

CHAPTER 76

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Authority

N.J.S.A. 4:1C-5f, 4:1C-10.4, and 13:8C-1 et seq.

Source and Effective Date

R.2010 d.047, effective January 15, 2010.
See: 41 N.J.R. 1300(a), 42 N.J.R. 587(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 76, State Agriculture Development Committee, expires on January 15, 2017. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 76, State Agriculture Development Committee, was adopted as R.1984 d.58, effective March 19, 1984. See: 15 N.J.R. 2086(a), 16 N.J.R. 518(b).

Subchapter 2, Agricultural Management Practices, was adopted as R.1984 d.84, effective April 2, 1984. See: 16 N.J.R. 95(b), 16 N.J.R. 707(c).

Subchapter 3, Creation of Farmland Preservation Programs, was adopted as R.1984 d.229, effective June 18, 1984. See: 16 N.J.R. 579(a), 16 N.J.R. 1471(c).

Subchapter 4, Creation of Municipally Approved Farmland Preservation Programs, was adopted as R.1984 d.230, effective June 18, 1984. See: 16 N.J.R. 582(a), 16 N.J.R. 1475(a).

Subchapter 5, Soil and Water Conservation Project Cost-Sharing, was adopted as R.1984 d.418, effective September 17, 1984. See: 16 N.J.R. 1636(a), 16 N.J.R. 2426(a).

Subchapter 6, Acquisition of Development Easements, was adopted as R.1984 d.419, effective September 17, 1984. See: 16 N.J.R. 1637(a), 16 N.J.R. 2427(a).

Subchapter 7, Review of Non-Agricultural Development Projects in Agricultural Development Areas, was adopted as R.1987 d.482, effective November 16, 1987. See: 19 N.J.R. 1009(a), 19 N.J.R. 2132(a).

Subchapter 8, Acquisition of Farmland in Fee Simple, was adopted as R.1989 d.48, effective January 17, 1989. See: 20 N.J.R. 2501(a), 21 N.J.R. 160(a).

Subchapter 9, Emergency Acquisition of Development Easements, was adopted as R.1989 d.214, effective April 17, 1989. See: 21 N.J.R. 231(a), 21 N.J.R. 981(b).

Pursuant to Executive Order No. 66(1978), Chapter 76, State Agricultural Development Committee, was readopted as R.1989 d.453, effective July 31, 1989. See: 21 N.J.R. 1601(a), 21 N.J.R. 2472(b).

Subchapter 10, Appraisal Handbook Standards, was adopted as R.1993 d.391, effective August 2, 1993. See: 25 N.J.R. 1811(a), 25 N.J.R. 3461(a).

Pursuant to Executive Order No. 66(1978), Chapter 76, State Agricultural Development Committee, was readopted as R.1994 d.393, effective June 28, 1994. See: 26 N.J.R. 1419(a), 26 N.J.R. 3159(b).

Pursuant to Executive Order No. 66(1978), Chapter 76, State Agricultural Development Committee, was readopted as R.1999 d.198, effective May 28, 1999, and Subchapter 2A, Agricultural Management Practices: Generally Accepted Operations and Practices, was adopted as R.1999, d.198, effective June 21, 1999. See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).

Subchapter 11, Committee Acquisition of Farmland Development Easements, was adopted as Emergency New Rules by R.1999 d.317, effective August 20, 1999, to expire October 19, 1999. See: 31 N.J.R. 2646(a). The provisions of R.1999 d.317 were readopted as R.1999 d.390, effective October 19, 1999. See: 31 N.J.R. 2646(a), 31 N.J.R. 3625(a).

Subchapter 12, Nonprofit Acquisition Projects: Project Eligibility, Conditions and Limitations, Subchapter 13, Nonprofit Acquisition Projects: Application Process, Subchapter 14, Nonprofit Acquisition Projects: Award Criteria, Subchapter 15, Nonprofit Acquisition Projects: Determination of Eligible Land Cost, and Subchapter 16, Nonprofit Acquisition Projects: Project Agreement, Negotiations for Purchase of Project Site, Disbursements, Accounting and Recordkeeping Requirements, were adopted as R.2000 d.95, effective March 6, 2000. See: 31 N.J.R. 4144(a), 32 N.J.R. 788(b).

Subchapter 2B, Supplemental Agricultural Activities, was adopted as R.2000 d.97, effective March 6, 2000. See: 31 N.J.R. 3882(a), 32 N.J.R. 787(b).

Subchapter 17, Planning Incentive Grants, was adopted as R.2000 d.263, effective June 19, 2000. See: 32 N.J.R. 1102(a), 32 N.J.R. 2223(a).

Subchapter 18, Agricultural Mediation Program, was adopted as R.2001 d.98, effective March 19, 2001. See: 33 N.J.R. 3(a), 33 N.J.R. 999(a).

Subchapter 19, Valuation of Development Easements in the Pinelands Area, was adopted as R.2001 d.121, effective April 2, 2001. See: 33 N.J.R. 152(a), 33 N.J.R. 1083(a).

Subchapter 20, Farmland Stewardship Program, was adopted as R.2002 d.68, effective March 4, 2002. See: 33 N.J.R. 2958(a), 34 N.J.R. 1034(a).

Subchapter 21, Administrative Grants to Counties, was adopted as R.2002 d.69, effective March 4, 2002. See: 33 N.J.R. 3597(a), 34 N.J.R. 1038(a).

Chapter 76, State Agriculture Development Committee, was re-adopted as R.2004 d.403, effective October 1, 2004. See: 36 N.J.R. 2322(a), 36 N.J.R. 4927(a).

Subchapter 17, Planning Incentive Grants, was repealed and Subchapter 17, County Planning Incentive Grants, and Subchapter 17A, Municipal Planning Incentive Grants, were adopted as new rules by R.2007 d.197, effective July 2, 2007. See: 38 N.J.R. 4929(a), 39 N.J.R. 2483(a).

Subchapter 22, Special Permit for Commercial Nonagricultural Activity on Preserved Farmland, and Subchapter 23, Special Permit for Installation of Personal Wireless Service Facility on Preserved Farmland, were adopted as new rules by R.2008 d.137, effective June 2, 2008. See: 39 N.J.R. 2568(a), 40 N.J.R. 2663(b).

Chapter 76, State Agriculture Development Committee, was re-adopted as R.2010 d.047, effective January 15, 2010. See: Source and Effective Date.

Subchapter 24, Solar Energy Generation on Preserved Farms, was adopted as new rules by R.2013 d.083, effective June 3, 2013. See: 44 N.J.R. 2223(a), 45 N.J.R. 1385(a).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. AGRICULTURAL DEVELOPMENT AREAS

2:76-1.1	Applicability
2:76-1.2	Definitions
2:76-1.3	Statutory criteria
2:76-1.4	Other criteria
2:76-1.5	Certification request
2:76-1.6	Committee review
2:76-1.7	Certification

SUBCHAPTER 2. RIGHT TO FARM

- 2:76-2.1 Definitions
- 2:76-2.2 Procedure for recommending agricultural management practices
- 2:76-2.3 Recommendations of site specific agricultural management practices where a board exists
- 2:76-2.4 Recommendations of site specific agricultural management practices where a board does not exist
- 2:76-2.5 Utilization of agricultural management practices and site specific agricultural management practices
- 2:76-2.6 Negotiation of conflicts between State regulatory practices and SADC recommended agricultural management practices
- 2:76-2.7 through 2:76-2.9 (Reserved)
- 2:76-2.10 Negotiation of conflicts between any person aggrieved by the operation of a commercial farm

SUBCHAPTER 2A. AGRICULTURAL MANAGEMENT PRACTICES: GENERALLY ACCEPTED OPERATIONS AND PRACTICES

- 2:76-2A.1 Recommendation basis
- 2:76-2A.2 Apiary agricultural management practice
- 2:76-2A.3 Poultry manure agricultural management practice
- 2:76-2A.4 Food processing by-product land application agricultural management practice
- 2:76-2A.5 Commercial vegetable production agricultural management practice
- 2:76-2A.6 Commercial tree fruit production agricultural management practice
- 2:76-2A.7 Natural resource conservation agricultural management practice
- 2:76-2A.8 Agricultural management practice for on-farm compost operations
- 2:76-2A.9 Fencing installation agricultural management practice for wildlife control
- 2:76-2A.10 Agricultural management practice for equine activities on commercial farms
- 2:76-2A.11 Aquaculture agricultural management practice
- 2:76-2A.12 Agricultural management practice for the construction, installation, operation or maintenance of solar energy generation facilities, structures and equipment on commercial farms

SUBCHAPTER 2B. SUPPLEMENTAL AGRICULTURAL ACTIVITIES

- 2:76-2B.1 Determination basis
- 2:76-2B.2 Eligibility of pick-your-own operations for Right to Farm protections
- 2:76-2B.3 Eligibility of equine activities for right to farm protections

SUBCHAPTER 3. CREATION OF FARMLAND PRESERVATION PROGRAMS

- 2:76-3.1 Applicability
- 2:76-3.2 Definitions
- 2:76-3.3 Petition
- 2:76-3.4 Board review
- 2:76-3.5 Agreement
- 2:76-3.6 Certification request
- 2:76-3.7 Certification
- 2:76-3.8 Recording of the farmland preservation program
- 2:76-3.9 Renewal, termination, reformation
- 2:76-3.10 Inclusion of additional lands
- 2:76-3.11 Withdrawal
- 2:76-3.12 Deed restrictions
- 2:76-3.13 Compliance

SUBCHAPTER 4. CREATION OF MUNICIPALLY APPROVED FARMLAND PRESERVATION PROGRAMS

- 2:76-4.1 Applicability
- 2:76-4.2 Definitions

- 2:76-4.3 Petition
- 2:76-4.4 Board review
- 2:76-4.5 Agreement
- 2:76-4.6 Certification request
- 2:76-4.7 Certification
- 2:76-4.8 Recording of the municipally approved program
- 2:76-4.9 Renewal, termination, reformation
- 2:76-4.10 Withdrawal
- 2:76-4.11 Deed restrictions
- 2:76-4.12 Compliance

SUBCHAPTER 5. SOIL AND WATER CONSERVATION PROJECT COST-SHARING

- 2:76-5.1 Applicability
- 2:76-5.2 Definitions
- 2:76-5.3 Approved soil and water conservation projects
- 2:76-5.4 Eligibility for State soil and water conservation cost-share funds
- 2:76-5.5 Eligible applicants
- 2:76-5.6 Submission of the application
- 2:76-5.7 Approval for project funding
- 2:76-5.8 Payment
- 2:76-5.9 Allocation of soil and water cost-share eligibility after subdivision

SUBCHAPTER 6. ACQUISITION OF DEVELOPMENT EASEMENTS

- 2:76-6.1 Applicability
- 2:76-6.2 Definitions
- 2:76-6.3 Eligible applicants
- 2:76-6.4 Application
- 2:76-6.5 Preliminary board review
- 2:76-6.6 Preliminary Committee review
- 2:76-6.7 Appraisals
- 2:76-6.8 Committee certification of development easement value
- 2:76-6.9 Landowner offer
- 2:76-6.10 Final board review
- 2:76-6.11 Final Committee review
- 2:76-6.12 Landowner decision
- 2:76-6.13 Terms, contingencies and conditions of purchase
- 2:76-6.14 Payment procedures; schedule of payment
- 2:76-6.14A Request for pre-closing division of land
- 2:76-6.15 Deed restrictions
- 2:76-6.16 Criteria for evaluating development easement applications
- 2:76-6.17 Residual dwelling site opportunity
- 2:76-6.18 SADC grant agreement with county: General provisions
- 2:76-6.18A SADC grant agreement with county: acquisition phase; and monitoring phase
- 2:76-6.18B SADC grant agreement with county: SADC responsibility
- 2:76-6.19 Request for Committee approval of lands permanently deed-restricted by a board and/or county not requiring a Committee cost share grant
- 2:76-6.20 Minimum eligibility criteria
- 2:76-6.21 Appraiser selection
- 2:76-6.22 Appraiser retention and removal
- 2:76-6.23 Determination of the Committee's cost share for a development easement on lands acquired in fee simple title by a government entity

SUBCHAPTER 7. REVIEW OF NON-AGRICULTURAL DEVELOPMENT PROJECTS IN AGRICULTURAL DEVELOPMENT AREAS

- 2:76-7.1 Applicability
- 2:76-7.2 Definitions
- 2:76-7.3 Responsibilities of the public body and/or public utility
- 2:76-7.4 Information about the project

adopted pursuant to this section do not preclude a board or the Committee from recommending a site specific agricultural management practice pursuant to N.J.A.C. 2:76-2.3 and 2.4, provided it is consistent with the agricultural management practices adopted pursuant to this section.

New Rule and recodification of 2:76-2.2 Definitions to 2.1. R.1993 d.223, effective May 17, 1993.

See: 25 N.J.R. 622(a), 25 N.J.R. 1963(a).

Section was "Definitions".

Amended by R.1999 d.198, effective June 21, 1999.

See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).

In (c), added a reference to appropriate county agents at the end of 2, inserted new 5 and 6, and recodified former 5 as 7; and rewrote (d).

Law Review and Journal Commentaries

Right to Farm Act Pre-empts Local Land-Use Authority. Lewis Goldshore and Marsha Wolf, 168 N.J.L.J. 1134 (2002).

2:76-2.3 Recommendations of site specific agricultural management practices where a board exists

(a) In counties where a board exists, a commercial farm owner or operator that meets the eligibility criteria pursuant to N.J.S.A. 4:1C-9 may make a request in writing to the board to determine if his or her operation constitutes a generally accepted agricultural operation or practice.

(b) In determining whether a commercial farm owner or operator meets the eligibility criteria pursuant to N.J.S.A. 4:1C-9, the board shall request the commercial farm owner or operator to provide the following in certification form:

1. Proof that the commercial farm is no less than five acres, produces agricultural/horticultural products worth \$2,500 or more annually, listing said products, and is eligible for differential property taxation pursuant to the Farmland Assessment Act of 1964 or, if the commercial farm is less than five acres, produces agricultural/ horticultural products worth \$50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964; and

2. Proof that the farm is located in an area in which, as of December 31, 1997 or thereafter, agriculture has been a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or which commercial farm was in operation as of July 2, 1998.

(c) The board shall advise the Committee and the municipality(ies) in which the commercial farm is located, in writing, of the receipt and nature of the request within 10 days.

(d) In recommending site specific agricultural management practices, the board may consult with the following agencies, organizations, or persons:

1. The New Jersey Department of Agriculture;
2. The State Agriculture Development Committee;

3. The New Jersey Agricultural Experiment Station, including appropriate county agents;

4. Other County Agriculture Development Boards;

5. The State Soil Conservation Committee;

6. Any other states' Departments of Agriculture, land grant institutions or Agricultural Experiment Stations;

7. The United States Department of Agriculture, or any other Federal governmental entity; or

8. Any other organization or person which may provide expertise concerning the particular practice.

(e) Upon the board's written recommendation, the site specific agricultural management practice shall be forwarded to the commercial farm owner or operator, the Committee and any other individuals or organizations deemed appropriate by the board within 30 days of the recommendation.

(f) Any person aggrieved by any decision of a board regarding site specific agricultural management practices may appeal the decision to the Committee in accordance with the provisions of 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, within 45 days from receipt of the board's final determination.

1. The decision of the Committee shall be considered a final administrative agency decision.

2. If the board's decision is not appealed within 45 days, the board's decision is binding.

Repeal and New Rule, R.1993 d.223, effective May 17, 1993.

See: 25 N.J.R. 622(a), 25 N.J.R. 1963(a).

Section was "Dispute procedures".

New Rule, R.1999 d.198, effective June 21, 1999.

See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).

Former N.J.A.C. 2:76-2.3, Utilization of agricultural management practices, recodified to N.J.A.C. 2:76-2.5.

Law Review and Journal Commentaries

Right to Farm Act Pre-empts Local Land-Use Authority. Lewis Goldshore and Marsha Wolf, 168 N.J.L.J. 1134 (2002).

Case Notes

Initial Decision (2007 N.J. AGEN LEXIS 239) adopted, which affirmed a county agriculture development board's approval of construction of a barn where the permit applicant, who operated a commercial farm pursuant to the requirements of N.J.S.A. 4:1C-9, was engaged in an accepted agricultural operation or practice and consequently had a legitimate agriculturally based reason under the Right to Farm Act for preemption of municipal land use authority. Application of the municipal ordinance would have entirely precluded applicant's ability to construct the barn, not merely restrict it, and moreover no testimony was offered to remotely suggest that fire or other emergency vehicles would be unable to reach the applicant's property, as access to the property was identical whether or not a barn would be built. In re Petty (Appeal of Resolution Issued by Warren County Agric. Dev. Bd.), OAL Dkt. No. ADC 05370-06, Final Decision (June 28, 2007).

Applicant failed to establish that she operated a commercial farm, as defined in N.J.S.A. 4:1C-3 and N.J.A.C. 2:76-2.1, because she did not provide clear evidence of income from agricultural production; thus,

applicant did not meet the threshold for a site-specific agricultural management practice determination pursuant to N.J.S.A. 4:1C-9 and N.J.A.C. 2:76-2.3 and was unable to preempt application of a local zoning ordinance. *Hertz v. Morris County Agric. Dev. Bd.*, OAL DKT. NO. ADC 07672-06, Final Decision (January 25, 2007).

Where the Tax Court of New Jersey had ruled that the landowners' premises met the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq., which was a threshold issue in determining applicability of the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., landowners were entitled to a determination by the county agricultural development board whether their commercial farm operation constituted a generally accepted agricultural operation or practice pursuant to N.J.A.C. 2:76-2.3(a) (all parties were in agreement with this result). In re Barton Nursery (Appeal From Decision of State Agric. Dev. Comm'n), OAL Dkt. No. ADC 6441-02, 2005 N.J. AGEN LEXIS 396, Initial Decision (August 5, 2005).

2:76-2.4 Recommendations of site specific agricultural management practices where a board does not exist

(a) In counties where a board does not exist, a commercial farm owner or operator that meets the eligibility criteria pur-

suant to N.J.S.A. 4:1C-9 may make a request in writing to the Committee to determine if his or her operation constitutes a generally accepted agricultural operation or practice.

(b) In determining whether a commercial farm owner or operator meets the eligibility criteria pursuant to N.J.S.A. 4:1C-9, the Committee shall apply the same standards as found in N.J.A.C. 2:76-2.3(b) and may consult with the same agencies, organizations, or persons as found in N.J.A.C. 2:76-2.2(d).

(c) Upon the Committee's recommendation, the site specific agricultural management practice shall be forwarded to the commercial farm owner or operator, the municipality(ies) in which the commercial farm is located and any other individuals or organizations deemed appropriate by the Committee.

New Rule, R.1993 d.223, effective May 17, 1993.

See: 25 N.J.R. 622(a), 25 N.J.R. 1963(a).

New Rule, R.1999 d.198, effective June 21, 1999.

See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).

Former N.J.A.C. 2:76-2.4, Negotiation of conflicts between State regulatory practices and SADC recommended agricultural management practices, recodified to N.J.A.C. 2:76-2.6.

Law Review and Journal Commentaries

Right to Farm Act Pre-empts Local Land-Use Authority. Lewis Goldshore and Marsha Wolf, 168 N.J.L.J. 1134 (2002).

2:76-2.5 Utilization of agricultural management practices and site specific agricultural management practices

(a) Owners and operators of commercial farms are afforded benefits and protections pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., P.L. 1983, c.31, as amended.

(b) The failure of a commercial farm owner or operator to comply with an agricultural management practice recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 2:76-2.2 or a site specific agricultural management practice adopted pursuant to N.J.A.C. 2:76-2.3 or 2.4 shall not be utilized in any judicial proceedings or proceeding before any governmental body or agency except for the process as described in N.J.S.A. 4:1C-10.1 and N.J.A.C. 2:76-2.10.

Recodified from N.J.A.C. 2:76-2.3 and amended by R.1999 d.198, effective June 21, 1999.

See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).

Rewrote the section.

Law Review and Journal Commentaries

Right to Farm Act Pre-empts Local Land-Use Authority. Lewis Goldshore and Marsha Wolf, 168 N.J.L.J. 1134 (2002).

2:76-2.6 Negotiation of conflicts between State regulatory practices and SADC recommended agricultural management practices

The Committee shall upon a finding of conflict between the regulatory practices of any State instrumentality and the agricultural management practices recommended by the Committee, commence a period of negotiation not to exceed 120 days with the State instrumentality in an effort to reach a resolution of the conflict, during which period the State instrumentality shall inform the Committee of the reasons for accepting, conditionally accepting or rejecting the Committee's recommendations and submit a schedule for implementing all or a portion of the Committee's recommendations.

New Rule, R.1993 d.223, effective May 17, 1993.

See: 25 N.J.R. 622(a), 25 N.J.R. 1963(a).

Recodified from N.J.A.C. 2:76-2.4 by R.1999 d.198, effective June 21, 1999.

See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).

Law Review and Journal Commentaries

Right to Farm Act Pre-empts Local Land-Use Authority. Lewis Goldshore and Marsha Wolf, 168 N.J.L.J. 1134 (2002).

2:76-2.7 through 2:76-2.9 (Reserved)

2:76-2.10 Negotiation of conflicts between any person aggrieved by the operation of a commercial farm

(a) Any person aggrieved by the operation of a commercial farm shall first file a complaint in writing, with the applicable board or the Committee in counties where no board exists, prior to filing an action in court. The complaint shall include detailed facts concerning the contested operation or practice.

(b) If a board exists and the dispute concerns activities that are addressed by an agricultural management practice recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 2:76-2.2 or a site specific agricultural management practice adopted pursuant to N.J.A.C. 2:76-2.3, the board shall:

1. Contact the commercial farm operator to provide evidence pursuant to N.J.A.C. 2:76-2.3(b) that the agricultural operation is a commercial farm, and, if the board is satisfied that the operation is a commercial farm, hold a public hearing.

i. Testimony presented at the hearing may include verbal and written statements from aggrieved parties, the commercial farm operator, expert witnesses, and any other party deemed appropriate by the board; and

2. Issue findings and recommendations to the Committee, the aggrieved person, the municipality(ies) in which the commercial farm is located and the commercial farm operator within 60 days of receipt of the complaint.

i. The findings and recommendations of the board shall be in the form of a written narrative providing a summary of the testimony, any supporting documents, and a copy of the agricultural management practice or site specific agricultural operation or practice utilized by the board in its recommendations and any other information requested by the Committee.

ii. Any person aggrieved by the decision of the board shall appeal the decision to the Committee within 10 days of the receipt of the board's final decision. The Committee shall schedule a hearing pursuant to the provisions of 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, and make a determination within 90 days of receipt of the petition for review.

(1) The decision of the Committee shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.

(2) Any decision of the board that is not appealed shall be binding.

(c) If a board exists and the dispute concerns activities that are not addressed by an agricultural management practice recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 2:76-2.2 or a site specific agricultural management practice adopted pursuant to N.J.A.C. 2:76-2.3, the board shall forward the complaint to the Committee requesting the Committee's determination of whether the disputed agricultural operation constitutes a generally accepted operation or practice.

1. The board shall inform the Committee if it has received a request for recommending a site specific agricultural management practice and, if so, the status of the board's development of the site specific agricultural management practice.

2. Upon receipt of the request, the Committee shall contact the commercial farm operator to provide evidence that the agricultural operation is a commercial farm as defined at N.J.A.C. 2:76-2.1, and, if the Committee determines that the operation is a commercial farm, hold a public hearing.

i. Testimony presented may include verbal and written statements from aggrieved parties, the board or its staff, the commercial farm operator, expert witnesses and any other party deemed appropriate by the Committee.

3. The Committee shall issue findings and recommendations to the board, the aggrieved person, the municipality(ies) in which the commercial farm is located and the commercial farm operator.

i. The findings and recommendations of the Committee shall include a summary of the testimony and any supporting documents utilized by the Committee in its recommendations.

ii. The Committee's decision shall be considered a final administrative agency decision and shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.

New Rule, R.1999 d.198, effective June 21, 1999.
See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).

Law Review and Journal Commentaries

Right to Farm Act Pre-empts Local Land-Use Authority. Lewis Goldshore and Marsha Wolf, 168 N.J.L.J. 1134 (2002).

Case Notes

This section applies only in cases where the Board issues a decision in a dispute concerning activities that are addressed by an Agricultural Management Practice; therefore, the ALJ erred in relying, in part, on the regulation because petitioner's claim did not involve a dispute over an AMP, but, instead, whether the activities on the premises of an adjacent landowner were conducted for agricultural purposes. *Bohlin v. Brickyard*, OAL Dkt. No. ADC 743-08, Final Decision (November 5, 2009).

SUBCHAPTER 2A. AGRICULTURAL MANAGEMENT PRACTICES: GENERALLY ACCEPTED OPERATIONS AND PRACTICES

2:76-2A.1 Recommendation basis

The agricultural management practices recommended in this subchapter are recommended pursuant to N.J.A.C. 2:76-2.2.

2:76-2A.2 Apiary agricultural management practice

(a) The following words and terms, as used in this section, shall have the following meanings:

"Apiary" means one or more colonies of honey bees.

"Bee" means members of the genus *apis*.

"Colony" means a hive or swarm of bees.

"Hive" means the manmade structure which contains a colony of honey bees.

(b) All overwintering apiaries must be registered with the New Jersey Department of Agriculture, pursuant to N.J.A.C. 2:24-3.1 et seq.

(c) Overwintering apiaries, honey production apiaries, queen and package apiaries and bee colonies utilized for crop pollination will not exceed an average density of 50 colonies per acre.

(d) All colonies must be located at least 25 feet from a public sidewalk, alley, street or road.

(e) All apiaries must be at least 300 feet from any residence, excluding the residence(s) associated with the agricultural operation. If less than 300 feet from any residence, a six feet high solid fence or hedge must be erected buffering the residence.

(f) All apiaries must have on site an adequate source of water which is no more than one-half mile from the apiary.

(g) All bee equipment and hives must be maintained in good condition.

(h) All colonies must be kept in movable frame hives in accordance with N.J.S.A. 4:6-10.

2:76-2A.3 Poultry manure agricultural management practice

(a) The poultry manure agricultural management practice applies to agricultural operations, which store poultry manure prior to land application and land apply poultry manure as part of crop production practices. Poultry manure is collected and stored in a variety of ways, depending on the need of the producer. The methods used to collect, handle and store the manure greatly affect its quality. Manure often has to be

1.

Mounting	System Height	Size Of Occupied Area	Minimum Setback To an Adjacent Residence Existing at the Time of System Installation and Not Located on the Commercial Farm	Minimum Setback To Property Line or Public Roadway Right of Way	Required Screening
Ground	Up to two feet	Up to one acre	200 feet	100 feet	Not Required
Ground	Greater than two feet up to 10 feet	Up to one acre	300 feet	150 feet	Not Required
Ground	Up to 10 feet	Greater than one acre up to 10 acres	300 feet 400 feet	150 feet 300 feet	Required Not required
Ground	Greater than 10 feet up to 20 feet	Up to 10 acres	300 feet 500 feet	300 feet 400 feet	Required Not required

2. Solar energy generation facilities shall not exceed a maximum system height of 20 feet.

3. Solar energy generation facilities shall be located in a manner that minimizes views of the facilities from public roadways and existing residences not located on the commercial farm, by utilizing existing visual barriers including, but not limited to, buildings, trees, hedgerows and pre-existing natural topography to the maximum extent possible.

i. In the event that existing visual barriers do not fully obstruct the view of the solar energy generation facilities, the installation of vegetative screens is required in certain circumstances as identified in paragraph (g)1 above.

ii. The installation of required vegetative screens shall comply with the aesthetic standards of the conservation plan approved by the soil conservation district and implemented by the owner pursuant to N.J.S.A. 54:4-23.3c.

(1) The conservation plan approved by the soil conservation district must address the soil and water resource concerns outlined in the National and State Resources Concerns and Quality Criteria (Section III) and Practice Standards (Section IV) of the Natural Resources Conservation Service NJ-Field Office Technical Guide (NJ-FOTG). The conservation plan filed must include a completed and NRCS-approved CPA-52 Environmental Evaluation Worksheet.

iii. The aesthetic standards of the conservation plan shall address the following:

(1) The use of existing visual barriers, where practicable;

(2) The need for and location of vegetative screens, including the identification of appropriate species and varieties of vegetation, to ensure that there is adequate visual screening throughout the year; and

(3) The appropriate height or caliper of the vegetation to be planted to ensure that there is a 75 percent screening of the solar energy generation facilities from existing residences on adjacent properties and public roadways within five years of completing the installation of the facilities.

(h) The solar energy generation facilities shall be constructed to avoid solar reflection on adjoining properties and public roadways.

(i) The treatment of the land for purposes of constructing, installing, operating or maintaining the solar energy generation facilities within the occupied area shall be in accordance with the following standards:

1. The use of existing roadways to provide access to the solar energy generation facilities shall be maximized to avoid the construction of new onsite roadways to the extent practicable.

i. New roadways within the occupied area shall be designed as grassed roadways to minimize the extent of soil disturbance, water runoff and soil compaction.

ii. The use of geotextile fabrics and gravel placed on the surface of the existing soil for the construction of temporary roadways during the construction of the solar energy generation facilities is permitted provided that the geotextile fabrics and gravel are removed once the solar energy generation facilities are in operation;

2. The use of geotextile fabrics covered by a layer of gravel is permitted as a base for the installation of solar energy generation facilities provided that the system height is no greater than two feet and the occupied area does not exceed one acre;

3. The use of concrete or asphalt is prohibited within the occupied area, except as follows:

i. The mounting of inverters, transformers, power conditioning units, control boxes, pumps and other such system components;

ii. The mounting of solar photovoltaic panels, films and arrays when used as ballast, as described in paragraph (f)1 above; and

iii. The mounting of the solar photovoltaic panels, films and arrays, if determined necessary by a licensed professional engineer as described in paragraph (f)2 above;

4. Site disturbance including, but not limited to, grading, soil removal, excavation and soil compaction is limited to no more than one acre within the occupied area to ensure that the area can readily be returned to active agricultural or horticultural production after the removal of the solar energy generation facilities;

5. During construction and installation of the solar energy generation facilities, appropriate measures are taken to control soil erosion from wind and water including, but not limited to, the following:

i. The temporary stabilization of exposed areas using vegetative cover or mulch; and

ii. The application of non-potable water to exposed areas and the utilization of barriers to control air current and minimize soil blowing;

6. During operation and maintenance of solar energy generation facilities, appropriate measures are taken to address soil and water resource concerns in accordance with the conservation plan;

7. The use of geotextile fabrics is permitted only for the purpose of conducting agricultural or horticultural production within the occupied area, unless otherwise permitted in this section; and

8. Where it is not practicable to utilize the occupied area for agricultural or horticultural production in accordance with N.J.S.A. 54:4-23.1 et seq., the occupied area shall be maintained in a vegetative cover to prevent soil erosion, mowed on a regular basis and managed to prevent weeds or other invasive species from growing or spreading to other areas of the commercial farm or surrounding properties.

(j) Solar energy generation facilities shall be designed to comply with either of the following standards for sound emission:

1. The sound level shall not exceed 40 dBA when measured at any point on the property line of the commercial farm; or

2. The sound level shall not exceed the ambient sound levels measured at locations at the property line of the commercial farm that reasonably represent current or potential off-site sensitive receptors in accordance with the following requirements:

i. Ambient sound level measurements shall be made with an octave band sound level meter during day-

light hours for periods of at least one half hour and on three separate occasions, a minimum of four hours apart, representing morning, mid-day and evening, at least one of which should be during a non-rush hour. The meter shall be set for slow response with a one second sampling interval; and

ii. The data reported for each occasion shall be the octave band values (31.5 Hz to 8,000 Hz) from the one second sample that represents the L90 or Lmin broadband value ("unweighted" or "flat" response, for example, dBZ).

(k) All inverters, transformers, power conditioning units and other system components that are designed to convert or modify electric current, or transmit electricity to the transmission or distribution system, shall be secured and entirely contained within a structure, building or steel cabinet secured with an operating lock.

(l) There shall be no signs that are visible from any public road posted on the energy generation facilities, equipment and structures, except for the manufacturer's or installer's identification, appropriate warning signs or owner identification.

(m) The solar energy generation facilities shall be deemed abandoned and the facilities shall be decommissioned in those instances when they are no longer being utilized to produce solar energy for a period of 18 consecutive months.

1. The decommissioning of all solar energy generation facilities shall be subject to local ordinances.

2. The decommissioning of all solar energy generation facilities shall be done in accordance with a conservation plan designed to address the impacts of the decommissioning process.

i. The conservation plan approved by the soil conservation district shall require, at a minimum, that all solar energy generation facilities shall be removed from the commercial farm and that the land shall be restored in accordance with the conservation plan prepared pursuant to NJ-FOTG in order to achieve as much agricultural productivity of the soil as practicable.

New Rule, R.2011 d.222, effective August 15, 2011.
See: 43 N.J.R. 231(a), 43 N.J.R. 2157(a).

SUBCHAPTER 2B. SUPPLEMENTAL AGRICULTURAL ACTIVITIES

2:76-2B.1 Determination basis

Pursuant to N.J.S.A. 4:1C-9(i), the supplemental agricultural activities contained in this subchapter are determined to be eligible to receive the protection of the Right to Farm Act, N.J.S.A. 4:1C-1 et seq.

2:76-2B.2 Eligibility of pick-your-own operations for Right to Farm protections

(a) As used in this section, "pick-your-own operation" means a direct marketing alternative wherein retail or wholesale customers are invited onto a commercial farm in order to harvest agricultural, floricultural or horticultural products.

(b) A pick-your-own operation is determined to be a permissible activity entitled to receive the protections and benefits of the Right to Farm Act, provided that the commercial farm operation of which the pick-your-own operation is a component meets the criteria as set forth in N.J.S.A. 4:1C-9.

2:76-2B.3 Eligibility of equine activities for right to farm protections

(a) As used in this section, the following words and terms shall have the following meanings:

"All other land not devoted to agricultural or horticultural use" means land other than that used in connection with the farmhouse that is not devoted to an agricultural or horticultural use nor is necessary to support or enhance land actively devoted to an agricultural or horticultural use. This land is assessed and taxed in accordance with the true value standard.

"Appurtenant woodland" means woodland that is part of a farm qualified for farmland assessment. Usually this land is restricted to woodlots because of slope, drainage capability, soil type or typography. Such land has limited productive use but it provides a windbreak, watershed, buffers or controls soil erosion.

"Boarding" means providing horses that are not owned by the owner or operator of a commercial farm with shelter, feed, and care on a continuing basis. "Boarding" shall not be construed to mean "raising" as defined in this section.

"Concrete and asphalt area" means the area of the farm occupied by buildings, or the portions of buildings, which have permanent concrete or asphalt flooring and are used in support of equine activities; and paved parking, driveway, and other paved areas used in support of equine activities.

"Contiguous" means parcels or lots sharing common boundaries. Parcels or lots separated by roads shall be deemed contiguous.

"Cropland harvested" means land that is the heart of a farming enterprise and represents the highest use of land 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.

"Equine-related infrastructure" means buildings and other related structures used to conduct equine activities, and paved areas, including parking and driveway areas, used in support of equine activities and any appurtenant non-production areas immediately adjacent to or between such buildings, structures, and parking and driveway areas. Equine-related infrastructure shall include agricultural labor housing used to conduct equine activities but shall not include race tracks, the land under and land used in connection with a farmhouse, and all other land not devoted to agricultural or horticultural use, as defined in this section.

"Keeping" means providing horses owned by the owner or operator of a commercial farm with shelter, feed, and care on a continuing basis. "Keeping" shall not be construed to mean "raising" as defined in this section.

"Land under and land used in connection with farmhouses" means land on which a farmhouse is located, together with such land area as may be devoted to lawns, flower gardens, shrubs, swimming pools, tennis courts and like purposes related to the use and enjoyment of the farmhouse. This is land not deemed to be in agricultural or horticultural use and, therefore, is assessed and taxed in accordance with the true value standard, that is at its residential value.

"Non-appurtenant woodland" means woodland 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. It is actively devoted to the production for sale of tree and forest products.

"Non-contiguous" means parcels or lots not sharing common boundaries.

"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 a farm operation for land to fall in this category.

"Production area" means the area of the farm, not including the area occupied by equine-related infrastructure, that is in or available for agricultural production and falls within the land use classes "cropland harvested," "cropland pastured," "permanent pasture," "non-appurtenant woodland," or "appurtenant woodland" as established by the State Farmland Evaluation Advisory Committee, and defined in this section, not including freshwater wetlands that have not been modified for agriculture, as determined pursuant to (d) below.

"Raising" means promoting the physical growth of horses to their full-grown stage for the purpose of selling the horses for a profit.

"Rehabilitation" means the care of horses for the purposes of returning them to good health or useful condition.

“Total usable area” means the sum of the production area and the area occupied by equine-related infrastructure, as defined in this section.

“Training” means educating horses to increase their salable value as well as enhance their ability to perform specific tasks and interact productively with people for the purpose of selling the horses for a profit.

(b) The following activities are eligible for the protections and benefits of the Right to Farm Act, subject to the requirements set forth in (c), (d), (e), and (f) below:

1. The raising, breeding, keeping, boarding, training, and rehabilitation of horses;

2. Complementary equine activities that are associated with the activities specified in (b)1 above, including, but not limited to, clinics, open houses, demonstrations, educational camps, farm events, competitions, and rodeos, as long as these activities are related to the marketing of horses that are raised, bred, kept, boarded, trained or rehabilitated on the farm, and are in compliance with municipal requirements; and

3. The sale and distribution of manure and composted products produced on the farm to off-farm users, subject to the following:

- i. The manure must be generated on the farm, and composted products must be generated on the farm from materials generated on the farm, with the exception of soil amendments such as lime or super-phosphates that may be necessary;

- ii. Vehicular activity occurring on the farm for the purposes of the sale and distribution of manure and composted products described in (b)3i above is eligible for the protections of the Right to Farm Act; and

- iii. The sale or distribution of manure not generated on the farm, or of compost generated from either some or all off-farm components, is not eligible for the protections of the Right to Farm Act.

(c) The production area of a commercial farm must be greater than the area occupied by equine-related infrastructure in proportions set forth in (c)3 and 4 below.

1. The sum of the production area and the area occupied by equine-related infrastructure, as defined in this section, shall be referred to as the total usable area.

2. If a farm management unit consists of noncontiguous parcels of land, the total usable area shall be determined individually for each non-contiguous parcel.

3. For farms where the total usable area is 150 acres or less, the area occupied by equine-related infrastructure shall not exceed 15 percent to 25 percent of the total usable area.

- i. It shall be the responsibility of each county agriculture development board (CADB) to determine the maximum permissible percentage of total usable area occupied by equine-related infrastructure based on the level of, or proximity of the farm to, non-agricultural development. In counties where no CADB exists, it shall be the responsibility of the Committee to make this determination. This maximum permissible percentage shall not be less than 15 percent nor more than 25 percent.

4. For farms where the total usable area is greater than 150 acres, the area occupied by equine-related infrastructure may not exceed the sum of 15 percent to 25 percent of the first 150 acres of total usable area, as determined by the CADB or Committee pursuant to (c)3(i) above, plus 10 percent of all additional acres of total usable area above the first 150 acres of total usable area.

5. Concrete and asphalt area shall not exceed 15 percent of the total usable area of each non-contiguous parcel of the farm management unit.

(d) Evaluation of the calculations under (c) above shall be based on the following:

1. Geographical Information Systems (GIS) aerial mapping and New Jersey Freshwater Wetlands Data provided by the New Jersey Department of Environmental Protection (NJDEP), which will be used to determine the total usable area, the area occupied by equine-related infrastructure, and the concrete and asphalt area.

- i. If NJDEP wetlands maps are in dispute, further investigation and onsite analysis may be conducted by a licensed engineer or qualified wetlands consultant and/or a letter of interpretation may be issued by NJDEP to provide a more accurate assessment of the site conditions;

2. The farm's Form FA-1 filed pursuant to the Farmland Assessment Act of 1964, P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.), which will be used to determine the area occupied by land under and land used in connection with farmhouses, and all other land not devoted to agricultural or horticultural use;

3. A visual on-site inspection of existing equine-related infrastructure and concrete and asphalt areas to verify NJDEP GIS mapping, FA-1 form information, and CADB or Committee determinations.

- i. Equine-related infrastructure and concrete and asphalt areas existing on the farm but not on NJDEP GIS maps shall be measured either on-site or through certified engineering drawings obtained from the farmer.

- ii. If a matter involves proposed construction, the farmer shall provide written estimates of the area on which equine-related infrastructure would be con-