment to N.J.A.C. 18:15-3.6(b) is proposed to make clear that an appeal of a notice of disallowance of the farmland assessment application may be made on or before April 1 of the tax year, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, to the county board of taxation or if the assessed valuation of the property subject to the appeal exceeds \$1,000,000, the appeal may be made directly with the State Tax Court. The amendment further proposes to provide that where a municipal-wide revaluation or municipal-wide reassessment has been implemented, a petition of appeal may be filed before or on May 1 of the tax year, except that if the assessed valuation of the property subject to the appeal exceeds \$1,000,000, the appeal may be made directly with the State Tax Court. These changes are proposed to be in conformity with recent amendments to N.J.S.A. 54:3-21.

Amendments to N.J.A.C. 18:15-4.5(a) propose that structures on land in agricultural or horticultural use will not include single use agricultural or horticultural facilities, such as readily dismantled greenhouses, hoophouses, polyhouses, grain bins, silos, or certain impoundments used for either storage or growing of crops or certain three-sided turn-out or garden-type utility sheds. These amendments are proposed to be in conformity with the decision in *Van Wingerden v. Lafayette Twp.*, 15 N.J.Tax 475 (1996), reversed 303 N.J. Super. 614 (App. Div. 1997), *on remand* by 18 N.J.Tax 81 (1999).

Proposed amendments to the examples located in N.J.A.C. 18:15-6.1(b)1 update dollar amounts based on annual changes in imputed value as provided by the State Farmland Evaluation Advisory Committee. Subparagraph (b)1iv, example 4, also change the imputed value for grazing to an amount in excess of \$500, rather than not in excess of, to show how such imputed value for grazing horses that are boarded and trained can make the land eligible for farmland assessment. Subparagraph (b)1vii, example 7, is new and shows how on a seven-acre parcel, where the land qualified for farmland assessment the two previous years and a minimum of five acres was in an agricultural use with clear evidence of anticipated sales in excess of the \$510.00 needed to qualify, the seven acres will meet the qualification criteria for farmland assessment. Subparagraph (b)1viii, example 8, is new and shows how imputed grazing values of boarded horses may be based on the Report of the State Farmland Evaluation Advisory Committee as proof that agricultural income criteria for farmland assessment have been met. Subparagraph (b)1ix, example 9, is new and shows how a parcel that is mowed for maintenance and that is enrolled under the United States Department of Agriculture's Conservation Reserve Program (CRP) and receives an annual rental from the Farm Service Agency may qualify for farmland

assessment. Subparagraph (b)1x, example 10, is new and shows how the cumulative growing and planting of evergreens for sale as Christmas trees in clear-cutting rotation with harvesting starting the seventh year after planting may meet the gross income requirement for farmland assessment. Subparagraph (b)1xi, example 11, is new and shows the necessity for documenting sales of farm products even where goats, chickens, and a horse are kept on a parcel and farmland assessment was denied as the municipal assessor determined that an insufficient number of livestock and poultry were being used for agricultural production and the applicant lacked proof of sales of agricultural commodities produced from the land.

Proposed new N.J.A.C. 18:15-6.1(d) sets forth the conditions and requirements under which land used for biomass, solar, or wind energy generation must be considered to be in agricultural or horticultural use and may be eligible for valuation, assessment, and taxation pursuant to P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.).

Amendments are proposed to N.J.A.C. 18:15-6.2(a) pertaining to the definition of "devoted to agricultural or horticultural use" (hereinafter "definition"). The OLS/OSA recommended that the term "actively devoted farmland/woodland" be defined also by the "effort, productivity, or with current monetary values to adhere to the intent and integrity of the statute. Accordingly, the amendments seek to expand the definition with that recommendation in mind. New paragraph (a)1, includes land under and used with barns, sheds, packing houses, farm storage facilities, seasonable farm markets selling predominantly agricultural products, seasonal agricultural labor housing, silos, cribs, and like uses when used in direct support of producing crops for sale. New paragraph (a)2 adds water-related areas that are supportive and subordinate or reasonably required for the purpose of maintaining agricultural or horticultural uses of a tract of land. Recodified paragraph (a)3, deletes reference to the term "grown for market" as not being descriptive enough and adds more expansive terms, such as "produced, harvested, and sold" to describe land that would be considered to be actively devoted to agricultural or horticultural use.

New paragraph (a)5 provides for land to be included on which poultry are housed or ranged. Recodified paragraph (a)6 is proposed for amendment to clarify land in the definition on which crops are grown for on-farm use, but not for personal consumption. New paragraph (a)7 provides for the inclusion in the definition of land kept fallow using cultivation or chemical control to eradicate or reduce weeds for future agricultural or horticultural production. Recodified paragraph (a)8 is proposed for amendment for syntax reasons. Recodified paragraph (a)9 is proposed for amendment to remove the Federal government's Soil Bank Program as it no longer exists and to add a "soil conservation program" administered by the Federal government. Recodified paragraph (a)10 is proposed for amendment so that land on which trees and forest products are produced must be placed for sale within a reasonable period of time and managed in compliance with a written woodland management plan approved by the State Forester in conformity with the dictates of N.J.S.A. 54:4-23.3. Recodified paragraph (a)11 adds as qualifying land, land on which livestock is pastured and enclosed by a fence sufficient to retain such animals which are themselves or their products sold.

New paragraph (a)12 proposes to include land used for boarding, rehabilitating, or training livestock, excluding dogs, for a fee, where the livestock is owned by a party or parties other than the property owner(s), and the land is contiguous to five or more acres that otherwise qualify for valuation, assessment, and taxation under the Act. Recodified paragraph (a)13 is proposed for amendment to delete reference to appurtenant woodland as not being descriptive enough and clarifies that contiguous wooded property or wetlands may qualify for farmland assessment where it is supportive and subordinate to cropland harvested, cropland pastured, or permanent pasture. New paragraph (a)14 is proposed to include land with limited farming or grazing potential that is managed in an erosion control program. New paragraph (a)15 is proposed to include land with greenhouses or poultry or livestock facilities in which animals or their products are sold. Finally, new paragraph (a)16 provides for the inclusion of certain renewable energy sources in the definition of "devoted to agricultural or horticultural use" in conformity with P.L. 2009, c. 213.

Proposed new N.J.A.C. 18:15-6.4(b) makes clear that land that is farmed but has insufficient income, as well as acreage, should be denied

for farmland assessment, but not be subject to the roll-back tax because of this disqualification, but shall be treated as land for which an annual application has not been submitted. This amendment is proposed to avoid an unfair impact on the farm that would otherwise qualify for farmland assessment.

The proposed amendment to N.J.A.C. 18:15-7.3(a)1 adds “that is, true market value” after “full and fair value” because in various places in New Jersey statutes, the terms true value, market value, and full and fair value have been used to mean the same thing. Paragraph (a)2 is amended to change “county percentage level” to “common level percentage, also known as the Director’s Ratio.” If the current county percentage level were used, the rolled back land would be valued as if the taxing district had a revaluation, which is most often not the case and, therefore, that parcel would be treated inequitably. The Director’s Ratio is an indicator of the level of taxable assessed value, that is, usually less than 100 percent in a taxing district as compared to true market value, that is, 100 percent. Using the Director’s Ratio would put the rolled back parcel on the same assessment level as the other land in the taxing district. (See online Table of Equalized Valuations for actual Director’s Ratios at <http://www.state.nj.us/treasury/taxation/lpt/lptvalue.shtml>.)

Amendments proposed at N.J.A.C. 18:15-7.4 and 7.5 revise the dates to make them current.

A proposed amendment to N.J.A.C. 18:15-7.6 pertaining to the assessment, collection, apportionment, and payment of roll-back taxes, makes grammatical changes and adds that procedures are governed by N.J.S.A. 54:4-23.8 and 23.9 and the provisions of N.J.S.A. 54:4-63.12 through 63.30, deleting reference to N.J.S.A. 54:4-63.2. Roll-back taxes are technically not omitted or added assessments, but “additional taxes” and in adopting a method to be followed by the assessor when applying the rollback, the Legislature directed that the procedure to be followed is the regular, not the alternative omitted method, for assessment of omitted property.

The existing text of N.J.A.C. 18:15-8.1 is codified as subsection (a) and proposed for an amendment with a clarifying change that makes reference to Subchapter 12 more neutral. Proposed new subsection (b) makes clear that notwithstanding the provisions of any law, rule, or regulation to the contrary, land that is acquired by certain governmental entities or a tax exempt nonprofit organization for recreation and conservation purposes shall not be subject to roll-back taxes pursuant to the Garden State Preservation Trust Act.

A proposed amendment to N.J.A.C. 18:15-8.2(a) changes the initial date where a change in land use may result in the denial or nullification by the assessor or county board of taxation of a pending farmland assessment application from October 1 to August 1 in conformity with N.J.S.A. 54:4-23.13. Proposed amendments to paragraph (a)1 and subsection (c), example 1, propose revisions to dates to make them more current. Subsection (c) is also proposed for amendment to correct “probation” to “proration.”

A grammatical change is proposed at N.J.A.C. 18:15-12.1.

As the Division 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 adoption of the amended rules will continue the public policy of providing incentives to owners of qualified land to keep and maintain that land in active agricultural and horticultural use. The statute and rules are relevant in determining when real property will be classified as farmland for the purposes of reducing real property tax assessments.

Economic Impact

The proposed amendments are expected to have no adverse economic impact in and of themselves, because they primarily state and implement the basic requirements of the statutes pertaining to farmland assessment, N.J.S.A. 54:4-23.1 et seq. Said statutes and this chapter should have the intended effect of improving or helping to stabilize revenues by clarifying when property should be classified as farmland for real property tax assessment, thereby reducing the costs of tax administration and compliance to taxpayers.

Federal Standards Statement

The proposed amendments do not contain requirements that exceed any requirements imposed by Federal law. The amendments represent policies of the State of New Jersey regarding implementation of N.J.S.A. 54:4-23.1 et seq., that are independent of Federal requirements or standards. Accordingly, no Federal standards analysis is required.

Jobs Impact

The proposed amendments may have a somewhat beneficial impact on the creation of jobs by agricultural and horticultural businesses in New Jersey by incorporating amendments made over the last several years to the Farmland Assessment Act, which clarified and liberalized the definition of farmland for the purposes of reducing real property taxes on land qualifying for farmland assessment. This would make it easier for farm businesses to hire employees. The proposed amendments continue that policy.

Agriculture Industry Impact

The proposed amendments conform with existing statutory provisions and continue the guidelines for the agriculture industry to follow in obtaining and maintaining land actively devoted to agricultural and horticultural use so as to qualify for farmland assessment, but will have no adverse impact on the industry.

Regulatory Flexibility Analysis

Some claimants for preferential tax treatment covered by Chapter 15 are classified as small businesses. The proposed amendments continue conformity with the Act as described in the Summary above. The Act contains criteria for the determination of whether real property is classified as farmland for purposes of the reduced tax assessment.

The proposed amendments continue to impose some recordkeeping, reporting, and compliance requirements and so could affect small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, none of the requirements impose provisions that do not easily derive from normal business practices and are, therefore, not so burdensome as to necessitate differing standards based on business size. The type of information required and compliance sought are necessary to insure the integrity of the farmland assessment program and to insure that those receiving the tax benefit are truly entitled to it. The amended rules continue the application and appeal procedures in the Act. These procedures apply to all taxpayers seeking farmland designation, including small businesses. Small businesses may seek the services of tax professionals to determine if the rules are applicable to their own tax situation. However, neither the Act nor the proposed amendments impose compliance costs specifically on small businesses.

It is not anticipated that compliance with the proposed amendments should require any initial capital or annual costs.

Housing Affordability Impact Analysis

The proposed amendments would not result in a change in the average costs associated with housing. The amendments would have no impact on any aspect of housing because the proposed amendments only involve the farmland assessment law.

Smart Growth Development Impact Analysis

The proposed amendments would not result in a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed amendments have nothing to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey. The proposed amendments only involve the farmland assessment law.

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

SUBCHAPTER 1. DEFINITIONS

18:15-1.1 Words and phrases defined

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

...

“Actively Devoted to Agricultural or Horticultural Use”[.] refers specifically to the income and land area requirements necessary to qualify for farmland assessment, pursuant to N.J.S.A. 54:4-23.5. See [Subchapter] also N.J.A.C. 18:15-6, [(Actively Devoted)] of this Chapter to Agricultural Use or Horticultural Use, for further guidelines.

“Agricultural use” means land [which] that is devoted to the production for sale of plants and animals useful to man, including, but not limited to:

1.-7. (No change.)

8. Trees and forest products (see also N.J.A.C. 18:15-2.7 for additional conditions); [or]

9. When devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal [Government.] government; or

10. Biomass, solar, or wind energy generation, provided that the biomass, solar, or wind energy generation is consistent with the provisions of P.L. 2009, c. 213 (N.J.S.A. 4:1C-32.4 et seq.), as applicable, and the rules promulgated thereunder, except that the energy generated from such use shall not be considered an agricultural product, and, therefore, cannot be considered income towards the gross sales requirement.

...
 “Assessor” means the municipal tax assessor appointed pursuant to the provisions of N.J.S.A. 40A:9-1 et seq., or the county assessor, deputy county assessor, and additional staff as established under P.L. 2009, c. 118 and N.J.A.C. 18:17A.

...
 “Biomass” means an agricultural crop, crop residue, or agricultural byproduct that is cultivated, harvested, or produced on the farm, or directly obtained from a farm where it was cultivated, harvested, or produced, and which can be used to generate energy in a sustainable manner.

“Change [in Use] of use” means when land that is being assessed under the Act is subsequently used for something other than agricultural or horticultural purposes. See [Subchapter] also N.J.A.C. 18:15-8, [(Change [in] of Use)] of this Chapter. Cessation of farming may be considered a change of use. However, a de minimis change of use is not necessarily a change of use if the dominant use remains agricultural or horticultural. Rotating crops or land use, or leaving land fallow for one year or less, may not be a change of use.

...
 “Conservation plan” means a site-specific plan that prescribes land treatment and related conservation and natural resources management measures that are deemed to be necessary, practical, and reasonable for the conservation, protection, and development of natural resources, the maintenance and enhancement of agricultural or horticultural productivity, and the control and prevention of non-point source pollution.

“Contiguous” means land that is bordering, touching, in actual physical contact with, adjoining, or abutting land immediately next to it, with no intervening land in between, except for a public thoroughfare, railroad right of way, or public waterway.

“Cover crop” is any annual, biennial, or perennial plant grown to manage soil fertility, soil quality, water, unwanted plants, and pests that limit crop production potential, on land in an agricultural or horticultural use.

“Crop rotation” is the practice of growing a series of dissimilar types of crops in the same area in sequential seasons for various benefits, such as to avoid the buildup of pathogens and pests that often occurs when one species is continuously cropped.

“Cropland harvested” means land with the highest use in agriculture. All land from which a crop was harvested in the current year falls into this category.

“Cropland pastured” means land that can be and often is used to produce crops, but its maximum income may not be realized in a particular year. Land that is fallow or in cover crops as part of a rotational program falls in this classification.

“Devoted to agricultural or horticultural use” refers not only to the land that produces agricultural and horticultural products for

sale at wholesale or retail, but also to the land that is supportive and has a relationship to the agricultural and horticultural products produced for sale. See also N.J.A.C. 18:15-6, Actively Devoted to Agricultural Use or Horticultural Use, for further guidelines.

“Fallow land” means land kept free of growing plants during the growing season using cultivation or chemical control to eradicate or reduce weeds for future agricultural production.

“Farmland assessment” means valuation, assessment, and taxation under the Farmland Assessment Act of 1964, [Chapter 48, Laws of] P.L. 1964, c. 48, N.J.S.A. 54:4-23.1 et seq., and P.L. 2009, c. 213, except that there is no income requirement for any portion of any property devoted to energy generation, and no income from any power or heat sold by the energy generation facility shall be eligible as income for farmland assessment purposes.

...
 “Horticultural use” means land [which] that is devoted to the production for sale of fruits of all kinds, including grapes, nuts, and berries; vegetables; nursery, floral, ornamental, and greenhouse products; or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal [Government] government; and includes biomass, solar, or wind energy generation, provided that the biomass, solar, or wind energy generation is consistent with the provisions of P.L. 2009, c. 213 (N.J.S.A. 4:1C-32.4 et seq.), as applicable, and the rules adopted thereunder, except that the energy generated from such use shall not be considered a horticultural product.

...
 “Land used for biomass, solar, or wind energy generation” means the land upon which the biomass, solar, or wind energy generation facilities, structures, and equipment are constructed, installed, and operated. In the case of biomass energy generation, “land used for biomass, solar, or wind energy generation” shall not mean the land upon which agricultural or horticultural products used as fuel in the biomass energy generation facility, structure, or equipment are grown.

“Non-appurtenant woodland” means woodland that is neither supported nor subordinate to other farmland and which can only qualify for farmland assessment on the basis of being in compliance with a woodland management plan filed with the Department of Environmental Protection. Non-appurtenant woodland is actively devoted to the production for sale of tree and forest products.

“Pasturing of livestock or poultry” means a land area used to support a group of grazing animals enclosed by fencing and devoted to the production of forage for harvest primarily by grazing. It may include a wooded area for shelter, have a number of paddocks, or may be rested for a specific time not to exceed one year as part of a particular grazing management practice.

“Permanent pasture” means land that is not cultivated because its maximum economic potential is realized from grazing or as part of erosion control programs. Animals may or may not be part of the farm operation for land to be qualified in this category.

“Pre-tax [Year] year” means the calendar year immediately preceding the “tax year.”[.]

“Preserved farmland” means land on which a development easement was conveyed to, or retained by, the State Agriculture Development Committee, a county agriculture development board, or a qualifying tax exempt nonprofit organization pursuant to the provisions of section 24 of P.L. 1983, c. 32 (N.J.S.A. 4:1C-31), section 5 of P.L. 1988, c. 4 (N.J.S.A. 4:1C-31.1), section 1 of P.L. 1989, c. 28 (N.J.S.A. 4:1C-38), section 1 of P.L. 1999, c. 180 (N.J.S.A. 4:1C-43.1), sections 37 through 40 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-37 through 13:8C-40), or any other State law enacted for farmland preservation purposes.

...
 “Ratio of one-to-five acres, or portion thereof” means for each acre of land, or portion thereof, devoted to biomass, solar, or wind energy generation facilities, structures, and equipment, not exceeding 10 acres, there are at least another five contiguous acres devoted to agricultural or horticultural production as defined in the Farmland

Assessment Act prior to being amended by P.L. 2009, c. 213. In other words, this ratio limits farmland qualification for land devoted to energy generation facilities to a ratio not to exceed one acre devoted to such facilities to five acres of land otherwise qualifying under traditional (that is, pre-P.L. 2009, c. 213) farmland assessment “apart from” that one acre. This is a ratio of 16.67 percent but for simplification purposes, the Division accepts a ratio rounded up to 17.00 percent.

... “Roll-back [Taxes] taxes” means the additional taxes imposed upon land after a change in use takes place.

... “Single-use agricultural or horticultural facility” means silos, greenhouses, hoop houses, grain bins, manure handling equipment, and impoundments employed in farming operations and commonly used for either storage or growing, which are designed or constructed so as to be readily dismantled and shall also include, but not be limited to, temporary demountable plastic-covered framework made up of portable parts with no permanent understructures or related apparatus, commonly known as seed starting plastic greenhouses, and is of a type which can be marketed or sold separately from the farmland and buildings, but shall not include a structure that encloses a space within its walls used for housing, shelter, working, office, or sales space, whether or not removable.

... “Supportive and subordinate wetlands” means a wetlands piece of property, which is beneficial to, or reasonably required for, the purpose of maintaining the agricultural or horticultural uses of a tract of land, which tract of land has a minimum area of at least five acres devoted to agricultural or horticultural uses.

“State Forester” means the chief forester or his or her designee, employed by the Department of Environmental Protection.

“Tax [Year] year” means the calendar year in which the local property tax is due and payable.

“Two megawatts of power,” as permitted on land that qualifies for farmland assessment, means an energy facility producing up to that amount of power under single ownership and operating as a single economic and functional unit.

“Unified title or single ownership” means common ownership by one distinct legal entity, of one or more contiguous parcels together.

SUBCHAPTER 2. APPLICATION FOR FARMLAND ASSESSMENT

18:15-2.2 Form FA-1 required

(a) Application for assessment under the [act] Act may be made only upon completion of the form prescribed by the Director, identified as Form FA-1. Copies of the form may be obtained, upon request, from the assessor of each taxing district who is required to provide said form for use by applicants.

(b) The annual filing of an application reflects the extent of any changes in farming or the woodland management activity from year-to-year and any revisions to cropland, pasture, or woodland acreage or the number of livestock. It is the responsibility of the landowner to complete the application by following the instructions on the back of the FA-1 Form and/or WD-1 Form and activity map and to sign the application. An incomplete application is grounds for denial.

(c) The applicant, on request of the assessor, at any time, must furnish proof of all the prerequisites necessary to show the land is eligible for farmland assessment, such as: ownership, description, area, uses, and adequate sales and income or fees from the agricultural or horticultural use of the land.

(d) Approval or denial of the FA-1 Form is the responsibility of the tax assessor. Approval or denial of the WD-1 Form is the responsibility of the State Forester. The application must be filed on or before August 1 of the pre-tax year. Late applications will be denied. Land in a farmland preservation program still must meet the criteria and filing requirements of the Farmland Assessment Act for land to be taxed at its productivity value.

18:15-2.7 Additional conditions to be fulfilled by an owner of woodland [which] that is devoted exclusively to the production for sale of trees and forest products other than Christmas trees [or the owner of woodland which] and that is not [supportive and subordinate] appurtenant woodland

(a) The owner of land [which] that is devoted exclusively to the production for sale of trees and forest products other than Christmas trees [or the owner of woodland which] and that is not [supportive and subordinate] appurtenant woodland shall annually submit to the assessor, in addition to a completed and timely filed application for farmland assessment (Form FA-1), [then] the following accompanying information[.]:

1. A copy of [a] the current woodland management plan for the landowner’s woodlands prepared in accordance with [provisions noted under] the criteria set forth at N.J.A.C. 18:15-2.10[, unless]. Unless the assessor requests such re-submission, re-submission of the current plan is not required if the plan was previously submitted to the assessor and the owner indicates on the WD-1 [form] Form that there has been no change in the plan from [the previous year, in which case it shall] when it was initially submitted or, if applicable, when it was most recently revised and re-submitted. However, any new plan or amended plan not yet on file with the assessor must be submitted [at least once every 10 to 15 years, consistent with the same period covered by the plan’s recommendations. The assessor may require that the plan be submitted more frequently, but no more than once a year, in the assessor’s discretion;].

2. (No change.)

3. A completed woodland data form (Form WD-1), as prescribed by the Director of the Division of Taxation. The information to be provided [by the landowner] on such form shall apply to the entirety of the pre-tax year and include the following:

i. A description of all woodland management [actions taken in the pre-tax year] activities and practices carried out or to be carried out;

ii. A statement as to the type and quantity of tree and forest products sold or to be sold;

iii. [An indication of the] The amount of income received [or] and an estimate of additional income anticipated to be received from the sale of trees and forest products; [and]

iv. A certification in lieu of an oath signed by both the landowner and an approved forester stating that the land is woodland, actively devoted to [a woodland] agricultural use, [which is in compliance with] that the activities and practices reported on the form are those specified for the pre-tax year in the filed woodland management plan[.], that they are being carried out in compliance with the plan, and that the information provided on the form is true and correct; and

v. A certification in lieu of an oath signed by the landowner stating that the income reported on the form as received or anticipated to be received from the sale of trees and forest products is valid and true and, if any activities and practices reported on the form have not been completed at the time of form submission, that they will be completed within the pre-tax year.

(b) The activities and practices listed on the WD-1 Form must be completed by the end of the calendar year.

(c) If the documents set forth in (a) above are not submitted annually to the assessor, the application shall be denied and such land shall be deemed not to be in agricultural use.

(d) The assessor shall not approve an application that includes woodland that is not appurtenant woodland until a woodland management plan has been prepared and approved by the State Forester and the owner has managed the woodland in accordance with the approved plan for at least the two successive years immediately preceding the tax year for which valuation, assessment, and taxation under the Farmland Assessment Act is requested.

18:15-2.8 Supportive and subordinate woodland or wetlands presumption

(a) A [wooded] woodland or wetlands piece of property [as described in the definition of supportive and subordinate woodland in N.J.A.C. 18:15-1.1] shall be presumed to be supportive and subordinate woodland or wetlands when its area is equal to or less than the area of the

farmland property qualifying for agricultural or horticultural uses other than the production for sale of trees and forest products, exclusive of Christmas trees.

(b) An owner claiming farmland assessment for a [wooded] **woodland or wetlands** piece of property exceeding the amount set forth in (a) above as presumed to be supportive and subordinate woodland **or wetlands** shall submit an explanation and additional proofs the assessor may require to support the claim that such woodland **or wetlands** is supportive and subordinate.

18:15-2.10 Criteria of a woodland management plan

(a) An owner of land subject to the additional conditions [as] set forth in N.J.A.C. 18:15-2.7 shall submit a woodland management plan prepared in accordance with the following criteria:

1. A cover page for the plan shall be [prepared] **provided** delineating the following:

i.-iv. (No change.)

v. The name and address of the approved forester who prepared the plan, if not prepared by the owner; [and]

vi. The date the plan was prepared; and [the]

vii. **The period of time the plan covers[.], and the starting and end date for plan implementation shall be specified.**

(1) For a plan that is approved by the State Forester on or after (the effective date of these amendments), the period of time a woodland management plan covers shall not exceed 10 years.

(2) For a plan that is approved by the State Forester prior to (the effective date of these amendments), that has a duration that is longer than 10 years, but does not exceed 15 years, will remain in effect for its approved duration.

2. A clear and concise statement **shall be provided** of the owner's overall objectives in managing the woodland.

3. A description **shall be provided** of how the property boundaries are or will be marked and delineated.

4. A brief description of past activities that have had an effect on the woodland **shall be provided** including, but not limited to, wildfire, insect and disease outbreaks, timber sales, plantings, thinnings, and weedings.

5. A statement describing each defined forest stand **shall be provided** incorporating the following factors:

i.-vii. (No change.)

6. A description of the [silvicultural prescriptions,] **woodland owner's forest management** [recommendations, activities and practices specified and planned] **goals** for each forest stand[,] **shall be provided, together with specification of the activities and practices planned to be carried out;** and an explanation of how [these sequences of treatment are integrated into the overall coordinated plan and], **within the plan's time frame, the sequential implementation of these activities and practices will integrate and coordinate** to meet the stated forest management [objectives] **goals** and to provide for the sustainability of the forest. [Such] **Additionally, for each stand, the plan shall include an implementation schedule that, under each forest management** [recommendations and practices shall be prepared for a period of time not less than 10 years and not more than 15 years.

i. The schedule of] **goal applicable to the stand, lists the activities and practices to be carried out each year toward the accomplishment of the goal. These activities and practices shall** [summarize the prescribed] **be meaningful and measurable** [management practices] **and shall be designed** to be carried out [in the 10 to 15 year] **during the time period** [as determined by] **that the** [Woodland Management Plan] **plan covers.**

7. A statement **shall be provided** of average overall productivity capabilities of the woodland.

8. [A] **In addition to the map required pursuant to N.J.A.C. 18:15-2.7, a map of the property shall be** [prepared to include] **provided that includes, but is not necessarily** [be] limited to, the following:

i.-v. (No change.)

vi. An identification of forest stands [which] **that are keyed to** [written prescriptions] **the activities and practices to be implemented therein;**

vii.-ix. (No change.)

(b) An owner of land that includes a freshwater wetlands or is located in a flood hazard area who wants to utilize a plan to qualify

for an exemption from the permit requirements of the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A or for a permit-by-rule under the Flood Hazard Area Control Act rules at N.J.A.C. 7:13, shall in addition to meeting the criteria set forth in (a) above, meet the additional plan requirements set forth in N.J.A.C. 7:7A or 7:13, as applicable.

18:15-2.13 On-site inspections required to be made by the [commissioner] **Commissioner**

(a) The [commissioner] **Commissioner**, in addition to reviewing each application, shall make an on-site inspection of the property to determine whether the land is in compliance with the filed woodland management plan.

(b) (No change.)

(c) In the event the [commissioner] **Commissioner** determines the woodland is not in compliance, he **or she** shall transmit a notice of noncompliance to the assessor within [five] **30** days stating the reasons for noncompliance.

18:15-2.14 [Land failing to meet conditions set forth in N.J.A.C. 18:15-2.7] **(Reserved)**

[Land which fails to meet the additional conditions set forth in N.J.A.C. 18:15-2.7 during the first year in which the conditions are imposed, shall not be subject to roll-back taxes for such failure, but shall be treated as land for which an annual application was not submitted.]

SUBCHAPTER 3. PROOF TO SUPPORT APPLICATION FOR FARMLAND ASSESSMENT

18:15-3.1 Two-year period devoted to agricultural or horticultural use required

(a) Land eligible for farmland assessment in addition to meeting the qualifications provided in N.J.A.C. 18:15-3.2 through 3.5 must have been actively devoted to agricultural or horticultural use as [defined in] **set forth at N.J.A.C. 18:15-6** for at least two successive years immediately preceding the tax year for which such assessment is requested.

1. Example: Where application for farmland assessment is made for [the] tax year [2003] **2010**, the land must have been actively devoted to agricultural or horticultural use during the entire period of [the] calendar years [2001] **2008** and [2002] **2009**.

18:15-3.2 Area of land devoted to agricultural or horticultural use

(a) Land actively devoted to agricultural or horticultural use, **including fallow land and land in rotation**, in order to be eligible for farmland assessment, must have a minimum area of five acres.

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

18:15-3.3 Filing date

(a) (No change.)

(b) [An] **Once an application** [once] is filed with the assessor for the tax year, it may not be withdrawn by the applicant after October 1 of the pre-tax year.^[1] (See N.J.A.C. 18:15-8.2, **Change of use, pertaining to the power of the assessor and the county board of taxation to deny or nullify an application where a change in use occurs between August 1 and December 31 of the pre-tax year.**)

1. **If a change in use of the land occurs between August 1 and December 31 of the pre-tax year, either the assessor or the county board of taxation shall deny or nullify such application and, after examination and inquiry, shall determine the full and fair value of said land under the valuation standard applicable to other land in the taxing district and shall assess the same, according to such value.**

i. **If, notwithstanding such change of use, the land is valued, assessed, and taxed under the provisions of this subsection in the ensuing year, the assessor shall enter an assessment, as an added assessment against such land, in the "Added Assessment List" for the particular year involved in the manner prescribed in P.L. 1941, c. 397 (N.J.S.A. 54:4-63.1 et seq.). The amount of the added assessment shall be in an amount equal to the difference, if any, between the assessment imposed under the Act and the assessment that would have been imposed had the land been valued and assessed as other land in the taxing district.**

ii. **The enforcement and collection of additional taxes resulting from any additional assessments so imposed shall be as provided by P.L. 1941, c. 397 (N.J.S.A. 54:4-63.1 et seq.). The additional assessment imposed pursuant to P.L. 1964, c. 48, as amended, (N.J.S.A. 54:4-23.13) shall not affect the roll-back taxes, if any, under N.J.S.A. 54:4-23.8.**

(c) (No change.)

[¹ See Section 8.2 (Change of Use) of this Chapter as to the power of the assessor and the county board of taxation to deny or nullify an application where a change in use occurs between October 1 and December 31 of the pre-tax year.]

18:15-3.4 Representation as to use of land

(a) (No change.)

(b) The application shall [include] **be subject to an on-site inspection of the land at least once every three years by the assessor's office.**

1.-2. (No change.)

18:15-3.5 Additional proof may be required by the assessor

(a) Each assessor may at any time require the submission of such additional proof as [he deems] **deemed** necessary to establish the right of an applicant to farmland assessment.

(b) The applicant, on request of the assessor, [must] **shall** furnish proof of all the prerequisites necessary to show the land is eligible for farmland assessment, such as:

1. [Ownership] **Unified title or single ownership;**

2.-3. (No change.)

[4. Uses;]

4. Agricultural and horticultural uses;

5. [Gross] **Substantiated evidence of gross sales of agricultural or horticultural products sufficient to meet the minimum requirements for qualification; [and]**

6. Fees received for boarding, rehabilitating, or training livestock[.]; **and**

7. Proof of enrollment and payments in an approved soil conservation program from an agency of the Federal government.

(c) (No change.)

18:15-3.6 Notice of disallowance of claim

(a) (No change.)

(b) The notice of disallowance shall set forth the reason or reasons [therefore] **therefor**, together with a statement notifying the landowner of his or her right to appeal such determination to the county board of taxation, **or file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000, on or before April 1 [of the tax year.], or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later. However, in a taxing district where a municipal-wide revaluation or municipal-wide reassessment has been implemented, a taxpayer or a taxing district may appeal on or before May 1 to the county board of taxation by filing a petition of appeal with the county board of taxation. If the assessed valuation of the property subject to the appeal exceeds \$1,000,000, a complaint may be filed directly with the State Tax Court.**

(c) (No change.)

SUBCHAPTER 4. VALUE OF LAND QUALIFYING FOR FARMLAND ASSESSMENT

18:15-4.5 Structures

(a) [Any structures] **Structures** located on land in agricultural or horticultural use such as a farmhouse or any other structure used in connection therewith is valued, assessed, and taxed by the same standards, methods, and procedures as other taxable structures in the taxing district; provided, however, that the term "structure" shall not include [temporary demountable plastic covered framework made up of portable parts with no permanent under structures or related apparatus, commonly known as seed starting plastic greenhouses or as a hoop house or polyhouse.] **a single-use agricultural or horticultural facility, as is commonly used for either storage or growing of crops and which is designed or constructed to be readily dismantled and can be**

marketed separately from the land and the building, such as readily dismantled greenhouses, hoop houses, polyhouses, grain bins, silos, or manure handling equipment or impoundments; or a three-sided turn-out shed used to shelter livestock provided there is no permanent foundation or floor, is 250-square feet or less in area, and has no water, gas, oil, sewer, or electric connections; or garden-type utility shed that is 200-square feet or less, is 10 feet or less in height, has no water, gas, oil, sewer, or electric connections, has a floor system that is tied to the walls of the structure, and does not have a permanent foundation.

(b) (No change.)

SUBCHAPTER 6. ACTIVELY DEVOTED TO AGRICULTURAL USE OR HORTICULTURAL USE

18:15-6.1 Actively devoted to agricultural or horticultural use defined

(a) (No change.)

(b) The amount of the gross sales, fees, payments, or income imputed to land used for grazing, or payments may be from one or a combination of sources included in (a) above, except fees for boarding, rehabilitating, or training livestock shall only be included, and the land deemed to be actively devoted to an agricultural use, where such use occurs on land which is contiguous to land under the same ownership, which otherwise qualifies for farmland assessment.

1. Examples are as follows:

i. Example (1): On a [10 acre] **10-acre** parcel of land, six acres are devoted to growing crops and generate annual gross sales of \$650.00. The remaining four acres are used for boarding horses and generate annual boarding fees of \$8,500. Since the land used for boarding horses is contiguous to land five acres or more otherwise qualifying for farmland assessment, the fees from boarding may be included to meet the minimum gross income requirements and qualify the entire [10 acre] **10-acre** parcel.

ii. Example (2): On a 10-acre parcel of land, 3.5 acres are devoted to growing crops and generate annual gross sales of \$450.00. The remaining 6.5 acres are used for boarding horses and generate annual boarding fees of \$10,500. None of the 6.5 acres is used for grazing horses. The land contiguous to the land used for boarding horses does not otherwise qualify for farmland assessment, both because it is not at least five acres in area and because it does not meet the minimum \$500.00 income requirement for the first five acres. Therefore, the fees from boarding may not be included to meet the minimum gross income requirements, and the entire 10-acre parcel is ineligible for qualification.

iii. Example (3): A [10 acre] **10-acre** parcel of land is managed under a soil conservation program of the United States Department of Agriculture and receives an annual payment of \$750.00. Since the payment meets the income requirement of \$525.00 (\$500.00 **for the first five acres** + \$5.00 for each acre above five), the entire 10 acres are eligible for farmland assessment.

iv. Example (4): On an 8.5-acre parcel of land, .5 acres is used with the house, and three acres are devoted to boarding and training horses, which produces fees of \$3,200. The remaining five acres are utilized for grazing the boarded horses at an imputed value of \$[99.00] **120.00**. Income imputed to grazing is determined to be \$[495.00] **600.00**. Since the five acres used for grazing does [not] have an imputed value for such use of at least \$500.00, it is [not] eligible for farmland assessment. The three-acre portion used for boarding and training is also [ineligible] **eligible** because it is [not] contiguous to land [which] **that** otherwise qualifies for farmland assessment.

v. Example (5): Three horses and a pony are kept by an owner on his land for pleasure riding. The animals pasture on 14 acres, which have an imputed grazing value of \$[1,442] **1,624**. The imputed grazing value in this county is \$[103.00] **116.00** per acre. Although the imputed grazing value exceeds the income requirements for qualification, the land nevertheless would be ineligible for farmland assessment since the livestock are not raised for sale, the livestock do not produce products for sale, and the grazing is not connected with breeding, raising, boarding, rehabilitating, or training activities.

vi. Example (6): On a 10-acre parcel of land, one acre is used for residential dwelling, three acres are devoted to hay production, four acres

are fenced pasture for boarded horses, .5 acres is for the boarding facility, and 1.5 acres is appurtenant woodland. One hundred twenty-five bales of hay with a value of \$3.00 per bale generating \$375.00 in value are produced annually and fed to the boarded horses. Income imputed to land for grazing of \$[100.00] 111.00 per acre times four acres equals \$[400.00] 444.00. As seven acres of land producing \$[775.00] 819.00 in income is adjacent to the boarding facility, nine acres qualifies for farmland assessment.

vii. Example (7): On a seven-acre parcel, five acres are used by a farmer who plants soybeans in June for harvest in November for sale under contract the following July. Two acres are in permanent pasture for erosion control. The landowner needs to verify to the municipal assessor clear evidence of anticipated sales. The landowner upon request from the assessor provides a signed statement that the anticipated yield will be 30 bushels per acre at a contract price of \$7.00 per bushel with a total value of production of \$1,050 on the five acres. Since the land qualified for farmland assessment the two previous years and a minimum of five acres was in agricultural use with clear evidence of anticipated sales in excess of the \$510.00 needed to qualify, the seven acres will meet the qualification criteria for farmland assessment.

viii. Example (8): On a six-acre parcel, one-half acre is used as a residence, five acres are fenced for pasturing three boarded horses and one-half acre is used as equine facilities. Upon request from the municipal assessor for proof of agricultural or horticultural production for sale, the landowner provides the names of the owners of the horses and uses the imputed grazing values of \$115.00 per acre as provided in the Report of the State Farmland Evaluation Advisory Committee. Since a minimum of five acres of pasture being utilized by three boarded horses has an imputed grazing value of \$575.00, the agricultural income criteria for farmland assessment have been met.

ix. Example (9): A 20-acre parcel is enrolled under the United States Department of Agriculture’s Conservation Reserve Program (CRP) and receives an annual rental from the Farm Service Agency of \$900.00 per year. A requirement of the program is maintaining the land through annual mowing. The landowner in completing the FA-1 application form, which shows the cropland as pastured, but land enrolled in a Federal government program must be categorized as cropland harvested. This 20-acre parcel meets the acreage and sales criteria of \$575.00 for farmland assessment.

x. Example (10): A 15-acre parcel is primarily used to grow evergreens for sale as Christmas trees. Eight acres have been planted with evergreens in various stages of growth and harvest. An additional three acres are in cover crop for anticipated planting in the future. The balance of the parcel is appurtenant woodland. The grower practices clear-cutting rotation of Christmas trees as opposed to inter-planting trees after harvest. Using seven-by-seven foot spacing, 888 trees will fit on an acre of land. Harvest will take place starting the seventh year after planting. Proper production practices during the years leading up to harvest will provide clear evidence of anticipated sales. The requirement of a minimum of \$500.00 in sales is cumulative and needs to be a minimum of \$5,000 achieved for the seventh through 10th years to meet the gross income requirement for farmland assessment.

xi. Example (11): Three goats, 20 chickens and a horse are being kept on a six-acre parcel. One-half acre is used with the residence. The parcel is fenced with five and one-half acres being reported as permanent pasture on the application for farmland assessment. Sales were not documented in the previous year. The municipal assessor determined that due to an insufficient number of livestock and poultry used for agricultural production and the lack of proof of sales of agricultural commodities produced from the land, the application for farmland assessment was denied.

(c) (No change.)

(d) Land used for biomass, solar, or wind energy generation shall be considered land in agricultural or horticultural use and may be eligible for valuation, assessment, and taxation pursuant to P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.), provided that:

1. The property where the energy generation facility is located is part of an operating farm that will continue to operate as a farm in the tax year for which farmland assessment is being applied;

2. The construction, installation, and operation of the energy generation facility on the land under the facility for which farmland assessment is sought, have received all approvals that may be required by law, where the interconnection is legally permissible, and where the energy generation facility and underlying farmland meet all other requisites for farmland assessment;

3. In the prior tax year, the acreage used for the biomass, solar, or wind energy generation facilities, structures, and equipment was valued, assessed, and taxed as land in agricultural or horticultural use;

4. The power or heat generated by the biomass, solar, or wind energy generation facilities, structures, and equipment is used to provide, either directly or indirectly but not necessarily exclusively, power or heat to the farm or agricultural or horticultural operations supporting the viability of the farm;

5. The owner or operator of the property on which the biomass, solar, or wind energy generation facilities, structures, and equipment has or will be constructed and used, has a conservation plan approved by the soil conservation district, with provisions for compliance with this paragraph where applicable, to account for the aesthetic, impervious coverage, and environmental impacts of the construction, installation, and operation of the biomass, solar, or wind energy generation facilities, structures, and equipment, including, but not necessarily limited to, water recapture and filtration;

6. Where solar energy generation facilities, structures, and equipment are installed, the property under the solar panels is used to the greatest extent practicable for the farming of shade crops or other plants capable of being grown under such conditions, or for pasture for grazing;

7. The amount of acreage devoted to energy generation facilities meets, but does not exceed, a ratio of one-to-five acres or portion thereof. In other words, for each “unit” of land devoted to energy generation, there are at least another five “units” of land devoted to agricultural and/or horticultural operations. The following graph illustrates the ratio in terms of sample acreages:

Acreage Used for Renewable Energy on Farmland Assessment Acreage		
Total Acres	*Maximum acres in Solar/Wind/Biomass	Minimum acres in Agriculture/Horticulture
5.25	0.25	5.00
5.60	0.60	5.00
6.00	1.00	5.00
7.00	1.19	5.81
8.00	1.36	6.64
9.00	1.53	7.47
10.00	1.70	8.30
15.00	2.55	12.45
25.00	4.25	20.75
50.00	8.50	41.50
59.00	10.00	49.00
60.00	10.00	50.00
100.00	10.00	90.00
*Ratio to calculate assessments: 1 part renewable energy to 5 parts of land devoted to agricultural or horticultural operations = 1÷6 or .167 rounded to .17.		
Must have greater than 5 acres to invest in renewable energy sources		

8. Biomass, solar, or wind energy generation facilities, structures, and equipment are constructed or installed on no more than 10 acres of the farmland for which the owner of the property is applying for valuation, assessment, and taxation pursuant to P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.), and if power is being generated, no more than two megawatts of power are generated on the 10 acres or less:

i. Example (1): A landowner devotes 60 acres to agricultural or horticultural production that qualifies for farmland assessment. He converts 10 of those acres for use as a solar energy facility, which generates no more than two megawatts of power. The landowner is entitled to have all 60 acres receive farmland assessment.

ii. Example (2): A landowner devotes 120 acres to agricultural or horticultural production which qualifies for farmland assessment. He converts 20 of those acres for use as a solar energy facility. Because the landowner is entitled to have only 10 of the acres used for a solar energy facility under farmland assessment, he no longer qualifies for this assessment on the 20 acres that have been converted to the solar energy facility and these 20 acres are subject to roll-back taxes. The landowner, however, continues to qualify for farmland assessment on the remaining 100 acres.

iii. Example (3): A landowner devotes 60 acres to agricultural or horticultural production that qualifies for farmland assessment. He converts 10 of those acres for use as a solar energy facility that generates three megawatts power. None of the 10 acres qualifies for farmland assessment. Only the remaining 50 acres that is in agricultural or horticultural production qualifies for farmland assessment because the two megawatt power limit is exceeded;

9. For biomass energy generation, the owner of the property has obtained approval from the New Jersey Department of Agriculture pursuant to section 5 of P.L. 2009, c. 213 (N.J.S.A. 4:1C-32.5);

10. If the energy generation facility is located in the Pinelands region, the construction, installation, and operation of the facility complies with the Comprehensive Management Plan;

11. If the land is permanently preserved under the State Farmland Preservation Program, the landowner must provide documentation that the project was approved by the State Agriculture Development Committee; and

12. No generated energy from any source shall be considered an agricultural or horticultural product and no income from any power or heat sold from the biomass, solar, or wind energy generation may be considered income for eligibility for valuation, assessment, and taxation of land pursuant to the Act, and, notwithstanding the provisions of the Act, or any rule promulgated pursuant thereto, to the contrary, there shall be no income requirement for property valued, assessed, and taxed pursuant to (d)2 through 9 above.

18:15-6.2 Devoted to agricultural or horticultural use defined

(a) "Devoted to agricultural or horticultural use" means:

1. Land under and used with barns, sheds, packing houses, farm storage facilities, seasonal farm markets selling predominantly agricultural products, seasonal agricultural labor housing, silos, cribs, and like structures when used in direct support of the producing crops for sale;

2. Land that consists of lakes, ponds, streams, stream buffer areas, hedgerows, wetlands, and/or irrigation ponds that are supportive and subordinate or reasonably required for the purpose of maintaining agricultural or horticultural uses of a tract of land, which tract of land has a minimum area of at least five acres devoted to agricultural or horticultural uses other than to the production for sale of trees and forest products;

[1.] 3. Land on which crops are [grown for market,] produced, harvested, and sold, either at retail or wholesale;

[2.] 4. (No change in text.)

5. Land on which poultry are housed or ranged, but if ranged, the land must be enclosed by a fence sufficient to retain such animals;

[3.] 6. Land on which crops are grown for on-farm use, but not including land [on which vegetables, fruits, and like products are grown for on-farm] that is used to produce crops only for personal consumption;

7. Land kept fallow during a growing season using cultivation or chemical control to eradicate or reduce weeds for future agricultural or horticultural production;

[4.] 8. Land on which [are] farm animals may be maintained, pastured, or ranged [farm animals] whose products or the animals themselves are produced for market, either retail or wholesale;

[5.] 9. Land [which has met the requirements and qualified for payments or compensation from an agency of the Federal government under the Soil Bank Program.] enrolled in a soil conservation program administered by an agency of the Federal government that meets the annual maintenance requirements for future agricultural or horticultural production or an equivalent program such as the Conservation Reserve or Wetlands Reserve Program;

[6.] 10. Land on which trees and forest products are produced for sale within a reasonable period of time and such land is managed in compliance with a written [approved] woodland management plan approved by the State Forester; [or]

[7.] 11. Land on which livestock is boarded, raised, pastured, rehabilitated, trained, or grazed, and enclosed by a fence sufficient to retain such animals that are themselves or their products sold, except that "livestock" shall not include dogs[.];

12. Land that is used for boarding, rehabilitating, or training livestock for a fee (not including acres pastured) where the livestock is owned by a party or parties other than the property owner(s), and the land is contiguous to five or more acres that otherwise qualify for valuation, assessment, and taxation under the Act;

[8.] 13. [Wooded property] Land that is supportive and subordinate woodland or wetlands[, which both can be considered appurtenant woodland, which] and that is contiguous to, part of, or beneficial to land [described in (a) above, and to which the woodland is supportive and subordinate.] that is cropland harvested, cropland pastured, or permanent pasture;

14. Land that has limited farming or grazing potential, is managed in an erosion-control program, and is supportive and subordinate or reasonably required for agricultural or horticultural production of land that has a minimum of five acres classified as cropland harvested, cropland pastured, or permanent pasture;

15. Greenhouses or poultry or livestock facilities in which animals or their products are sold; or

16. Land used for biomass, solar, or wind energy generation shall be considered land actively devoted to agricultural or horticultural use as long as it meets the qualifications set forth in N.J.A.C. 18:15-6.1(d), except that the energy generated from such use shall not be considered an agricultural or horticultural product.

18:15-6.4 Failure to meet additional gross sales income requirements on acreage—[rollback] roll-back

(a) Land previously qualified as actively devoted to agricultural or horticultural use under the Act but failing to meet the additional requirement on acreage above five acres shall not be subject to the roll-back tax because of such disqualification, but shall be treated as land for which an annual application has not been submitted.

(b) Land that is farmed but is insufficient in acreage or income, should be denied for farmland assessment, and shall not be subject to the roll-back tax because of this disqualification, but shall be treated as land for which an annual application has not been submitted.

SUBCHAPTER 7. ROLL-BACK TAXES

18:15-7.3 Amount; computation

(a) In determining the amount of roll-back taxes chargeable on land [which] that has undergone a change in use, the assessor is required for each of the roll-back tax years involved to ascertain:

1. The full and fair value, that is, true market value, of such land under the valuation standard applicable to other taxable land in the taxing district;

2. The amount of the land assessment for the particular tax year by multiplying such full and fair value by the [county percentage] common level percentage, also known as the Director's Ratio, as determined by the county board of taxation in accordance with [Section] section 3 of P.L. 1960, [c.51] c. 51 (N.J.S.A. 54:4-2.27);

3. The amount of the additional assessment on the land for the particular tax year by deducting the amount of the actual assessment on the land for that year from the amount of the land assessment determined under [paragraph 2 of this subsection] **(a)2 above**; and

4. The amount of the roll-back tax for that year by multiplying the amount of the additional assessment determined under [paragraph 3 of this subsection] **(a)3 above** by the general property tax rate of the taxing district applicable for that tax year.

18:15-7.4 Tax years applicable

(a) (No change.)

(b) Examples are as follows:

1. Example (1): A parcel of land qualifies for farmland assessment for the tax years [2001, 2002, and 2003] **2008, 2009, and 2010**. A change of use occurs in June [2003] **2010**. The land is subject to roll-back taxes for the tax years [2001, 2002 and 2003] **2008, 2009, and 2010**.

2. Example (2): A parcel of land was assessed generally for the tax year [2001] **2008**, and qualified for farmland assessment in the tax years [2002 and 2003] **2009 and 2010**. A change in use occurs in June [2003] **2010**. The land is subject to roll-back taxes for the tax years [2002 and 2003] **2009 and 2010**, but not subject to roll-back taxes for the tax year [2001] **2008**, inasmuch as the land was not assessed under the Act for such tax year.

18:15-7.5 Change in use when land not assessed under the Act

(a) If a change in use of the land occurs in a tax year when the land was not assessed and taxed under the Act, then such land becomes subject to roll-back taxes for such of the two tax years immediately preceding in which the land was assessed under the Act.

1. Example: A parcel of land was assessed under the Act for the tax years [2001 and 2002] **2008 and 2009**, but not for [2003] **2010**. A change in use occurs in June [2003] **2010**. The land is subject to roll-back taxes for the tax years [2001, 2002] **2008 and 2009**, but is not subject to roll-back taxes for [2003] **2010**, inasmuch as the land was not assessed under the Act for such tax year.

18:15-7.6 Procedure for assessment, collection, apportionment, and payment [over] of roll-back taxes

The assessment, collection, apportionment, and payment [over] of the roll-back taxes imposed by the Act is governed by the procedures [provided] **set forth in N.J.S.A. 54:4-23.8 and 23.9 and the provisions of N.J.S.A. 54:4-63.12 through 63.30** for the assessment and taxation of omitted property [under N.J.S.A. 54:4-63.2].

SUBCHAPTER 8. CHANGE OF USE

18:15-8.1 Effect

(a) When land [which] **that** is being assessed under the Act is applied to a use other than agricultural or horticultural, it becomes subject to roll-back taxes. (See [subchapter] N.J.A.C. **18:15-7**, [(Roll-back] **Roll-Back Taxes**) of this chapter, for procedure imposing roll-back taxes. See [subchapter] N.J.A.C. **18:15-12**, [(Eminent Domain)] of this chapter, respecting the [inapplicability] **applicability** of roll-back taxes in case of eminent domain.)[.]

(b) **Notwithstanding the provisions of any law, rule, or regulation to the contrary, land which is valued, assessed, and taxed under the**

provisions of P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.) and is acquired by the State, a local government unit, a qualifying tax exempt nonprofit organization, or the Palisades Interstate Park Commission for recreation and conservation purposes shall not be subject to roll-back taxes.

1. As used in this subsection, “acquired,” “local government unit,” “qualifying tax exempt nonprofit organization,” and “recreation and conservation purposes” mean the same as those terms are defined pursuant to section 3 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-3), Garden State Preservation Trust Act.

18:15-8.2 Change of use between certain dates

(a) If a change in the use of land occurs between [October] **August 1** and December 31 of the pre-tax year, and an application is then pending for assessment under the Act for the ensuing tax year, either the assessor or the county board of taxation, as the case may be, shall deny or nullify such application and, after examination and inquiry, determine the full and fair value of said land under the valuation standard applicable to other land in the taxing district and assess the same according to such value.

1. Example: An application is filed with the assessor on or before August 1, [2002] **2009** for farmland assessment for the tax year [2003] **2010**. On November 15, [2002] **2009**, a change in use of the land takes place. The assessor, knowing of the change of use, will deny the application and value and assess the land for the tax year [2003] **2010** in the same manner as other real property in the taxing district. If the assessor is unaware of such change before he files his assessment list and duplicate on January 10 following, then the county board of taxation, if it has knowledge of the change before the tax roll becomes final, will revoke the application and assess the land in the same manner as other real property in the taxing district.

(b) (No change.)

(c) The added assessment is to be in an amount equal to the difference, if any, between the assessment imposed under the Act and the assessment [which] **that** would have been imposed had the land been valued and assessed as other land in the taxing district. This added assessment is applicable to the full tax year and not subject to [probation] **proration**.

1. Example: A change in use takes place on November 15, [2002] **2009** but is not discovered by the assessor or the county board of taxation until June 1, [2003] **2010**. In that event, the assessor will enter an added assessment against land on the Added Assessment List for [2003] **2010**, in accordance with [subsection] (b) [of this section] **above**. In addition, he shall impose roll-back taxes **using the regular, not the alternative omitted procedure**, for such of the tax years [2002, 2001 and 2000] **2009, 2008, and 2007**, in which the land was assessed under the Act.

SUBCHAPTER 12. EMINENT DOMAIN

18:15-12.1 Effect of roll-back taxes on eminent domain and condemnation

The taking of land [which] **that** is being valued, assessed, and taxed under the Act by right of eminent domain is [no longer] **not** exempt from the imposition of roll-back taxes. (Section 3 of P.L. 1970, [c.243] **c. 243**, approved October 28, 1970).