

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.2004 d.403, effective October 1, 2004.
See: 36 N.J.R. 2322(a), 36 N.J.R. 4927(a).

Chapter Expiration Date

Chapter 76, State Agriculture Development Committee, expires on October 1, 2009.

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 by 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 Pine-lands 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 readopted as R.2004 d.403, effective October 1, 2004. See: Source and Effective Date.

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SUBCHAPTER 1. AGRICULTURAL DEVELOPMENT AREAS

2:76-1.1 Applicability

This subchapter applies to County Agriculture Development Boards and Subregional Agricultural Retention Boards when identifying and receiving State Agriculture Development Committee certification for agricultural development areas.

2:76-1.2 Definitions

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

"Agricultural Development Area", hereinafter referred to as ADA, means an area identified by a county agriculture development board pursuant to the provisions of N.J.S.A. 4:1C-18 and certified by the State Agriculture Development Committee.

"Board" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a subregional agricultural retention board established pursuant to N.J.S.A. 4:1C-17.

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

Amended by R.1984 d.274, effective July 2, 1984.

See: 16 N.J.R. 947(a), 16 N.J.R. 1714(a).

Amendments to definitions.

2:76-1.3 Statutory criteria

(a) The board may, after public hearing, identify and recommend an area as an agricultural development area, which recommendation shall be forwarded to the county planning board. The board shall document where agriculture shall be the preferred, but not necessarily the exclusive, use of land if that area:

1. Encompasses productive agricultural lands which are currently in production or have a strong potential for future production in agriculture and in which agriculture is a permitted use under the current municipal zoning ordinance or in which agriculture is permitted as a non-conforming use;

2. Is reasonably free of suburban and conflicting commercial development;

3. Comprises not greater than 90 percent of the agricultural land mass of the county;

4. Incorporates any other characteristics deemed appropriate by the board.

2:76-1.4 Other criteria

(a) The factors in this section that shall be considered by the board in developing criteria for the identification of agricultural development area(s) shall include, but not necessarily be limited to, the following:

1. Soils;
2. Current and anticipated local land use plans and regulations;
3. Farmland assessment status;
4. Anticipated approvals for non-agricultural development;
5. Accessibility to publicly funded water and sewer systems;
6. Compatibility with comprehensive and special purpose county and State plans;
7. Proximity and accessibility to major highways and interchanges;
8. Minimum size of an ADA;
9. Landowner sign-up;
10. Land within boroughs, towns or cities;
11. Inclusion of entire or partial lots and blocks;
12. Land ownership;
13. Natural and special features;
14. Type and distribution of agriculture.

(b) Guidelines for interpretation of the above factors may be obtained from the committee upon request. Requests shall be addressed to:

The State Agriculture
Development Committee
PO Box 330
Trenton, New Jersey 08625-0330

2:76-1.5 Certification request

(a) In order to obtain committee certification of board approval of ADAs, the board shall submit the following to the committee:

1. Board certification that a hearing was held in compliance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.;

2. A copy of the approved minutes of the hearing which shall include a summary of the testimony;
3. A comprehensive report consisting of the following:
 - i. Discussion of factors considered for arriving at the adopted ADA criteria;
 - ii. Adopted criteria for ADA identification;
 - iii. A resolution of adoption of ADA(s);
 - iv. Map(s), preferably but not necessarily U.S.G.S. (1:24000), showing the general location of the ADA(s) as defined by the application of the criteria.

2:76-1.6 Committee review

- (a) The committee shall review board submissions pursuant to N.J.A.C. 2:76-1.5.
- (b) In order to certify, the committee must make a finding that the board's analysis of factors and resultant

criteria are reasonable and consistent with the provisions of this subchapter.

2:76-1.7 Certification

Upon compliance with the provisions of this subchapter, the committee shall present to the Secretary of Agriculture its findings and recommendations to certify, to certify with conditions, or deny the request made pursuant to N.J.A.C. 2:76-1.5.

SUBCHAPTER 2. RIGHT TO FARM

2:76-2.1 Definitions

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

New Rule, R.1999 d.367, effective October 18, 1999.

See: 31 N.J.R. 2023(a), 31 N.J.R. 3081(c).

Amended by R.2000 d.450, effective November 6, 2000.

See: 32 N.J.R. 2636(a), 32 N.J.R. 3974(a).

In (a) and (c), substituted references to 2000 for references to 1999.

2:76-2A.7 Natural resource conservation agricultural management practice

(a) The purpose of this section is to establish a generally accepted agricultural management practice for the implementation of a farm conservation plan for the conservation and development of soil, water and related natural resources on farmland.

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

“District” or “Soil Conservation District” (SCD) means a governmental subdivision of this State, organized in accordance with the provisions of N.J.S.A. 4:24-1 et seq.

“Farm conservation plan” means a site specific plan developed by the landowner and approved by the local soil conservation district which prescribes needed land treatment and related conservation and natural resource management measures including forest management practices that are determined practical and reasonable to conserve, protect and develop natural resources, to maintain and enhance agricultural productivity and to control and prevent non-point source pollution.

“United States Department of Agriculture, Natural Resources Conservation Service, (NRCS) Field Office Technical Guide” means a composite of national, regional, State and local data and standards derived primarily from local universities, NRCS and conservation district offices and cooperating conservation agencies which administer natural resource conservation programs.

(c) The implementation of a farm conservation plan on farmland shall be a generally accepted agricultural management practice recommended by the Committee.

1. A farm conservation plan shall be prepared in conformance with the following:

i. United States Department of Agriculture, Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG), revised April 20, 1998, incorporated herein by reference, as amended and supplemented; and

ii. Forest management practices shall be in accordance with standards and specifications adopted by the New Jersey Department of Environmental Protection, Bureau of Forest Management where such standards and specifications are not included in the NRCS FOTG.

2. For purposes of this recommended agricultural management practice, a farm conservation plan which

includes recommendations concerning land application of sewage sludge-derived products is not recommended as a generally accepted agricultural management practice by the Committee.

New Rule, R.2000 d.96, effective March 6, 2000.

See: 31 N.J.R. 3881(a), 32 N.J.R. 787(a).

2:76-2A.8 Agricultural management practice for on-farm compost operations operating on commercial farms

(a) Pursuant to the authority of N.J.A.C. 1:30-2.2, the State Agriculture Development Committee hereby adopts and incorporates by reference the Natural Resource, Agriculture, and Engineering Service’s “Field Guide to On-Farm Composting,” NRAES-114, as the agricultural management practice for on-farm compost operations operating on commercial farms, provided that:

1. Biosolids, including sludge derived materials, paper sludge, cotton sludge, slaughter wastes, and solid wastes subject to regulation under N.J.A.C. 7:26 are not part of the compost mixture;

2. The finished compost product is not distributed or sold to off-farm users;

3. The production or use of compost on a commercial farm be in accordance with the requirements of the Water Pollution Control Act, N.J.S.A. 58:10-1 et seq., N.J.A.C. 7:26A, N.J.A.C. 7:14A and this section;

4. Only finished compost meeting the product quality criteria at N.J.A.C. 7:26A-4.5(c) shall be land applied to commercial farms; and

5. The location of compost areas and the land application of compost to commercial farms shall be in conjunction with and conformance to a farm conservation plan prepared by the United States Department of Agriculture-Natural Resources Conservation Service (“USDA-NRCS”) and approved by the Soil Conservation District.

(b) Within one year of the start-up of the composting operation, commercial farm operators shall attend a composting course sponsored by the Rutgers Extension County Agricultural or Resource Management Agents or other courses approved by the New Jersey Department of Environmental Protection.

(c) Copies of the “Field Guide to On-Farm Composting” may be purchased from the Natural Resource, Agriculture, and Engineering Service, Cooperative Extension, 152 Riley Robb Hall, Ithaca, NY 14853-5701. Purchasing information is also available on the Natural Resource, Agriculture, and Engineering Service’s site on the World Wide Web at <http://www.NRAES.ORG>.

New Rule, R.2002 d.94, effective March 18, 2002.

See: 33 N.J.R. 2564(a), 34 N.J.R. 1262(c).

2:76-2A.9 Fencing installation agricultural management practice for wildlife control

(a) The installation of fencing on farmland for protection against wildlife damage shall be a generally accepted agricultural management practice recommended by the Committee.

1. The installation of fencing on farmland for protection against wildlife damage shall be performed in accordance with the following:

i. With respect to high-tensile woven wire fencing, the Rutgers Cooperative Extension publication entitled "High-Tensile Woven Wire Fences for Reducing Wildlife Damage," FS 8XX, which the State Agriculture Development Committee hereby adopts and incorporates by reference, as amended and supplemented, pursuant to N.J.A.C. 1:30-2.2;

ii. With respect to electric fencing, the Rutgers Cooperative Extension publication entitled "Vertical Seven-Wire Deer Control Fence," FS 151, which the State Agriculture Development Committee hereby adopts and incorporates by reference, as amended and supplemented, pursuant to N.J.A.C. 1:30-2.2; and

iii. The particular fence manufacturer's installation instructions and guidelines.

2. Pursuant to N.J.S.A. 4:1C-9, N.J.A.C. 2:76-2.3 and N.J.A.C. 2:76-2.4, a commercial farm operator shall request a site specific agricultural management practice recommendation from the appropriate County Agriculture Development Board or the State Agriculture Development Committee in counties where no County Agriculture Development Boards exist, when installing, maintaining or utilizing a type of fence not specifically recommended in this agricultural management practice.

3. Copies of "High-Tensile Woven Wire Fences for Reducing Wildlife Damage" and "Vertical Seven-Wire Deer Control Fence" may be obtained from Rutgers, The State University of New Jersey, Publications Distribution Center, RCE, Cook College, 57 Dudley Road, New Brunswick, NJ 08901-8520.

New Rule, R.2002 d.93, effective March 18, 2002.
See: 33 N.J.R. 2566(a), 34 N.J.R. 1263(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.

SUBCHAPTER 3. CREATION OF FARMLAND PRESERVATION PROGRAMS**Law Review and Journal Commentaries**

Farmlands—Municipal Land Use. Judith Nallin, 136 N.J.L.J. No. 12, 70 (1994).

2:76-3.1 Applicability

This subchapter provides for any eligible landowner to voluntarily petition a county agriculture development board or a subregional agricultural retention board for the creation of a farmland preservation program.

2:76-3.2 Definitions

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

"Agreement" means a legally binding written document between the landowner(s), and the board which must be signed by both parties and certified by the State Agriculture Development Committee to signify approval of a petition for creating a farmland preservation program.

"Agricultural Development Area" hereinafter referred to as ADA, means an area identified by a board pursuant to the provisions of N.J.S.A. 4:1C-18 and certified by the State Agriculture Development Committee.

"Board" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a subregional agricultural retention board established pursuant to N.J.S.A. 4:1C-17.

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

"Development easement" means an interest in land less than fee simple absolute title thereto, which enables the owner to develop the land for any nonagricultural purpose as determined by the provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32 and any relevant rules or regulations promulgated pursuant hereto.

"Farmland preservation program" means any voluntary program, the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the "Farmland Preservation Bond Act of 1981," P.L. 1981, C.276, which has as its principal purpose the long term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32 and the maintenance and support of increased agricultural production as the first priority use of that land.

"Petition" means a formal written document adopted by the board, which an eligible landowner must submit to the board when applying for inclusion in a farmland preservation program.

"Premises" means the property under easement which is defined by the legal metes and bounds description in the Agreement.

"Soil and water conservation project" means any project designed for the control and prevention of soil erosion and sediment damages, the control of pollution on agricultural lands, the impoundment, storage and management of water for agricultural purposes, or the improved management of land and soils to achieve maximum agricultural productivity.

Amended by R.1986 d.196, effective June 2, 1986.

See: 18 N.J.R. 508(a), 18 N.J.R. 1193(b).

Added definition "premises".