

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

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).

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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
 P.O. 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:

“Agricultural management practices” means practices which have been recommended by the State Agriculture Development Committee, and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., which shall include, but not necessarily be limited to, air and water quality control, noise control, pesticide control, fertilizer application, integrated pest management and labor practices.

“Board” means a county agriculture development board established pursuant to N.J.S.A. 4:1C-17 or a subregional agricultural retention board established pursuant to N.J.S.A. 4:1C-20.

“Commercial farm” means:

1. A farm management unit of no less than five acres producing agricultural or horticultural products worth \$2,500 or more annually, and satisfying 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.; or
2. A farm management unit less than five acres, producing agricultural or 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, N.J.S.A. 54:4-23.1 et seq.

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

“Farm management unit” means a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise.

“Farm market” means a facility used for the wholesale or retail marketing of the agricultural output of a commercial farm, and products that contribute to farm income, except that if a farm market is used for retail marketing at least 51 percent of the annual gross sales of the retail farm market shall be generated from sales of agricultural output of the commercial farm, or at least 51 percent of the sales area shall be devoted to the sale of the agricultural output of the commercial farm, and except that if a retail farm market is located on land less than five acres in area, the land on which the farm market is located shall produce annually agricultural or horticultural products worth at least \$2,500.

“Site specific agricultural management practice” means a specific operation or practice which has been recommended by the appropriate board, or in a county where no board exists, the Committee, to constitute a generally accepted agricultural operation or practice.

“State Soil Conservation Committee” means an agency of the State established pursuant to N.J.S.A. 4:24-1 et seq.

Amended by R.1984 d.275, effective July 2, 1984.
See: 16 N.J.R. 948(a), 16 N.J.R. 1714(b).

Definitions amended.

Amended and Recodified from 2:76-2.2 by R.1993 d.223, effective May 17, 1993.

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

Old section was “Applicability”. Revised definition “Agricultural management practices” and added new definition “State Soil Conservation Committee”.

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

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

In “Agricultural management practices”, inserted “, and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.,” following “Committee”; rewrote “Commercial farm”; and inserted “Farm management unit”, “Farm market” and “Site specific agricultural management practice”.

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).

2:76-2.2 Procedure for recommending agricultural management practices

(a) The Committee at its initiative may recommend agricultural management practices.

(b) Any person or organization may request the Committee to recommend agricultural management practices.

(c) In considering agricultural management practices, the Committee may consult with the following agencies, organizations, or persons:

1. The New Jersey Department of Agriculture;
2. The New Jersey Agricultural Experiment Station, including appropriate county agents;
3. County Agriculture Development Boards;
4. The State Soil Conservation Committee;
5. Any other states’ Departments of Agriculture, land grant institutions or Agricultural Experiment Stations;
6. The United States Department of Agriculture, or any other Federal governmental entity; or
7. Any other organization or person which may provide expertise concerning the particular practice.

(d) Upon the committee’s recommendation, the agricultural management practice shall be forwarded to the appropriate State departments and agencies and boards and any other individuals, officials or organizations deemed appropriate by the Committee. Agricultural management practices 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-empt's 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-empt's Local Land-Use Authority. Lewis Goldshore and Marsha Wolf, 168 N.J.L.J. 1134 (2002).

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 pursuant 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.

2:76-21.5 Amount of grant

(a) Grant amounts shall be 50 percent of the cost of creating and filling new staff positions. Cost shall be limited to the following:

1. Salary; and
2. Fringe benefits.

(b) A grant shall not exceed \$20,000 per county.

2:76-21.6 Applications

(a) A county shall obtain grant application forms from the Committee.

(b) Completed application forms shall be submitted to the Committee by January 17, 2002, for fiscal year 2002 and by April 1 for future grant requests.

(c) The application form shall request the following information:

1. County requesting grant;
2. Grant amount requested;
3. Title of new position created subsequent to January 2001, for purposes described in N.J.A.C. 2:76-21.4;
4. Agency or unit where the position will be established;
5. Person supervising position;
6. Salary and fringe benefits allocated to fund the position;
7. Verification that the position was approved by the Board of Chosen Freeholders or other appropriate authority;
8. Anticipated work hours and permanency of the position;
9. Anticipated duties of the position;
10. Copy (if available) and status of county's farmland preservation plan; and
11. Number and acres of applications pending pursuant to N.J.A.C. 2:76-21.7(a)2.

2:76-21.7 Awarding of grant

(a) The Committee shall determine the priority of allocating grants to counties according to the following factors:

1. Priority shall first be given to counties that have the most agricultural lands to potentially be preserved, indexed to the county in the State with the most agricultural land to potentially be preserved, based on the 1997 Agricultural Census or most current U.S. Agricultural Census data available and adjusted for acreage already preserved for agricultural purposes.

i. Grant applications shall be assigned a maximum of 50 points identifying farmland preservation potential based on the following formula:

$$\frac{\text{County Preservation Potential (Acres)}}{\text{County With Highest Preservation Potential (Acres)}} \times 50 = \text{---points}$$

2. Priority shall next be given to counties that have the most acreage from farmland preservation applications pending before the county and the Committee, indexed to the county in the State with the most acreage from farmland applications pending before the county and the Committee.

i. Grant applications shall be assigned a maximum of 25 points identifying applications pending based on the following formula:

$$\frac{\text{County Applications Pending (Acres)}}{\text{County With Most Applications Pending (Acres)}} \times 25 = \text{---points}$$

(b) Grants shall be awarded by the Committee in the order of those counties with the highest point total resulting from the combination of (a)1 and 2 above.

(c) The Committee shall enter into a grant agreement with the county.

2:76-21.8 Annual review

(a) A Board that has received a grant shall provide the Committee with an annual performance review of each new staff person that was funded with the grant indicating the benefits and accomplishments resulting from the position.

(b) Annual performance summaries shall be filed with the Committee by August 15 of each year a grant is awarded.