

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

AGRICULTURE

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

State Agriculture Development Committee Rules Agricultural Management Practice (AMP) for On- Farm Direct Marketing Facilities, Activities, and Events; Right to Farm Management Practices and Procedures

Proposed New Rules: N.J.A.C. 2:76-2.8 and 2A.13

**Proposed Amendments: N.J.A.C. 2:76-2.3, 2.4, and
2.5**

Proposed Repeal and New Rule: N.J.A.C. 2:76-2B.2

**Proposed Recodification with Amendments: 2:76-
2.10 as 2.7**

Authorized By: State Agriculture Development Committee, Susan E. Payne, Executive Director.

Authority: N.J.S.A. 4:1C-1 et seq., specifically, 4:1C-5.f.

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

Proposal Number: PRN 2013-101.

Submit comments by August 16, 2013 to:

Susan E. Payne, Executive Director
State Agriculture Development Committee
P.O. Box 330
Trenton, NJ 08625-0330

The agency proposal follows:

Summary

The State Agriculture Development Committee (“SADC” or “Committee”) proposes new N.J.A.C. 2:76-2A.13, establishing an agricultural management practice (AMP) for on-farm direct marketing facilities, activities, and events that commercial farms must comply with to receive the protections of the Right to Farm Act (Act), N.J.S.A. 4:1C-1 et seq. This AMP is designed to support and protect on-farm direct marketing operations by identifying safe, effective, and economically viable standards for commercial farms seeking the protections of the Act. In the development of this proposed new rule, the SADC consulted with representatives from the New Jersey Department of Agriculture, New Jersey Farm Bureau, State Board of Agriculture, Rutgers Cooperative Extension, county agriculture development boards (“CADBs” or board), towns, and farmers specializing in the direct marketing of agricultural products from various sectors of the agriculture industry, including viticulture, nursery, fruits, and vegetables.

The proposed new rule addresses on-farm facilities, activities, and events on commercial farms that are used to facilitate and provide for

direct, farmer-to-consumer sales, such as farm stands, farm stores, community-supported agriculture, pick-your-own farming operations, and associated activities and events that fit within the scope of the Act. The intent of this proposed new rule is to establish standards on which farmers, the public, municipalities, and CADBs can rely, and to provide standards that are performance-based, rather than prescriptive, in order to give reliable, Statewide guidance to farmers, towns, and others throughout New Jersey, while providing flexibility to commercial farm owners and operators in complying with this AMP.

In addition, the SADC proposes various amendments to N.J.A.C. 2:76-2.3, 2.4, 2.5, and 2.10, which set forth the procedures for the determination of site-specific agricultural management practices (SSAMPs) on, and the resolution of complaints against, commercial farms. These amendments clarify the roles of CADBs and the SADC in the Right to Farm review process in a manner consistent with the Act. The SADC proposes new N.J.A.C. 2:76-2.8 to establish hearing requirements for CADBs and the SADC when considering SSAMP requests by and complaints against commercial farms. Due to the addition of N.J.A.C. 2:76-2.8, N.J.A.C. 2:76-2.10 is proposed for recodification with amendments as N.J.A.C. 2:76-2.7.

Proposed N.J.A.C. 2:76-2A.13(b) sets forth the definitions of terms used in this section. “Agricultural output of a commercial farm” is defined as the items specified in N.J.S.A. 4:1C-9a and the value-added or processed products produced from those items, provided that the primary and predominant ingredients used to produce such products are grown or raised by the commercial farm. The term “agriculture-related educational activities” means on-farm educational offerings that have an agricultural focus and are related to marketing the agricultural or horticultural output of the commercial farm, and “ancillary entertainment-based activities” are non-agricultural offerings, commonly used as incidental components of on-farm direct marketing activities, which are accessory to, and serve to increase, the direct-market sales of the agricultural output of a commercial farm. Such activities are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products, and they may have a *de minimis* fee associated with them compared to the income generated from the sale of the agricultural output of the commercial farm. “Board” is defined as 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. The term “buffer” is defined as a setback distance and/or screening utilized by a commercial farm in conjunction with its on-farm direct marketing facilities, activities, or events.

The “commercial farm” definition is taken from N.J.S.A. 4:1C-3 and means a farm management unit of no less than five acres producing agricultural or horticultural products worth \$2,500 or more annually that satisfies the eligibility criteria for differential property taxation pursuant to the “Farmland Assessment Act of 1964,” P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.)(FAA), or 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 FAA. "Committee" is defined as the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4. The term "community supported agriculture (CSA) operation" is defined as an on-farm direct marketing method in which the retail sale of the agricultural output of a commercial farm is provided through a paid subscription and "CSA market and distribution area" is an on-farm direct marketing facility used by a CSA operation to organize and dispense CSA operation members' farm product shares and to market products that contribute to farm income.

The term "farm-based recreational activities" is defined as recreational offerings that are uniquely suited to occurring on a farm and also may include common outdoor recreation activities that are compatible with the agricultural use of the farm, where such offerings and activities are related to marketing the agricultural or horticultural output of the commercial farm. Such activities are accessory to, and serve to increase, the direct-market sales of the agricultural output of the commercial farm by enhancing the experience of purchasing agriculture products for the purpose of attracting customers to the commercial farm. The "farm management unit" definition is taken from N.J.S.A. 4:1C-3 and 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. The "farm market" definition is also taken from N.J.S.A. 4:1C-3 and 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 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. The term "hours of operation" is the time during which an on-farm direct marketing facility, activity, or event is open or offered to the public.

"On-farm direct marketing" is defined as the on-farm facilities, activities, and events that are used to facilitate and provide for direct, farmer-to-consumer sales of the agricultural output of the commercial farm and products that contribute to farm income. An "on-farm direct marketing activity" or "activity" is an agriculture-related happening made available by a commercial farm that is accessory to, and serves to increase, the direct-market sales of the agricultural output of the commercial farm. Such activities are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products and include, but are not limited to: agriculture-related educational activities; farm-based recreational activities; and ancillary entertainment-based activities. The term "on-farm direct marketing event" or "event" is defined as an agriculture-related function offered by a commercial farm that is accessory to, and serves to increase, the direct-market sales of the agricultural output of the commercial farm. Such events are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products; may include on-farm direct marketing activities as components; are either product-based or farm-based; and occur seasonally or periodically. Product-based events, provided they demonstrate the required relationship to marketing the output of the commercial farm, may include, but are not limited to: an apple, peach, strawberry, pumpkin, wine, or other agricultural or horticultural product festival held at a commercial farm that produces that particular product. Farm-based events, provided they demonstrate the required relationship to marketing the output of the commercial farm, may include, but are not limited to: seasonal harvest festivals held at a commercial farm that produces such seasonal farm products, farm open house events, CSA membership meetings, and farm-to-table events that showcase the agricultural output of the commercial farm. An "on-farm direct marketing facility" or "facility" is a type of farm market including the permanent, temporary, and/or moveable structures, improvements, equipment, vehicles, and apparatuses necessary to facilitate and provide for direct, farmer-to-consumer sales of the agricultural output of the commercial farm and products that contribute to farm income. Such facilities include various

types and sizes of direct marketing operations, including, but not limited to: farm stands; farm stores; CSA market and distribution areas; and pick-your-own (PYO) market areas. A facility may include one or more structures or a portion of a structure and a facility may utilize new or existing structures. A facility's structures may also be used for the commercial farm's other farm purposes, for instance: equipment storage, equipment maintenance, and the production, processing, packaging, storage, or wholesale marketing of the agricultural output of the commercial farm.

The term "pick-your-own (PYO) operation" is defined as an on-farm direct marketing method wherein retail or wholesale customers are invited onto a commercial farm in order to harvest and pay for agricultural or horticultural products. A "PYO market area" is the on-farm direct marketing facility used by a PYO operation to set up PYO activities and collect money for PYO crops harvested by customers. PYO market areas may be stand-alone facilities or part of other on-farm direct-marketing facilities. The definition recognizes that when a PYO is part of a CSA operation, the collection of money might not occur following harvesting. The term "products that contribute to farm income" is defined as complementary or supplementary products that are sold to help attract customers to the farm market through a broadening of the range of products available and an enhancement of the experience of purchasing the agricultural output of the commercial farm. "Complementary products" are defined as items commonly used to facilitate the use or consumption of the agricultural output of the commercial farm and promotional items that help market the commercial farm, and "supplementary products" are defined as the agricultural output of other farms, and additional customary food and drink items. The term "sales area" is defined as the indoor, outdoor, covered, and uncovered areas of an on-farm direct marketing facility whose primary and predominant use is the display, marketing, and selling of the agricultural output of a commercial farm and products that contribute to farm income. Sales areas do not include: PYO and other production fields; pastures and other areas occupied by livestock on a regular basis; non-public areas, such as areas used for the storage of equipment and other items; and areas dedicated to farm-based recreational activities. Covered sales areas include sales areas inside structures and sales areas underneath tents, awnings, and other canopies. The term "sanitary facilities" is defined as restrooms or portable toilets.

Proposed N.J.A.C. 2:76-2A.13(c) sets forth the hours of operation allowed for on-farm direct marketing facilities, activities, and events on commercial farms. On-farm direct marketing facilities and activities may be open or offered on weekdays, weekends, holidays, seasonally, for part of the year, or year-round, while on-farm direct marketing events may be offered on weekdays, weekends, holidays, seasonally, or for part of the year. The proposed new rule provides that hours of operation may be between 6:00 A.M. and 10:00 P.M. These hours may be temporarily extended to 11:00 P.M. in conjunction with seasonal on-farm direct marketing sales, activities, or events.

Proposed N.J.A.C. 2:76-2A.13(d) sets forth the standards for the lighting of on-farm direct marketing facilities, activities or events on commercial farms. When an on-farm direct marketing facility, activity, or event is open or offered after dark, a commercial farm shall provide, unless specified otherwise in this agricultural management practice, lighting for areas used by customers, such as walkways, parking areas, sales areas, activity areas, and event areas. This lighting shall provide, at a minimum, the amount of light necessary for customer safety. The proposed new regulation provides that all lighting, including security lighting, shall be provided with lights focused either downward or in, with an orientation designed to minimize light spilling off the site and to minimize impacts on adjacent off-farm residential buildings and streets. Lights shall not be focused directly onto public roads, and any temporary lighting shall be removed within 30 days after the activity or event has ended. Further, the proposed new rule provides that, in addition to the aforementioned standards, a commercial farm may use lighting for other farm management purposes, for example, for security. Security lighting may be used to help protect a farm's products or other physical or natural resources and to discourage trespassing and vandalism. However, aside from security lighting needed for other farm management purposes, lighting shall be turned off within half an hour of the close of business.

Proposed N.J.A.C. 2:76-2A.13(e) sets forth requirements for sanitary facilities at on-farm direct marketing facilities, activities or events on commercial farms. A commercial farm shall provide sanitary facilities if indoor seating space, outdoor picnic tables, or other areas are made available to enable customers to consume food on-site, and if an on-farm direct marketing activity or event promotes customers staying on-site for more than 90 minutes. The proposed new regulation also notes that sanitary facilities shall be provided when required pursuant to N.J.A.C. 8:24, Sanitation in Retail Food Establishments and Food and Beverage Vending Machines, or 5:23, New Jersey Uniform Construction Code. Further, the number of sanitary facilities provided shall be sufficient to accommodate, without causing long queues, the volume of visitors expected in conjunction with on-farm direct marketing facilities, activities, or events. In addition, the proposed new regulation provides that a commercial farm shall provide hand-sanitizing facilities for visitors to utilize after the use of the sanitary facilities, and sanitary facilities shall be located and managed with an appropriate cleaning schedule, so as to prevent adverse impacts, such as odors, on adjacent properties.

Proposed N.J.A.C. 2:76-2A.13(f) sets forth the safety requirements for on-farm direct marketing facilities, activities, and events on commercial farms. A commercial farm shall provide visitors with any rules or safety procedures associated with the on-farm direct marketing facilities, activities, and events that are provided, offered, or held. This information may be conveyed by farm staff, through posted signs or written handouts, or through other appropriate means, and may include notice that visitors share in the responsibility for their own safety, such as being aware of inherent risks, using common sense, and wearing farm-appropriate attire. The proposed new regulation also provides that hazardous materials shall be safely stored in a secure location and in compliance with relevant State and Federal laws, rules, and regulations.

Proposed N.J.A.C. 2:76-2A.13(g) sets forth the standards for the use of signs for on-farm direct marketing facilities, activities, and events on commercial farms. The proposed new regulation provides that a commercial farm may use permanent and temporary signs to promote its on-farm direct marketing facilities, activities, and events. The types and examples of permitted signs include, but are not limited to, directional signs, advance signs, signs promoting the products available for sale, and facility, activity, and event signs. The following general standards apply to all signs used for on-farm direct marketing facilities: first, signs shall be installed and maintained in a manner that does not pose a direct threat to public health and safety; signs shall not interfere with sight distances at street intersections, ingress and egress points to or from parking areas, and other locations. Second, signs may be attached to farm buildings, fences, or other structures or be freestanding, and signs may have information on both sides. Third, the use and location of signs shall comply with relevant Federal and State laws, rules, and regulations. Fourth, along the approach to the farm on the road on which the on-farm direct marketing facility, activity, or event is located, a commercial farm may install advance signs up to one-half mile away from the farm's entrance. Advance signs are designed to alert drivers of an approaching on-farm direct marketing facility, activity, or event and are generally located in close proximity to one another along the road approaching, and leaving, the site upon which the facility, activity, or event is located. Fifth, directional and other signs may be installed at key intersections or other important locations. Sixth, a commercial farm shall obtain the permission of the appropriate landowner or easement holder when locating signs at off-farm locations. Seventh, temporary signs promoting a seasonal on-farm direct marketing facility, activity, or event may be installed up to one month prior to the facility, activity, or event's seasonal opening and shall be removed within 15 days of seasonal closing. Finally, internally-lit and neon-type signs are not eligible for Right to Farm protection.

As to primary on-site farm business signs, the proposed new regulation provides that a commercial farm's primary on-site farm business sign shall comply with the following three standards: (1) the sign is set back at least 10 feet from the paved portion of the street right of way; (2) the maximum size, meaning the physical size of the sign and not the combined square footage of both sides, is 32 square feet; and (3) the maximum height to the top of the sign does not exceed 15 feet from the ground. The proposed new regulation also provides that a commercial

farm with frontage on multiple roads may install one primary on-site farm business sign on each additional road frontage in accordance with the requirements of this subsection.

As to the extent and size of signs for on-farm direct marketing facilities, activities, and events on commercial farms, the proposed new regulation provides that the maximum size of any one sign, meaning the physical size of the sign and not the combined square footage of both sides, is 16 square feet, and the total combined square footage of the signs cannot exceed 160 square feet. This number is calculated by adding the physical sizes of the signs and not the square footage of the signs' front and back sides. Further, if a commercial farm has multiple distinct and separate on-farm direct marketing locations, such as two on-farm direct marketing facilities located on two different properties within the farm management unit, each on-farm direct marketing location may utilize a total combined square footage of signs of 160 square feet. However, the provisions of N.J.A.C. 2:76-2A.13(g) do not apply to the commercial farm's primary on-site farm business sign(s), commercial billboards, New Jersey Department of Transportation Tourist Oriented Directional Signage (TODS), Farmland Preservation signs, signs whose sole purpose is to facilitate and provide for safe traffic movement directly onto or from the farm site, and signs within the interior of the farm that are not intended to be visible from a public right of way.

Proposed N.J.A.C. 2:76-2A.13(h) sets forth standards for parking areas for on-farm direct marketing facilities, activities, and events on commercial farms. In the absence of municipal standards for the construction of parking areas applicable to on-farm direct marketing facilities, the standards in this proposed new regulation shall apply to facilities' parking areas. The proposed new regulation provides that a commercial farm's parking areas for on-farm direct marketing facilities, activities, and events may include areas permanently devoted to parking, areas temporarily devoted to parking, or a combination of such areas. Areas permanently devoted to parking means areas utilized by the facility on a daily basis when the facility is open. Areas temporarily devoted to parking means areas utilized by the facility when additional parking capacity is needed on a short-term, temporary basis, such as in conjunction with seasonal on-farm direct marketing sales, activities, or events. The proposed new regulation also specifies standards that apply to all parking areas for on-farm direct marketing facilities, activities, and events. For instance, safe, off-road parking shall be provided. Parking shall not be located in a road right of way, and the number of spaces provided shall be sufficient to accommodate the normal or anticipated traffic volume for the commercial farm's on-farm direct marketing facilities, activities, and events. Also, ingress and egress points, driveway areas, and parking areas shall be arranged so as to provide for safe traffic circulation. This is intended to allow customers to safely pull off of and onto adjacent roadways, and to safely maneuver to and from parking areas and into and out of parking spaces. On-farm direct marketing facilities need adequate driveway access to enable customers to reach the facility from the adjacent roadway. Where applicable, parking areas shall accommodate bus traffic and allow for the safe unloading and loading of bus passengers. For areas permanently devoted to parking, the proposed new regulation provides that the types of surfaces and any physical improvements associated with areas permanently devoted to parking, such as curbing or landscaping, need not involve greater than the minimum level of improvements necessary to protect public health and safety.

Further, for areas temporarily devoted to parking for on-farm direct marketing facilities on commercial farms, the proposed new regulation provides additional standards. Areas temporarily devoted to parking shall require few or no improvements, so that they can easily be converted back to productive agricultural use once a farm's need for short-term additional parking ceases, and they may include, but are not limited to, hay fields, grass fields, pastures, and other crop fields, provided they have vegetative or organic mulch cover such that bare ground is not parked on. Moreover, the proposed new regulation provides that the slope of the land shall be considered to address issues related to: drainage; puddles, and pockets of standing water; and safety. The proposed new regulation states that the commercial farm shall mark, sign, or otherwise indicate where vehicles should be parked, and also provides standards for temporary parking during different weather conditions. For instance, during dry

conditions, areas temporarily devoted to parking shall be mowed, so that vegetation does not come in contact with the underside of customer vehicles, while during wet conditions, areas temporarily devoted to parking shall be managed to provide vehicles and pedestrians with safe and sufficient traction.

Proposed N.J.A.C. 2:76-2A.13(i) sets forth buffer standards for on-farm direct marketing facilities, activities and events on commercial farms. Generally, a commercial farm may utilize buffers as an effective tool to mitigate the impacts that on-farm direct marketing facilities, activities, or events may pose on adjacent properties, such as noise, dust, and light spillage. Buffers need not involve greater than the minimum setbacks and/or screening necessary to protect public health and safety and to mitigate unreasonably adverse impacts on adjacent properties. Also, when making determinations regarding the necessity or extent of buffers, consideration shall be given to the following: the nature of the existing adjacent property uses; the nature and scale of the commercial farm's on-farm direct marketing facilities, activities, and events; the frequency of the commercial farm's activities and events; the physical features and constraints of the commercial farm property; the presence or absence of existing on- or off-farm buffers; and the economic feasibility of using buffers.

The proposed new regulation also addresses setback requirements for on-farm direct marketing facilities, activities, and events on commercial farms. The setback requirements shall apply to the location of building and parking areas for on-farm direct marketing facilities. For new or expanded facilities' permanent structures, the proposed new regulation requires a 50-foot front-yard setback from the paved portion of the road right of way, a 50-foot side-yard setback from the property line, and a 50-foot rear-yard setback from the property line. For new or expanded activities and events, the proposed new regulation requires a 25-foot front-yard setback from the paved portion of the road right of way, a 50-foot side-yard setback from the property line, a 50-foot rear-yard setback from the property line, and a 100-foot setback from any existing, occupied residence not located on the farm. For new or expanded areas permanently devoted to parking, the proposed new regulation requires a 25-foot front-yard setback from the paved portion of the road right of way, a 50-foot side-yard setback from the property line, and a 50-foot rear-yard setback from the property line.

The proposed new regulation also provides that setbacks of a lesser distance than those previously specified may be permissible, provided that additional requirements are met. For instance, screening must be considered, and if appropriate, installed. Also, the combined setback distance and screening arrangement must receive approval as a site-specific AMP pursuant to N.J.A.C. 2:76-2.3 and 2.4. Further, such site-specific AMP determination must take into consideration adjacent property uses and buffers; the scale of the facility and intensity of its use; the nature, scale, and frequency of the activities and events; the physical features and constraints of the commercial farm property; and the economic feasibility of using buffers. For a CADB or the Committee to make such a site-specific AMP determination departing from the required setback provisions discussed in the preceding paragraph, a commercial farm must provide a legitimate farm-based reason for the departure and address the additional requirements listed in this paragraph.

The proposed new regulation also provides that existing on-farm direct marketing facilities, activities, or events, including existing areas permanently devoted to parking, are not subject in their current layout and configuration to the provisions discussed in the summary of subparagraphs (a)2ii through iv above, and if such facilities, activities, events, or parking areas are situated at lesser distances than the standards specified in the aforementioned subparagraphs, the use of screening for buffer purposes shall be considered. The proposed new regulation specifies that existing on-farm direct marketing activities or events, such as PYO activities, which are offered and located in different fields over time, shall not be considered new activities or events under N.J.A.C. 2:76-2A.13(i).

The proposed new regulation also addresses screening requirements for on-farm direct marketing facilities, activities, and events on commercial farms. When screening is used for buffer purposes, it shall consist of vegetation or structures, such as, but not limited to, trees, bushes, fences, or walls. If the screening is comprised of vegetation and if

it is used in conjunction with a facility, the existing or newly planted materials shall be grown in such a manner that there is 75 percent screening of the facility within five years. The proposed new regulation requires that, if the screening is comprised of vegetation and if it is used in conjunction with an activity or event offered in two or more consecutive years, the existing or newly planted materials shall be grown in such a manner that there is 75 percent screening of the activity or event within five years. The proposed new regulation also requires that, if the screening is comprised of a fence, wall, or another existing farm structure, then the fence, wall, or other existing farm structure shall be of sufficient height or construction to provide 75 percent screening of the facility, activity, or event. Moreover, the proposed new regulation requires that screening shall be installed if the distance between a new or expanded facility and an existing, occupied residence not located on the farm is less than 100 feet.

Proposed new N.J.A.C. 2:76-2A.13(j) sets forth standards for outdoor sales areas for on-farm direct marketing facilities, activities, and events on commercial farms. The proposed new regulation requires that outdoor sales areas be arranged so as to not interfere with safe pedestrian and vehicular traffic circulation.

Proposed new N.J.A.C. 2:76-2A.13(k) sets forth standards for the use of structures or improvements in conjunction with on-farm direct marketing activities and events on commercial farms. The proposed new regulation provides that existing agricultural structures or improvements may be used in conjunction with the offering of on-farm direct marketing activities and events, provided the use does not adversely affect the continued use of the structures or improvements for agricultural production purposes. The proposed new regulation also provides that new structures or improvements may be constructed and used in conjunction with the offering of on-farm direct marketing activities and events, provided this construction and use has a negligible impact on the farm's continued use of the land for agricultural production purposes. If such structures or improvements are temporary and used in conjunction with a temporary or seasonal activity, the structures or improvements shall be removed within 30 days of cessation of the activity or event. The proposed new regulation also requires that the use and construction of structures or improvements comply with relevant Federal and State laws, rules, and regulations.

Proposed new N.J.A.C. 2:76-2A.13(l) sets forth the requirement that on-farm direct marketing activities and events shall have a negligible impact on the farm's continued use of the land for agricultural production purposes.

Proposed new N.J.A.C. 2:76-2A.13(m) sets forth standards for the following on-farm direct marketing activities: pick-your-own activities; choose-and-cut Christmas tree activities; corn, sunflower, and other crop mazes; hayrides and wagon rides; livestock and animal activities; and bonfires.

For pick-your-own activities, the proposed new regulation requires that visitors be informed of any rules to follow and instructed as to which fields they are permitted to harvest, and that the fields open for PYO activities shall be clearly marked. The proposed new regulation provides that parking areas may be adjacent to or near PYO fields, particularly if such fields are far from the farm's PYO market area, and PYO market areas shall comply with applicable standards for on-farm direct marketing facilities.

For choose-and-cut Christmas tree activities, the proposed new regulation requires that visitors be informed of any activity and equipment rules and the location(s) where Christmas trees may be selected and cut. The proposed new regulation provides that customers may be allowed to cut their own Christmas trees, but they shall not be supplied with power equipment or be permitted to use motorized tree baling equipment. In addition, the proposed new regulation states that choose-and-cut Christmas tree market areas shall comply with applicable standards for on-farm direct marketing facilities.

For corn, sunflower, and other crop mazes, the proposed new regulation requires that visitors be informed of any rules associated with the maze, including how to exit the maze in the event of an emergency. The proposed new regulation also requires that farm staff walk through the maze periodically, or periodically observe the maze from an elevated location, to check for lost visitors, and farm staff shall similarly check for

lost visitors before closing the maze. The proposed new regulation also sets forth that, if a maze is open after dark, adequate lighting shall be provided by the commercial farm and/or used by visitors to illuminate the traveled paths. If lighting is provided, the lighting shall be turned off within a half an hour of the close of business. Further, the proposed new regulation states that no smoking or any other open flames shall be permitted in or near the maze.

For hayrides and wagon rides, the proposed new regulation provides that wagons be in good repair and have sideboards to contain occupants. In addition, the use of a ladder, ramp, footstool, steps, or other stable device or component is required to assist with the safe boarding of and disembarking from wagons. The proposed new regulation also states that, when using a tractor to tow wagons, the left and right brakes of the tractor shall be locked together, and no smoking or any other open flames are permitted on hayrides and wagon rides. The proposed new regulation also includes specific requirements for wagon operators. For instance, wagon operators must have a current motor vehicle operator's license, operate tractor and wagon equipment in low gears and at safe speeds, and plan ride routes in advance. Further, the proposed new regulation requires that wagon operators be familiar with and have experience in both operating the tractor and wagon equipment, as well as using draft animals, if applicable. The proposed new regulation also requires that wagon operators evenly distribute passengers on the wagons and instruct passengers to remain seated during the rides.

For livestock and animal activities, the proposed new regulation requires that a farm employee or activity attendant shall regularly monitor activities in which visitors may have incidental contact with agricultural animals. Incidental contact includes, but is not limited to, agricultural animal display, petting, or feeding areas. The proposed new regulation also states that a farm employee or activity attendant shall be present at all times to monitor activities in which visitors are permitted to have direct contact with agricultural animals. Direct contact includes, but is not limited to, horseback riding, pony rides, and animal shows, competitions, or demonstrations. Additionally, the proposed new regulation provides that all agricultural animals having incidental or direct contact with the public shall be observed daily for health problems by a farm employee or activity attendant, and that sick animals or animals behaving strangely shall be prevented from having contact with the public. The proposed new regulation also provides that hand-sanitizing facilities must be provided and readily available if an activity is offered in which visitors may have incidental or direct contact with agricultural animals. Hand-sanitizing facilities include running water with soap, antibacterial hand wipes, waterless hand sanitizers, and/or other hand-washing stations. In addition, visitors must be advised to sanitize their hands after contact with agricultural animals. The proposed new regulation also requires that visitors be advised not to feed agricultural animals unless the feed has been specifically provided by the farm, and that visitors' pets and animals are not allowed in areas with agricultural animal activities, unless in connection with a specific agricultural purpose, including, but not limited to, agricultural animal shows, competitions, or demonstrations. Finally, the proposed new regulation notes that the management of animals shall comply with the Animal Welfare Act, 7 U.S.C. § 54, and the Humane Treatment of Domestic Livestock regulations, N.J.A.C. 2:8, as applicable, and any other relevant State and Federal laws, rules, or regulations.

For bonfires, the proposed new regulation requires that a commercial farm conducting a bonfire shall comply with Uniform Fire Code requirements, N.J.A.C. 5:70-2.7, and any other relevant State and Federal laws, rules, or regulations, and that a farm employee must be present for the duration of the bonfire to monitor and oversee the activity.

Proposed new N.J.A.C. 2:76-2A.13(n) sets forth the requirements for event management plans for on-farm direct marketing events on commercial farms. Specifically, if the expected volume of traffic and visitors for an event is significantly greater than the volume regularly accommodated by a commercial farm's on-farm direct marketing facility, such that the increased volume of traffic is likely to interfere with the movement of normal traffic or emergency vehicles on- and off-site, the farm shall create and implement a written event management plan to address public health and safety issues including, but not limited to, emergency vehicle access, traffic management, and public health management. The proposed new regulation requires that a complete copy

of the plan be provided to the clerk of the municipality in which the commercial farm is located at least 30 days in advance of the event as an advisory notice and to enable coordination between the commercial farm and municipality that may be necessary regarding emergency vehicle access, traffic, and public health management. This requirement may be satisfied by obtaining a special events permit, or its equivalent, from the municipality in which the commercial farm is located. The proposed new regulation further provides that if an event of the type described in paragraph (n)1 occurs periodically or more than once per year and occurs under the same basic conditions, a commercial farm may satisfy the provisions of paragraph (n)1 for the multiple events by submitting a single event management plan that notes the multiple occurrences of the event.

Proposed new subparagraph (n)1ii specifies that "emergency vehicle access management" includes establishing the location(s) and manner in which emergency vehicles may access the farm if necessary. Proposed new subparagraph (n)1iii provides that "traffic management" includes providing safe ingress and egress, vehicular and pedestrian traffic flow, and utilizing parking attendants, signs, or other parking-related instructions to facilitate vehicular and pedestrian traffic flow onto, off of, and within the farm. It also includes establishing areas temporarily devoted to parking based on the volume of visitors expected, and establishing overflow parking areas in the event the planned-for parking capacity is exceeded. Moreover, the proposed new subparagraph provides that local police officers may be hired to assist with traffic management.

Proposed new subparagraph (n)1iv specifies that "public health management" includes providing sanitary facilities sufficient to accommodate, without causing long queues, the volume of visitors expected, and providing hand-sanitizing facilities for visitors to wash or sanitize their hands after the use of the sanitary facilities. Also included is the requirement that sanitary facilities be located and managed with an appropriate cleaning schedule, so as to prevent adverse impacts, such as odors, on adjacent properties. In addition, trash and recycling receptacles must be provided to accommodate the volume of visitors expected in order to prevent the accumulation of trash on the ground. Likewise, properly training and equipping commercial farm staff on how to handle an emergency situation during the event including, but not limited to, whether and how police, fire, or other entities should be contacted based on an actual emergency, is required.

Proposed new N.J.A.C. 2:76-2A.13(o) provides that the AMP for on-farm direct marketing facilities, activities, and events does not apply to overnight lodging and that the AMP shall not be construed to extend Right to Farm protection to overnight accommodations of any kind including, but not limited to, lodging and camping.

Proposed new N.J.A.C. 2:76-2A.13(p) states that a commercial farm seeking to establish a new, or expand an existing, on-farm direct marketing facility may apply to either the municipality or the CADB for approval of site plan elements. The proposed new regulation provides that a commercial farm applying to a municipality for approval of site plan elements may request the municipality consider waiving or reducing review requirements based on a consideration of relevant site-specific elements, such as the following: the farm's setting and surroundings; the scale of the facility and intensity of its use; the type and use of the public road on which the facility is located; and the minimum level of improvements necessary to protect public health and safety. Nothing in this regulation shall be construed as authorizing a municipality to waive or reduce review requirements that are required by State or Federal law, rules, or regulation. The proposed new regulation also requires that a commercial farm applying to a CADB or the Committee for approval of site plan elements shall request a site-specific AMP determination pursuant to N.J.A.C. 2:76-2.3 and 2.4. Also, the proposed new regulation requires that, if a commercial farm has previously obtained approval for an on-farm direct marketing facility, then such a facility closing seasonally and reopening the following year with the same total square footage of indoor and/or outdoor covered sales area as previously approved shall not be considered a new facility.

Proposed new N.J.A.C. 2:76-2A.13(q) sets forth the relevant Federal and State laws, rules, and regulations that on-farm direct marketing facilities, activities, and events must comply with. Those laws, rules, and regulations include, but are not limited to, the Highlands Water

Protection and Planning Act, N.J.S.A. 13:20-1 et seq.; and the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq.; and the New Jersey Uniform Construction Code, N.J.A.C. 5:23; the New Jersey Uniform Fire Code, N.J.A.C. 5:70; the Stormwater Management rules, N.J.A.C. 7:8; the State Highway Access Management Code, N.J.A.C. 16:47; the Sanitation in Retail Food Establishments and Food and Beverage Vending Machines, N.J.A.C. 8:24; and the Pinelands Comprehensive Management Plan, N.J.A.C. 7:50.

Proposed new N.J.A.C. 2:76-2A.13(r) provides that the AMP does not preclude a commercial farm from requesting a site-specific AMP determination for on-farm direct marketing facilities, activities, and events pursuant to N.J.A.C. 2:76-2.3 and 2.4. A CADB or the Committee, pursuant to N.J.A.C. 2:76-2.3 and 2.4, may make site-specific AMP determinations for facilities, activities, and events, provided such site-specific AMP determinations are consistent with the practices set forth in N.J.A.C. 2:76-2A.13. Further, if a commercial farm believes a municipality's standards for the construction of building and parking areas applicable to on-farm direct marketing facilities are unduly restrictive, or believes a municipality is unreasonably withholding local zoning approval related to a facility, the commercial farm may request that the appropriate CADB, or the Committee in counties where no CADB exists, make a determination in the matter by requesting a site-specific AMP pursuant to N.J.A.C. 2:76-2.3 and 2.4.

The SADC also proposes to amend the text and reorganize Right to Farm Act procedures set forth in N.J.A.C. 2:76-2.3, 2.4, 2.5, and 2.7 to make the rules clearer and more directly aligned with the statutory language of the Act. Existing N.J.A.C. 2:76-2.10, pertaining to disposition of Right to Farm complaints is proposed for recodification with amendments as N.J.A.C. 2:76-2.7, and hearing procedures are proposed as new N.J.A.C. 2:76-2.8, logically following the substantive rules related to site-specific AMP (SSAMP) requests and Right to Farm complaints.

The SADC proposes to amend N.J.A.C. 2:76-2.3, which addresses recommendations of SSAMP requests where a CADB exists. The heading of the section is proposed for amendment to change recommendations to determinations. The language of the section has been changed to be consistent with the express terms of N.J.S.A. 4:1C-9, recognizing that CADBs will be making SSAMP determinations, not recommendations. Existing N.J.A.C. 2:76-2.3(a) provides that a commercial farm owner satisfying eligibility criteria in N.J.S.A. 4:1C-9 may apply to a CADB, where a board exists, for an SSAMP. The proposed amendment to N.J.A.C. 2:76-2.3(a) clarifies that entitlement to Right to Farm protection is not only based on satisfying the eligibility requirements contained in N.J.S.A. 4:1C-9, but also on satisfying the criteria necessary for recognition as a "commercial farm" defined in N.J.S.A. 4:1C-3. Proposed new N.J.A.C. 2:76-2.3(a)1 allows for pre-application meetings between a commercial farm and CADB staff to discuss application requirements, procedures, and any other appropriate matters. In order that there be more logical sequencing of the rules, existing N.J.A.C. 2:76-2.3(c), providing for notice of an SSAMP application to the SADC and to the municipality in which the commercial farm is located, will be relocated as N.J.A.C. 2:76-2.3(b), which also cross-references N.J.S.A. 4:1C-3. Proposed new N.J.A.C. 2:76-2.3(d) is aligned with the introductory paragraph in N.J.S.A. 4:1C-9, which provides that agricultural operations satisfying commercial farm eligibility may engage in activities included in the list of permitted activities set forth in N.J.S.A. 4:1C-9.a through j. N.J.A.C. 2:76-2.3(d) provides that CADBs initially will determine whether the commercial farm operation or practice is included in one or more of the permitted activities listed in N.J.S.A. 4:1C-9. If the board determines that the farm operation is not a commercial farm pursuant to N.J.S.A. 4:1C-3 and/or that the operation or practice is not included in any of the activities permitted by N.J.S.A. 4:1C-9, then the board shall pass a resolution dismissing the request in accordance with N.J.A.C. 2:76-2.3(g). The resolution shall contain detailed findings of fact and conclusions of law, and references to any supporting documents in order to create a comprehensible record should an appeal be filed. The resolution must be forwarded to the commercial farm owner and/or operator, the SADC, the municipality or municipalities in which the commercial farm is located,

and any other individuals or organizations deemed appropriate by the board within 30 days of passage of the resolution.

Proposed new N.J.A.C. 2:76-2.3(e) addresses that, in the event the commercial farm owner or operator has sought approval of the agricultural operation or practice from the municipality in which the commercial farm is located, and subsequently applies for an SSAMP, the board shall consider, at a minimum, any operation or practice that has not been granted approval by the municipality. Further, proposed new N.J.A.C. 2:76-2.3(f) states that, if appropriate, one or more board members or board staff may inspect the farm operation to confirm commercial farm eligibility and/or to verify that the operation or practice is included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9. If board members conduct the inspection, the board shall ensure that less than a quorum, as defined in Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., is present at the inspection.

Proposed new N.J.A.C. 2:76-2.3(h) provides, as guidance for the board and/or board staff, a checklist of information to request from a farm owner or operator, so that the board can make its site-specific AMP determinations. The checklist will be used by the board only after it determines that the farm operation is a commercial farm pursuant to N.J.S.A. 4:1C-3 and that the operation or practice is included in any of the activities permitted by N.J.S.A. 4:1C-9. Proposed new N.J.A.C. 2:76-2.3(h) further directs that the checklist shall include, at a minimum, the following components: (1) site plan elements to identify site location, extent and orientation, existing and proposed site conditions, location and availability of development infrastructure, detailed parking and traffic improvements and dedications, drainage provision, and the location of signage and lighting; (2) a list of regulatory approvals or permit requirements; (3) a list of studies required to assess the suitability of the site and impacts of the operation or practice that is the subject of the application submitted pursuant to N.J.A.C. 2:76-2.3; (4) a schedule of municipal planning and zoning requirements, and exemptions from the schedule sought by the commercial farm; and (5) submittal of a farm conservation plan or documents showing active efforts to obtain a farm conservation plan in a timely manner. The SADC anticipates drafting a model checklist that may be used by the CADBs.

Proposed new N.J.A.C. 2:76-2.3(h)3 provides that the board and/or board staff shall have the discretion, subject to any limitations in relevant Federal or State laws, rules, and regulations, to waive, reduce, and/or determine the nonapplicability of checklist items in its review of an application filed by a commercial farm owner and/or operator pursuant to N.J.A.C. 2:76-2.3, and the board may delegate this function to board staff. Further, in making such decisions, the board and/or board staff shall consider relevant site-specific elements such as, but not limited to: (1) the farm's setting and surroundings; (2) the scale and intensity of the proposed operation(s) or practice(s); (3) the type and use of the public road on which the operation or practice is located; and (4) when applicable, the minimum level of improvements necessary to protect public health and safety. Proposed new N.J.A.C. 2:76-2.3(h)4 states that, subject to the provisions of N.J.A.C. 2:76-2.3(k), the board may retain jurisdiction over any or all municipal ordinances and/or county resolutions related to the commercial farm owner or operator's application for a site-specific AMP determination. This is consistent with the New Jersey Supreme Court's holding in *Township of Franklin v. den Hollander*, 172 N.J. 147 (2002), which directed that the boards have primary jurisdiction over disputes between commercial farms and municipalities, though the CADBs must give appropriate consideration to local ordinances and regulations and balance the public interest expressed in those local laws with the farmer's interest in conducting legitimate agricultural operations. Finally, proposed new N.J.A.C. 2:76-2.3(h)5 provides that the commercial farm owner or operator may employ appropriate professional(s), at the commercial farm owner or operator's sole expense, as it determines necessary to prepare the application and checklist items and to testify before the board in support of the application.

Proposed new N.J.A.C. 2:76-2.3(i) provides that the board will hold a public hearing on the SSAMP application in accordance with the procedures set forth in N.J.A.C. 2:76-2.8, if the board determines that a commercial farm owner or operator's site-specific AMP application and checklist items are complete.

Existing N.J.A.C. 2:76-2.3(d) is proposed for recodification as N.J.A.C. 2:76-2.3(j). In response to concerns raised by CADBs regarding expertise in dealing with particular SSAMP issues, the SADC proposes to amend this subsection to allow for the board to consult with county engineering staff and/or any other licensed professional employed by the county when determining whether or not to approve a site-specific AMP, and to make it clear that the board is making a determination, not a recommendation.

Proposed new N.J.A.C. 2:76-2.3(k) directs that the board shall have no authority to determine the commercial farm owner or operator's compliance with State laws, rules, and regulations delegated to the municipality or county for administration and enforcement, including stormwater management and construction code requirements, unless the municipal ordinance or county resolution, or any portion(s) thereof, effectuating the delegation exceed(s) State regulatory standards. Proposed new N.J.A.C. 2:76-2.3(k) also provides that, if a municipal ordinance or county resolution, or any portion(s) thereof, exceed(s) State regulatory standards, then the board shall have the authority to determine whether the ordinance or resolution, or portion thereof, that exceeds such State regulatory standards is preempted by the board's approval of the commercial farm owner or operator's site-specific agricultural management practice.

Existing N.J.A.C. 2:76-2.3(e) is proposed for recodification with amendments as N.J.A.C. 2:76-2.3(l). The proposed amendments require the board to pass a resolution granting, with or without conditions, or denying the request for a site-specific AMP determination. The resolution shall contain detailed findings of fact and conclusions of law, including commercial farm eligibility, the relationship(s), if any, between the operation or practice that is the subject of the application submitted pursuant to N.J.A.C. 2:76-2.3 and any activity permitted pursuant to N.J.S.A. 4:1C-9, and include references to any supporting documents. The subsection also provides that the resolution shall be forwarded to the commercial farm owner and operator, the Committee, the municipality(ies) in which the commercial farm is located, and any other individuals or organizations deemed appropriate by the board within 30 days of passage of the resolution, adding the municipality in which the commercial farm is located to the list of those that receive a copy of the resolution.

Existing N.J.A.C. 2:76-2.3(f) is recodified as N.J.A.C. 2:76-2.3(m). The SADC proposes to amend this subsection to change the term "board's final determination" to "board's decision" for consistency within the subsection.

N.J.A.C. 2:76-2.4, which addresses determinations of site-specific AMPs where a CADB does not exist, is proposed for amendment. Like proposed N.J.A.C. 2:76-2.3, 2.4 is proposed for amendment by replacing "recommendations" with "determinations" for consistency with the language in N.J.S.A. 4:1C-9. The proposed amendment to N.J.A.C. 2:76-2.4(a) allows a commercial farm owner or operator who meets the eligibility criteria pursuant to N.J.S.A. 4:1C-3 and 9 to submit an application to the SADC to determine if his or her operation constitutes a generally accepted agricultural operation or practice included within any of the permitted activities set forth in N.J.S.A. 4:1C-9. Existing N.J.A.C. 2:76-2.4(b) is proposed for deletion and replaced with language that makes this subsection consistent with N.J.A.C. 2:76-2.3, as proposed for amendment, as it directs that the provisions of N.J.A.C. 2:76-2.3(b) through (l) shall apply to the SADC's consideration of the request. N.J.A.C. 2:76-2.4(c) has also been amended to be consistent with N.J.A.C. 2:76-2.3, as proposed for amendment, as it requires the SADC to pass a resolution granting, with or without conditions, or denying the request for a site-specific AMP determination. As in proposed N.J.A.C. 2:76-2.3, the resolution shall contain detailed findings of fact and conclusions of law, including commercial farm eligibility, the relationship(s), if any, between the operation or practice which is the subject of the application submitted pursuant to N.J.A.C. 2:76-2.3 and any activity permitted pursuant to N.J.S.A. 4:1C-9, and include references to any supporting documents. Proposed N.J.A.C. 2:76-2.4(c) also provides that the resolution shall be forwarded to the commercial farm owner and commercial farm operator, if applicable, the municipality(ies) in which the commercial farm is located, and any other individuals or organizations deemed appropriate by the SADC within 30

days of passage of the resolution, adding the municipality in which the commercial farm is located to the list of those that receive a copy of the resolution. In addition, the decision of the SADC 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.

N.J.A.C. 2:76-2.5, which focuses on the utilization of AMPs and site-specific AMPs, is proposed for amendment to also include procedures for such uses. Existing N.J.A.C. 2:76-2.5(a) and (b) remain unchanged. The SADC proposes to add new N.J.A.C. 2:76-2.5(c) to provide that, if a commercial farm owner or operator believes a municipality or county's standards or requirements for agricultural operations or practices are unduly restrictive, or believes a municipality or county is unreasonably withholding approvals related to agricultural operations or practices, then the commercial farm owner or operator may request that the board, or the Committee in counties where no board exists, make a determination in the matter by requesting a site-specific agricultural management practice pursuant to N.J.A.C. 2:76-2.3 or 2.4, respectively.

Proposed new N.J.A.C. 2:76-2.5(d) provides that a commercial farm owner or operator shall not be precluded from requesting a site-specific AMP determination from a board, or from the Committee in counties where no board exists, pursuant to N.J.A.C. 2:76-2.3 or 2.4, respectively, for activities set forth in AMPs recommended by the Committee and adopted pursuant to the provisions of N.J.A.C. 2:76-2.2 and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. This new provision is designed to provide operational flexibility for a commercial farm. However, no site-specific AMP approval shall be granted if it is inconsistent with an AMP recommended by the Committee and adopted pursuant to the provisions of N.J.A.C. 2:76-2.2 and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.. Proposed new N.J.A.C. 2:76-2.5(e) to specify that a commercial farm owner and/or operator who obtains a site-specific AMP determination by resolution from the board, or from the Committee in counties where no board exists, may present the resolution to appropriate municipal officials in support of obtaining appropriate permits, if applicable.

Existing N.J.A.C. 2:76-2.10 is proposed for recodification with amendments as N.J.A.C. 2:76-2.7. The recodified section addresses, in a more comprehensive and logical fashion, the filing and handling of Right to Farm complaints in order to make the process consistent with the statutory language in the Act. The proposed amendments make the process more rational by increasing the involvement of CADBs during the initial stages of the complaint process; CADBs would perform the initial eligibility threshold screening on: (1) whether the farm meets the Right to Farm Act definition of commercial farm; and (2) whether the activity is included in the permitted activities in N.J.S.A. 4:1C-9. This process is in accordance with *Borough of Closter v. Abram Demaree Homestead, Inc.*, 365 N.J.Super. 338, (App. Div. 2004), which held that it is the CADBs that must first decide whether a farm meets the definition of a commercial farm under the Right to Farm Act and whether the farm's actions were agricultural management practices.

Proposed N.J.A.C. 2:76-2.7(b) provides that if a CADB exists, then the CADB shall contact the commercial farm owner or operator to provide evidence that the agricultural operation is a commercial farm pursuant to N.J.S.A. 4:1C-3. In turn, recodified N.J.A.C. 2:76-2.7(c) provides for CADB inspection of the farm similar to that as described in proposed N.J.A.C. 2:76-2.3(f), and the recodified subsection is substantially similar to the prior language codified at existing N.J.A.C. 2:76-2.10(b).

Pursuant to proposed new N.J.A.C. 2:76-2.7(d), if a CADB determines that the farm is a commercial farm and that the dispute involves agricultural activities addressed by an AMP or a previously-issued SSAMP, then the CADB will hold a public hearing in accordance with N.J.A.C. 2:76-2.3(k) and 2.8. Proposed N.J.A.C. 2:76-2.7(d)1 provides that the CADB decision shall be forwarded to the SADC, the aggrieved person, the municipality or municipalities in which the commercial farm is located, the commercial farm owner, and the commercial farm operator, if applicable, within 60 days of receipt of the complaint. Proposed N.J.A.C. 2:76-2.7(d)1i, as proposed for amendment, provides that the CADB decision shall be in the form of a resolution providing a summary of the testimony, detailed findings of fact and conclusions of law, references to any supporting documents, 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 SADC. N.J.A.C. 2:76-2.7(d)1ii is proposed for amendment to indicate that any appeal under this sub-paragraph is to be regarding a complaint against a commercial farm, in accordance with N.J.A.C. 2:76-2.7(b). Proposed N.J.A.C. 2:76-2.7(e), as amended, provides that, 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 approved by the board pursuant to N.J.A.C. 2:76-2.3, the board shall contact the farm owner to provide evidence that the farm operation is a commercial farm pursuant to N.J.S.A. 4:1C-3, rather than forward the complaint to the Committee for the Committee's determination. In addition, the board shall determine whether the commercial farm operation or practice in dispute involves agricultural activity, or activities, that is, or are, included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9.

Similar to N.J.A.C. 2:76-2.7(c), proposed new N.J.A.C. 2:76-2.7(f) provides that, if appropriate, one or more board members or board staff may inspect the farm operation to confirm commercial farm eligibility pursuant to N.J.S.A. 4:1C-3 and to verify that the disputed agricultural activity or activities is or are included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9. If board members conduct the inspection, the board shall ensure that less than a quorum, as defined in the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., is present at the inspection.

Proposed new N.J.A.C. 2:76-2.7(g) provides that, if the CADB determines that the dispute does not involve a commercial farm and/or does not involve agricultural activities included in the list of protected activities set forth in N.J.S.A. 4:1C-9, then the CADB shall dismiss the complaint by resolution, which shall contain detailed findings of fact and conclusions of law and references to any supporting documents. The resolution shall be transmitted to the commercial farm owner, the commercial farm operator, if applicable, the aggrieved person, the Committee, and the municipality or municipalities in which the farm operation is located within 60 days of receipt of the complaint.

Proposed new N.J.A.C. 2:76-2.7(h) deals with the procedures applicable to a Right to Farm complaint involving activities not addressed by an AMP or a previously-issued SSAMP. Initially the CADB must determine whether the farm against which the complaint is filed qualifies as a commercial farm and whether the activity in dispute is included in the list of activities set forth in N.J.S.A. 4:1C-9. If those criteria are satisfied, then, consistent with the specific statutory language in N.J.S.A. 4:1C-10.1(c), the CADB will forward the matter to the SADC for the limited purpose of determining whether or not the disputed agricultural operation constitutes a generally accepted operation or practice. In accordance with proposed N.J.A.C. 2:76-2.7(h)1, which is recodified from existing N.J.A.C. 2:76-2.7(c)1, the CADB must inform the SADC if it has received a request for an SSAMP determination and, if so, the status of the CADB's determination.

Upon receipt of the Right to Farm complaint, the SADC, pursuant to N.J.A.C. 2:76-2.7(h)2, which is recodified from existing N.J.A.C. 2:76-2.7(c)2 and 3, will review the CADB's decision that the farm is a commercial farm and that the dispute involves agricultural activities included in N.J.S.A. 4:1C-9. As part of its review, the SADC may contact the farm owner to provide additional information. The SADC will dismiss the complaint if it determines that the farm is not a commercial farm or the activities in dispute are not included in N.J.S.A. 4:1C-9. The SADC's decision shall be set forth in a resolution containing detailed findings of fact and conclusions of law, and references to any supporting documents. The resolution shall be transmitted to the commercial farm owner (which is proposed as new), the commercial farm operator, if applicable, the aggrieved person, and the municipality or municipalities in which the farm operation is located. Existing N.J.A.C. 2:76-2.10(c)3i is proposed for deletion as the essence of this regulation is proposed for relocation to N.J.A.C. 2:76-2.7(h)2. Existing N.J.A.C. 2:76-2.10(c)3ii is proposed for recodification as N.J.A.C. 2:76-2.7(h)2i, without change.

If, however, the SADC determines that the farm is a commercial farm and that the disputed agricultural activity is included in the list of

permitted activities set forth in N.J.S.A. 4:1C-9, then, pursuant to proposed new N.J.A.C. 2:76-2.7(i), and consistent with the text of N.J.S.A. 4:1C-10.1.c, the SADC will hold a public hearing limited to the specific issue of whether the disputed activity constitutes a generally accepted operation or practice. The hearing is to be held in accordance with N.J.A.C. 2:76-2.8. Proposed new N.J.A.C. 2:76-2.7(i)1 provides that, if the SADC determines that the disputed agricultural activity constitutes a generally accepted operation or practice, its determination shall be sent to the board for a public hearing on the allegations of the complaint filed by the aggrieved person against the commercial farm. Conversely, proposed new N.J.A.C. 2:76-2.7(i)2 provides that, if the SADC determines that the disputed agricultural activity does not constitute a generally accepted operation or practice, the complaint shall be dismissed. This SADC determination is considered a final administrative agency decision and it shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.

Proposed new N.J.A.C. 2:76-2.7(i)3 provides that the SADC's determination that the disputed activity either does or does not constitute a generally accepted operation or practice shall be in the form of a resolution containing detailed findings of fact, conclusions of law, and references to any supporting documents. The resolution shall be sent to the CADB, the aggrieved person, the municipality or municipalities in which the commercial farm is located, the commercial farm owner, and the commercial farm operator, if applicable.

Proposed new N.J.A.C. 2:76-2.7(j) follows N.J.S.A. 4:1C-10.1.c, by providing that, upon receipt of the SADC's determination that the disputed agricultural activity constitutes a generally accepted operation or practice, the CADB shall hold a public hearing on the allegations of the complaint filed by the aggrieved person against the commercial farm, and the CADB shall issue its findings and recommendations within 60 days of the receipt of the SADC's determination. The CADB's hearing shall be conducted in accordance with the procedures set forth in N.J.A.C. 2:76-2.8 and with the provisions of N.J.A.C. 2:76-2.3(k).

Proposed new N.J.A.C. 2:76-2.7(k) incorporates N.J.S.A. 4:1C-10.1.d by stating that any person aggrieved by the decision of the CADB regarding a complaint against a commercial farm in accordance with N.J.A.C. 2:76-2.10(c) shall appeal the decision to the SADC within 10 days from receipt of the CADB's decision. The SADC must then schedule a hearing and make a determination within 90 days of receipt of the petition for review. As provided in proposed new N.J.A.C. 2:76-2.7(k)1 and 2, the decision of the SADC shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court, and any decision of the CADB that is not appealed shall be binding.

Proposed new N.J.A.C. 2:76-2.8 establishes and clarifies hearing procedures for site-specific AMP requests and Right to Farm complaints. Proposed new N.J.A.C. 2:76-2.8(a) provides that the SADC and CADBs shall follow the procedures set forth in N.J.A.C. 2:76-2.8 for cases arising from the Right to Farm Act, N.J.S.A. 4:1C-1 et seq. and the Right to Farm rules set forth in N.J.A.C. 2:76-2, 2A, and 2B. Proposed new N.J.A.C. 2:76-2.8(b) provides that the procedures set forth in N.J.A.C. 2:76-2.8 shall apply only after the CADB or the Committee, where no CADB exists, determines that it has jurisdiction to hear the Right to Farm case.

In response to *Curzi v. Raub*, 415 N.J.Super. 1 (App. Div. 2010), proposed new N.J.A.C. 2:76-2.8(c) sets forth public notice requirements that generally follow those set forth in the Municipal Land Use Law and that are applicable to requests by a commercial farm for a site-specific AMP determination (see N.J.A.C. 2:76-2.3 and 2.4). Written notice of the request shall be given by the commercial farm, at its sole expense, via certified mail, return receipt requested, and/or by personal service, to: (1) the clerk and land use board secretary of the municipality in which the commercial farm is located; if the commercial farm is located within 200 feet of an adjoining municipality, then written notice of the request shall be given as set forth above to the clerk and land use board secretary of the adjoining municipality; (2) the owners of all real property, on the current tax duplicates, within 200 feet in all directions of the property upon which the commercial farm is located; the commercial farm shall be solely responsible to pay for and obtain a certified list of property owners in accordance with N.J.S.A. 40:55D-12.c; (3) the SADC; (4) the county planning board, if the commercial farm is located on property adjacent to

a county road or county-owned property; (5) the Commissioner of the New Jersey Department of Transportation, if the commercial farm is located on a State highway; and (6) the public, by publication in the official newspaper of the municipality, if there is one, or in a newspaper of general circulation in the municipality.

Proposed new N.J.A.C. 2:76-2.8(c)2 provides that written notice, as set forth in N.J.A.C. 2:76-2.8(c)1, shall state the date, time, and place of the hearing; the site-specific AMP(s) that will be considered at the hearing; the identity of the property upon which the commercial farm is located by street address, if any, or by reference to lot and block number(s); the location and times at which documents in support of the commercial farm's request are available at the office of the board; and advise that the board will accept public comments at and/or prior to the hearing. Moreover, the written notice must be served at least 10 days in advance of the hearing, and proof of service of the notice shall be provided by the commercial farm to the CADB. In addition, the proposed new rule directs that the CADB shall allow the applicant to respond to any written comments within such reasonable time as the CADB directs, and the hearing shall not begin until satisfactory proof of notice to all appropriate individuals has been provided by the commercial farm. The proposed new rule directs that the board hearing shall be conducted in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.

Proposed new N.J.A.C. 2:76-2.8(c)3i, ii, and iii incorporate portions of existing Right to Farm rules by stating that the testimony of all parties and witnesses shall be under oath or affirmation administered by the chairperson of, or counsel to, the board, and testimony presented at the hearing may include verbal and written statements from the commercial farm operator, expert witnesses, and any other party deemed necessary by the board. Further, the hearing shall not be bound by statutory or common law rules of evidence or any rule formally adopted in the New Jersey Rules of Evidence; however, the board may exclude irrelevant, immaterial, or unduly repetitive evidence. Finally, the hearing must be recorded utilizing a sound recording device or a stenographer, so that an adequate and comprehensible record is established.

Proposed new N.J.A.C. 2:76-2.8(d) sets forth the procedures applicable to a complaint by an aggrieved person against a commercial farm (see N.J.A.C. 2:76-2.7) and incorporates existing portions of the Right to Farm rules. The board shall provide notice of the complaint, in writing, to the commercial farm owner, the commercial farm operator, if applicable, the Committee, and to the municipality(ies) in which the commercial farm is located, within 10 days of receipt of the complaint. The board hearing shall be conducted in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. Proposed new N.J.A.C. 2:76-2.8(d)2i, ii, and iii incorporate portions of existing right to Farm rules by stating that the testimony presented at the hearing shall be under oath or affirmation administered by the chairperson of, or counsel to, the board, and it may include verbal and written statements from the commercial farm operator, expert witnesses, and any other party deemed necessary by the board. In addition, the proposed new regulation provides that the hearing shall not be bound by statutory or common law rules of evidence or any rule formally adopted in the New Jersey Rules of Evidence; however, the board may exclude irrelevant, immaterial, or unduly repetitive evidence. Finally, the hearing must be recorded utilizing a sound recording device or a stenographer, so that an adequate and comprehensible record is established.

Existing N.J.A.C. 2:76-2B.2, pertaining to eligibility of PYO operations is proposed for repeal and is replaced with a new rule containing a cross-reference to proposed new N.J.A.C. 2:76-2A.13, which, as discussed in detail above, sets forth the PYO operations rules.

As the SADC 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 proposed new rules, repeals, recodifications, and amendments will have a positive social impact by encouraging owners of commercial farms to promote on-farm direct marketing facilities, activities, and events for the public to experience. The proposed new rules, repeals, recodifications, and amendments will directly benefit the public by providing predictable standards for Right to Farm protection, thus

encouraging New Jersey communities to promote agriculture-related educational activities and farm-based recreational activities. Further, the proposed new rules, repeals, recodifications, and amendments will fulfill the community's desire for quality local produce in New Jersey, while also broadening the public's awareness and enjoyment of protected farm activities. It is anticipated that this increase in public awareness of farms will foster community support for agriculture and reduce Right to Farm issues between commercial farms and the public.

The SADC expects that the agricultural community and the general public will be supportive of the proposed new rules, repeals, recodifications, and amendments, as they establish clear standards for Right to Farm Act protections for on-farm direct marketing facilities, activities, and events on commercial farms. The proposed new rules, repeals, recodifications, and amendments strike an appropriate balance between the public interest as expressed in municipal and county regulation, the general public interest in accessing quality, locally-grown food, and the encouragement of agriculture as a viable business in New Jersey under the Right to Farm Act.

Economic Impact

The proposed new rules, repeals, recodifications, and amendments will provide economic benefits to commercial farms by enabling them to obtain Right to Farm Act protections for on-farm direct marketing facilities, activities, and events. The existence of clearer standards will provide commercial farms with the predictability needed to make more informed planning and investment decisions leading to an improved agricultural business climate and contributing positively to New Jersey's overall economic activity. The proposed new rules, repeals, recodifications, and amendments will promote expansion of existing on-farm direct marketing operations and encourage the creation of new on-farm direct marketing operations in the State.

The proposed new rules require that commercial farmers must, at their sole expense, provide written public notice of their SSAMP applications. Accordingly, this requirement will have an economic impact on commercial farmers who now must bear the cost of providing such notice. Further, commercial farmers may choose to incur survey, engineering and other professional costs in support of their request for SSAMP determinations, although the hiring of professional services is not required under the proposed new rules.

Consequently, the SADC expects that the proposed new rules, repeals, recodifications, and amendments will help strengthen New Jersey's agricultural industry by ensuring that commercial farms with on-farm direct marketing facilities, activities, and events are able to remain viable. As a result, it is anticipated that the proposed new rules, repeals, recodifications, and amendments will impart an increased opportunity for the general public to purchase local quality produce more conveniently, thus reducing traffic on public roads and the time and expense associated with travelling to supermarkets. The SADC anticipates that commercial farms in compliance with the new regulatory standards will attract more customers through direct marketing, thus improving profitability and contributing to a strong agricultural industry.

Moreover, the SADC expects that the proposed new rules, repeals, recodifications, and amendments, by promoting investment in, expansion and creation of on-farm direct marketing operations, will stimulate activity for New Jersey businesses that provide construction services, materials, and supplies to those operations.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules, repeals, recodifications, and amendments are governed by N.J.S.A. 4:1C-1 et seq., and are not subject to any Federal standards or requirements.

Jobs Impact

The proposed new rules, repeals, recodifications, and amendments could generate some new jobs if there is a substantial increase in on-farm direct marketing facilities, activities, and events on New Jersey farmland. The State's efforts to ensure that farms with on-farm direct marketing facilities, activities, and events are able to remain viable, while providing clear guidance to farm operators and municipalities regarding protected activities, could encourage the opening of additional on-farm businesses

in New Jersey, thus creating additional jobs. The SADC expects that the proposed new rules, repeals, recodifications, and amendments, by promoting investment in, expansion and creation of on-farm direct marketing operations, will stimulate job growth for New Jersey businesses that provide construction services, materials, and supplies to those operations.

By helping to maintain the economic viability of preserved farms and keeping New Jersey’s agricultural industry strong, the proposed new rules, repeals, recodifications, and amendments could also help provide better opportunities for on-farm employment.

Agricultural Industry Impact

The proposed new rules, repeals, recodifications, and amendments will have a positive impact on the agricultural industry. On-farm direct marketing is a growing part of the agricultural industry and important to farm viability. The proposed new rules, repeals, recodifications, and amendments apply to commercial farms seeking protections of the Right to Farm Act, and they establish consistent Statewide standards that address the issue of on-farm direct marketing practices that may be treated differently depending on the municipality and county in which the on-farm direct marketing operation is located. By promoting consistency, the proposed new rules, repeals, recodifications, and amendments will benefit the agricultural industry by clarifying the business opportunities available to eligible commercial farms regardless of their location in New Jersey.

The proposed new rules, repeals, recodifications, and amendments will help ensure that farms with on-farm direct marketing facilities, activities, and events are able to remain viable, provide the public with assurance that certain standards need to be met by farms to obtain Right to Farm Act protections, and provide clear guidance to farm operators, counties, and municipalities regarding protected activities.

Regulatory Flexibility Analysis

The majority of land potentially subject to the proposed new rules, repeals, recodifications, and amendments is owned by small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as they employ fewer than 100 employees full-time. Consistent with N.J.S.A. 52:14B-18.b, commercial farms seeking Right to Farm protection for on-farm direct marketing operations must comply with performance measures set forth in the proposed new rules, repeals, recodifications, and amendments rather than more prescriptive design standards. Any reporting, recordkeeping, and compliance requirements are as discussed in the Summary above.

The proposed new rules, repeals, recodifications, and amendments do not provide for different compliance requirements based on business size. Rather, the proposed new rules, repeals, recodifications, and amendments establish a consistent regulatory framework to ensure that all on-farm direct marketing facilities, activities, and events operate in a manner that protects the public health and safety. Any costs as a result of the proposed new rules, repeals, recodifications, and amendments are discussed in the Economic Impact above.

Housing Affordability Impact Analysis

The proposed new rules, repeals, recodifications, and amendments will have an insignificant impact on affordable housing in New Jersey. There is no evidence that the proposed new rules, repeals, recodifications, and amendments would evoke a change in the average costs associated with housing, generally, as the rules pertain to on-farm direct marketing facilities, activities, and events on commercial farms.

Smart Growth Development Impact Analysis

The proposed new rules, repeals, recodifications, and amendments will have an insignificant impact on smart growth development, and there is an extreme unlikelihood that they would evoke a change in housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey, because the regulation of on-farm direct marketing facilities, activities, and events is unrelated to, and will not substantially impair, smart growth development within participating municipalities.

In fact, the proposed new rules, repeals, recodifications, and amendments support the continued viability of agricultural operations, the overwhelmingly majority of which are located in Planning Areas 3, 4,

and 5, which is consistent with the State Development and Redevelopment Plan.

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

SUBCHAPTER 2. RIGHT TO FARM

2:76-2.3 [Recommendations] **Determinations** of [site specific] **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-3 and 9 may [make a request in writing] **submit an application** to the board to determine if his or her operation constitutes a generally accepted agricultural operation or practice **included in any of the permitted activities set forth in N.J.S.A. 4:1C-9.**

1. The commercial farm owner and/or operator and board staff may hold a pre-application meeting or meetings to discuss application requirements, board jurisdiction and procedures, and any other related matter.

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

(b)(c) In determining whether a commercial farm owner or operator meets the eligibility criteria pursuant to N.J.S.A. 4:1C-3 and 9, the board shall request the commercial farm owner or operator to provide the following in certification form:

1.-2. (No change.)

(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) The board shall determine whether the commercial farm operation or practice is included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9.

(e) In the event the commercial farm owner or operator has sought approval of the agricultural operation or practice from the municipality in which the commercial farm is located, the board shall consider, at a minimum, any operation or practice, the approval of which has not been granted by the municipality.

(f) If appropriate, one or more board members or board staff may inspect the farm operation to confirm commercial farm eligibility and/or to verify that the operation or practice is included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9. If board members conduct the inspection, the board shall ensure that less than a quorum, as defined in the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., is present at the inspection.

1. The board shall, at one or more regular meeting(s), determine commercial farm eligibility and/or determine whether the operation or practice is included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9.

(g) If the board determines that the farm operation is not a commercial farm pursuant to N.J.S.A. 4:1C-3 and/or that the operation or practice is not included in any of the activities permitted by N.J.S.A. 4:1C-9, then the board shall pass a resolution dismissing the request. The resolution shall contain detailed findings of fact and conclusions of law, and references to any supporting documents. The resolution shall be forwarded to the commercial farm owner and/or operator, the Committee, the municipality(ies) in which the commercial farm is located, and any other individuals or organizations deemed appropriate by the board within 30 days of passage of the resolution.

(h) Board checklist. If the board determines that the farm operation is a commercial farm pursuant to N.J.S.A. 4:1C-3 and that the operation or practice is included in any of the activities permitted by N.J.S.A. 4:1C-9, then the board and/or board staff may request that the commercial farm owner or operator provide information using a checklist adopted by the board.

1. The checklist shall enumerate the data and materials reasonably necessary for the board to make an informed judgment on an application.

2. The checklist shall include, at a minimum, the following components:

i. Site plan elements to identify site location, extent and orientation, existing and proposed site conditions, location and availability of development infrastructure, detailed parking and traffic improvements and dedications, drainage provision, and the location of signage and lighting;

ii. A list of regulatory approvals or permit requirements;

iii. A list of studies required to assess the suitability of the site and impacts of the operation or practice that is the subject of the application submitted pursuant to this section;

iv. A schedule of municipal planning and zoning requirements and exemptions from the schedule sought by the commercial farm; and

v. Submittal of a farm conservation plan or documents showing active efforts to obtain a farm conservation plan in a timely manner.

3. The board and/or board staff shall have the discretion to waive, reduce, and/or determine the nonapplicability of checklist items in its review of an application filed by a commercial farm owner and/or operator pursuant to this section. The board may delegate this function to board staff. In making such decisions, the board and/or board staff shall consider relevant site-specific elements, such as, but not limited to, the following:

i. The farm's setting and surroundings;

ii. The scale and intensity of the proposed operation(s) or practice(s);

iii. The type and use of the public road on which the operation or practice is located; and

iv. When applicable, the minimum level of improvements necessary to protect public health and safety.

4. Subject to the provisions of (k) below, the board may retain jurisdiction over any or all municipal ordinances and/or county resolutions related to the commercial farm owner or operator's application for a site-specific agricultural management practice determination.

5. The commercial farm owner or operator may employ appropriate professional(s), at the commercial farm owner or operator's sole expense, as it determines necessary to prepare the application and checklist items and to testify before the board in support of the application.

(i) If the board determines that the application and checklist items are complete, then the board shall hold a public hearing in accordance with the hearing procedures set forth in N.J.A.C. 2:76-2.8.

[(d)] (j) In [recommending site specific] determining whether or not to approve site-specific agricultural management practices, the board may consult with the following agencies, organizations, or persons:

1.-6. (No change.)

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

8. County engineering staff and/or any other licensed professional employed by the county; or

[8.] 9. (No change in text.)

(k) The board shall have no authority to determine the commercial farm owner or operator's compliance with State laws, rules, and regulations delegated to the municipality or county for administration and enforcement including stormwater management and construction code requirements, unless the municipal ordinance or county resolution, or any portion(s) thereof, effectuating the delegation exceed(s) State regulatory standards. If a municipal ordinance or county resolution, or any portion(s) thereof, exceed(s) State regulatory standards, then the board shall have the authority to determine whether the ordinance or resolution, or portion thereof, that exceeds such State regulatory standards is preempted by the board's approval of the commercial farm owner or operator's site-specific agricultural management practice.

[(e)] (l) [Upon the board's written recommendation, the site-specific agricultural management practice] The board shall pass a resolution

granting, with or without conditions, or denying the request for a site-specific agricultural management practice determination. The resolution shall contain detailed findings of fact and conclusions of law, including commercial farm eligibility, the relationship(s), if any, between the operation or practice that is the subject of the application submitted pursuant to this section and any activity permitted pursuant to N.J.S.A. 4:1C-9, and include references to any supporting documents. The resolution shall be forwarded to the commercial farm owner [or] and operator, the Committee, the municipality(ies) in which the commercial farm is located, and any other individuals or organizations deemed appropriate by the board within 30 days of passage of the [recommendation] resolution.

[(f)] (m) Any person aggrieved by any decision of a board regarding [site specific] 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 52:14F-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] decision.

1.-2. (No change.)

2:76-2.4 [Recommendations] Determinations of [site specific] 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-3 and 9 may [make a request in writing] submit an application to the Committee to determine if his or her operation constitutes a generally accepted agricultural operation or practice included in any of the permitted activities set forth in N.J.S.A. 4:1C-9.

[(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).]

(b) The provisions of N.J.A.C. 2:76-2.3(b) through (l) shall apply to the Committee's consideration of the application.

(c) [Upon the Committee's recommendation, the site specific] The Committee shall pass a resolution granting, with or without conditions, or denying the request for a site-specific agricultural management practice determination. The resolution shall contain detailed findings of fact and conclusions of law, including commercial farm eligibility, the relationship(s), if any, between the operation or practice that is the subject of the application submitted pursuant to N.J.A.C. 2:76-2.3 and any activity permitted pursuant to N.J.S.A. 4:1C-9, and include references to any supporting documents. The resolution shall be forwarded to the commercial farm owner [or] and commercial farm operator, if applicable, the municipality(ies) in which the commercial farm is located, and any other individuals or organizations deemed appropriate by the Committee within 30 days of passage of the resolution.

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

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

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

(c) If a commercial farm owner or operator believes a municipality or county's standards or requirements for agricultural operations or practices are unduly restrictive, or believes a municipality or county is unreasonably withholding approvals related to agricultural operations or practices, then the commercial farm owner or operator may request that the board, or the Committee in counties where no board exists, make a determination in the matter by requesting a site-specific agricultural management practice pursuant to N.J.A.C. 2:76-2.3 or 2.4, respectively.

(d) A commercial farm owner or operator shall not be precluded from requesting a site-specific agricultural management practice determination from a board, or from the Committee in counties where no board exists, pursuant to N.J.A.C. 2:76-2.3 or 2.4,

respectively, for activities set forth in agricultural management practices 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.

1. No site-specific agricultural management practice approval shall be granted if it is inconsistent 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.

(e) A commercial farm owner and/or operator who obtains a site-specific agricultural management practice determination by resolution from the board, or from the Committee in counties where no board exists, may present the resolution to appropriate municipal officials in support of obtaining appropriate permits, if applicable.

2:76-[2.10]2.7 [Negotiation] **Disposition** 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 with 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, then the board shall contact the commercial farm owner or operator to provide evidence that the agricultural operation is a commercial farm pursuant to N.J.S.A. 4:1C-3.

[(b)] (c) If [a board exists and] appropriate, one or more board members or board staff may inspect the farm operation to confirm commercial farm eligibility and/or to verify that 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] site-specific agricultural management practice [adopted] approved by the board pursuant to N.J.A.C. 2:76-2.3[, the board shall:]. If board members conduct the inspection, the board shall ensure that less than a quorum, as defined in the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., is present at the inspection.

[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]

1. The board shall, at one or more regular meeting(s), determine commercial farm eligibility and/or determine whether the operation or practice is included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9.

(d) If the board determines that the farm is a commercial farm pursuant to N.J.S.A. 4:1C-3 and that 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 approved by the board pursuant to N.J.A.C. 2:76-2.3, the board shall hold a public hearing in accordance with the hearing procedures set forth in N.J.A.C. 2:76-2.8 and with the provisions of N.J.A.C. 2:76-2.3(k).

[2.] 1. [Issue] The decision of the board, containing its findings and recommendations, shall be forwarded to the Committee, the aggrieved person, the municipality(ies) in which the commercial farm is located, the commercial farm owner, and the commercial farm operator, if applicable, within 60 days of receipt of the complaint.

i. The [findings and recommendations] decision of the board shall be in the form of a [written narrative] resolution providing a summary of the testimony, detailed findings of fact and conclusions of law, references to any supporting documents, [and] a copy of the agricultural management practice or [site specific] site-specific agricultural operation or practice utilized by the board in its [recommendations] decision, and any other information requested by the Committee.

ii. Any person aggrieved by the decision of the board regarding a complaint against a commercial farm in accordance with (b) above 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 52:14F-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)-(2) (No change.)

[(c)] (e) 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] site-specific agricultural management practice [adopted] approved by the board 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] contact the farm owner to provide evidence that the farm operation is a commercial farm pursuant to N.J.S.A. 4:1C-3.

1. The board shall determine whether the commercial farm operation or practice in dispute involves agricultural activity(ies) that is or are included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9.

(f) If appropriate, one or more board members or board staff may inspect the farm operation to confirm commercial farm eligibility and/or to verify that the operation or practice is included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9. If board members conduct the inspection, the board shall ensure compliance with the provisions of the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., if applicable.

(g) If the board determines that the dispute subject to (c) above does not involve a commercial farm as defined in N.J.S.A. 4:1C-3 and/or agricultural activity(ies) included in one or more of the protected activities set forth in N.J.S.A. 4:1C-9, then the board shall dismiss the complaint. The board's decision shall be set forth in a resolution containing detailed findings of fact and conclusions of law and references to any supporting documents. The resolution shall be transmitted to the commercial farm owner, the commercial farm operator, if applicable, the aggrieved person, the Committee, and the municipality(ies) in which the farm operation is located within 60 days of receipt of the complaint.

(h) If the board determines that the dispute subject to (c) above involves a commercial farm as defined in N.J.S.A. 4:1C-3 and agricultural activity(ies) included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9, then 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] site-specific agricultural management practice determination and, if so, the status of the board's [development of the site specific agricultural management practice] determination.

2. Upon receipt of the [request] complaint, the Committee shall [contact the commercial farm operator to provide evidence] review the board's determinations that the [agricultural operation is] dispute involves a commercial farm as defined [at N.J.A.C. 2:76-2.1,] in N.J.S.A. 4:1C-3 and[, if] agricultural activity(ies) included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9. As part of its review, the Committee may contact the farm owner to provide additional information. If the Committee determines that the [operation is] dispute does not involve 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] as defined in N.J.S.A. 4:1C-3 and/or agricultural activity(ies) included in one of more of the permitted activities set forth in N.J.S.A. 4:1C-9, then the Committee shall [issue] dismiss the

complaint. The Committee's decision shall be set forth in a resolution containing detailed findings of fact and conclusions of law and [recommendations] references to [the board,] any supporting documents. The resolution shall be transmitted to the commercial farm owner, the commercial farm operator, if applicable, the aggrieved person, and the municipality(ies) in which the [commercial] farm operation 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.] i. (No change in text.)

(i) If the Committee determines that the dispute subject to (c) above involves a commercial farm as defined in N.J.S.A. 4:1C-3 and agricultural activity(ies) included in one or more of the permitted activities set forth N.J.S.A. 4:1C-9, then the Committee shall hold a public hearing in accordance with the hearing procedures set forth in N.J.A.C. 2:76-2.8. The hearing shall be limited to consideration of whether or not the disputed agricultural activity constitutes a generally accepted operation or practice.

1. If the Committee determines that the disputed agricultural activity constitutes a generally accepted operation or practice, its determination shall be sent to the board for a public hearing on the allegations of the complaint filed by the aggrieved person against the commercial farm.

2. If the Committee determines that the disputed agricultural activity does not constitute a generally accepted operation or practice, the complaint shall be dismissed. The Committee's determination 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.

3. The Committee's determination pursuant to (i)1 or 2 above shall be in the form of a resolution containing detailed findings of fact and conclusions of law and references to any supporting documents. The resolution shall be sent to the board, the aggrieved person, the municipality(ies) in which the commercial farm is located, the commercial farm owner, and the commercial farm operator, if applicable.

(j) Upon receipt of the Committee's determination pursuant to (i)1 above, the board shall hold a public hearing on the allegations of the complaint filed by the aggrieved person against the commercial farm. The board shall issue its findings and recommendations within 60 days of the receipt of the Committee's decision. The board's hearing shall be conducted in accordance with the procedures set forth in N.J.A.C. 2:76-2.8 and with the provisions of N.J.A.C. 2:76-2.3(k).

(k) Any person aggrieved by the decision of the board regarding a complaint against a commercial farm in accordance with (c) above shall appeal the decision to the Committee within 10 days from receipt of the board's decision. The Committee shall schedule a hearing 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.

2:76-2.8 Hearing procedures for Right to Farm cases

(a) The Committee and county agriculture development boards shall follow the procedures set forth in this section for cases arising from the Right to Farm Act, N.J.S.A. 4:1C-1 et seq. and the Right to Farm rules set forth at N.J.A.C. 2:76-2, 2A, and 2B.

(b) The procedures set forth in this section shall apply only after the county agriculture development board or the Committee determines that it has jurisdiction to hear the Right to Farm case.

(c) Procedures applicable to requests by a commercial farm for a site-specific agricultural management practice determination (see N.J.A.C. 2:76-2.3 and 2.4) shall be as follows:

1. Written notice of the request shall be given by the commercial farm, at its sole expense, via certified mail, return receipt requested, and/or by personal service, to:

i. The clerk and land use board secretary of the municipality in which the commercial farm is located. If the commercial farm is

located within 200 feet of an adjoining municipality, then written notice of the request shall be given as set forth in (c)1 above to the clerk and land use board secretary of the adjoining municipality;

ii. The owners of all real property, on the current tax duplicates, within 200 feet in all directions of the property upon which the commercial farm is located. The commercial farm shall be solely responsible to pay for and obtain a certified list of property owners in accordance with N.J.S.A. 40:55D-12.c;

iii. The State Agriculture Development Committee;

iv. The county planning board, if the commercial farm is located on property adjacent to a county road or county-owned property;

v. The Commissioner of the New Jersey Department of Transportation, if the commercial farm is located on a State highway;

vi. The public, by publication in the official newspaper of the municipality, if there is one, or in a newspaper of general circulation in the municipality.

2. The written notice set forth in (c)1 above shall state the date, time, and place of the hearing; the site-specific agricultural management practice(s) that will be considered at the hearing; the identity of the property upon which the commercial farm is located by street address, if any, or by reference to lot and block number(s); the location and times at which documents in support of the commercial farm's request are available at the office of the board; and advise that the board will accept public comments at and/or prior to the hearing.

i. The board shall allow the applicant to respond to any written comments within such reasonable time as the board directs.

ii. The written notice set forth in (c)1 above shall be served at least 10 days in advance of the hearing, and proof of service of the notice shall be provided by the commercial farm to the board.

iii. The hearing shall not begin until satisfactory proof of notice to all appropriate individuals has been provided by the commercial farm.

3. The board hearing shall be conducted in accordance with the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.

i. The testimony of all parties and witnesses shall be under oath or affirmation administered by the chairperson of, or counsel to, the board. Testimony presented at the hearing may include verbal and written statements from the commercial farm operator, expert witnesses, and any other party deemed necessary by the board.

ii. The hearing shall not be bound by statutory or common law rules of evidence or any rule formally adopted in the New Jersey Rules of Evidence; however, the board may exclude irrelevant, immaterial, or unduly repetitive evidence.

iii. The hearing shall be recorded utilizing a sound recording device or a stenographer.

(d) Procedures applicable to a complaint by an aggrieved person against a commercial farm (see N.J.A.C. 2:76-2.7) shall be as follows:

1. The board shall provide notice of the complaint, in writing, to the commercial farm owner, the commercial farm operator, if applicable, the Committee, and to the municipality(ies) in which the commercial farm is located, within 10 days of receipt of the complaint.

2. The board hearing shall be conducted in accordance with the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.

i. The testimony of all parties and witnesses shall be under oath or affirmation administered by the chairperson of, or counsel to, the board. Testimony presented at the hearing may include verbal and written statements from the commercial farm operator, expert witnesses, and any other party deemed necessary by the board.

ii. The hearing shall not be bound by statutory or common law rules of evidence or any rule formally adopted in the New Jersey Rules of Evidence; however, the board may exclude irrelevant, immaterial, or unduly repetitive evidence.

iii. The hearing shall be recorded utilizing a sound recording device or a stenographer.

2:76-2A.13 Agricultural management practice for on-farm direct marketing facilities, activities, and events

(a) This section, which is an agricultural management practice, sets forth the standards for on-farm direct marketing facilities, activities, and events that commercial farms must comply with to receive the protections of the Right to Farm Act (Act), N.J.S.A. 4:1C-1 et seq. This section is designed to support and protect on-farm direct marketing operations by identifying safe, effective, and economically viable agricultural management practices for commercial farms seeking the protections of the Act.

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

“Agricultural output of a commercial farm” means the items specified in N.J.S.A. 4:1C-9.a that a commercial farm produces and the value-added or processed products produced from those items, provided that the primary and predominant ingredients used to produce such products are grown or raised by the commercial farm. Examples of unprocessed agricultural output include, but are not limited to: fruits, vegetables, nursery stock, bedding plants, cut flowers, Christmas trees, and forest and livestock products. Examples of value-added or processed agricultural output include, but are not limited to: meat products, dairy products, cider, canned goods, baked goods, prepared foods, cut firewood, and wreaths.

“Agriculture-related educational activities” means on-farm educational offerings that have an agricultural focus and are related to marketing the agricultural or horticultural output of the commercial farm. Such activities are accessory to, and serve to increase, the direct-market sales of the agricultural output of a commercial farm by enhancing the experience of purchasing agricultural products for the purpose of attracting customers to the commercial farm. Examples of agriculture-related educational activities may include, but are not limited to: school trips, hands-on farming activities, educational displays, farm tours, farm task experiences, wine tastings, agriculture-related lectures for clubs, farm open house days, and agriculture-related classes on topics, such as, but not limited to: canning, freezing, cooking with fresh produce, pie making, pruning, beekeeping, animal care, and gardening.

“Ancillary entertainment-based activities” means non-agricultural offerings, commonly used as incidental components of on-farm direct marketing activities, that are accessory to, and serve to increase, the direct-market sales of the agricultural output of a commercial farm. Such activities are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products. Examples of ancillary entertainment-based activities include, but are not limited to: background live or recorded music, face painting, story-telling, sandbox area, small swing set or playground equipment, pedal carts for children, and picnic tables. Such activities may have a fee associated with them, but such fees shall be *de minimis* compared to the income generated from the sale of the agricultural output of the commercial farm.

“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.

“Buffer” means a setback distance and/or screening utilized by a commercial farm in conjunction with its on-farm direct marketing facilities, activities, or events.

“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, P.L. 1964, c. 48 (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, P.L. 1964, c. 48 (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.

“Community supported agriculture (CSA) operation” means an on-farm direct marketing method in which the retail sale of the agricultural output of a commercial farm is provided through a paid subscription.

“Complementary products” means items commonly used to facilitate the use or consumption of the agricultural output of the commercial farm and promotional items that help market the commercial farm.

“CSA market and distribution area” means an on-farm direct marketing facility used by a CSA operation to organize and dispense CSA operation members’ farm product shares and to market products that contribute to farm income.

“Farm-based recreational activities” means recreational offerings that are uniquely suited to occurring on a farm and also may include common outdoor recreation activities that are compatible with the agricultural use of the farm, where such offerings and activities are related to marketing the agricultural or horticultural output of the commercial farm. Such activities are accessory to, and serve to increase, the direct-market sales of the agricultural output of the commercial farm by enhancing the experience of purchasing agriculture products for the purpose of attracting customers to the commercial farm. Examples of farm-based recreational activities uniquely suited to occurring on a farm may include, but are not limited to: corn, sunflower, and other crop mazes; hayrides and wagon rides; agricultural animal display or petting areas; farm tours; horseback riding; pony rides; and tractor pulls. Examples of farm-based recreational activities considered common outdoor recreation activities that are compatible with the agricultural use of the farm include, but are not limited to: hiking; bird watching; sleigh rides; hunting and fishing; and bonfires. Activities and related infrastructure not considered farm-based recreational activities include, but are not limited to: athletic fields; paintball; go-karting and other similar racetracks; carnival-type amusement rides; and the flying of hobby, private, or commercial aircraft.

“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 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.

“Hours of operation” means the time during which an on-farm direct marketing facility, activity, or event is open or offered to the public.

“On-farm direct marketing” means the on-farm facilities, activities, and events that are used to facilitate and provide for direct, farmer-to-consumer sales of the agricultural output of the commercial farm and products that contribute to farm income.

“On-farm direct marketing activity” or “activity” means an agriculture-related happening made available by a commercial farm that is accessory to, and serves to increase, the direct-market sales of the agricultural output of the commercial farm. Such activities are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products and include, but are not limited to: agriculture-related educational activities; farm-based recreational activities; and ancillary entertainment-based activities.

“On-farm direct marketing event” or “event” means an agriculture-related function offered by a commercial farm that is accessory to, and serves to increase, the direct-market sales of the agricultural output of the commercial farm. Such events are designed to attract customers to a commercial farm by enhancing the

experience of purchasing agricultural products; may include on-farm direct marketing activities as components; are either product-based or farm-based; and occur seasonally or periodically. Product-based events, provided they demonstrate the required relationship to marketing the output of the commercial farm, may include, but are not limited to: an apple, peach, strawberry, pumpkin, wine, or other agricultural or horticultural product festival held at a commercial farm that produces that particular product. Farm-based events provided they demonstrate the required relationship to marketing the output of the commercial farm, may include, but are not limited to: seasonal harvest festivals held at a commercial farm that produces such seasonal farm products, farm open house events, CSA membership meetings, and farm-to-table events that showcase the agricultural output of the commercial farm.

“On-farm direct marketing facility” or “facility” means a type of farm market including the permanent, temporary, and/or moveable structures, improvements, equipment, vehicles, and apparatuses necessary to facilitate and provide for direct, farmer-to-consumer sales of the agricultural output of the commercial farm and products that contribute to farm income. Such facilities include various types and sizes of direct marketing operations, including, but not limited to: farm stands; farm stores; CSA market and distribution areas; and pick-your-own (PYO) market areas. A facility may include one or more structures or a portion of a structure, and a facility may utilize new or existing structures. A facility’s structures may also be used for the commercial farm’s other farm purposes, for instance: equipment storage, equipment maintenance, and the production, processing, packaging, storage, or wholesale marketing of the agricultural output of the commercial farm.

“Pick-your-own (PYO) operation” means an on-farm direct marketing method wherein retail or wholesale customers are invited onto a commercial farm in order to harvest and pay for agricultural or horticultural products. Examples of PYO operation crops include, but are not limited to, fruits, vegetables, flowers, and Christmas trees.

“Products that contribute to farm income” means complementary or supplementary products that are sold to help attract customers to the farm market though a broadening of the range of products available and an enhancement of the experience of purchasing the agricultural output of the commercial farm.

“PYO market area” means an on-farm direct marketing facility used by a PYO operation to set up PYO activities and collect money for PYO crops harvested by customers. PYO market areas may be stand-alone facilities or part of other on-farm direct-marketing facilities. In some cases, such as when a commercial farm has a CSA operation or component, PYO operations may not necessarily involve the collection of money following harvesting, as PYO crops may be one of the benefits of a CSA membership.

“Sales area” means the indoor, outdoor, covered, and uncovered areas of an on-farm direct marketing facility whose primary and predominant use is the display, marketing, and selling of the agricultural output of a commercial farm and products that contribute to farm income. Sales areas do not include: PYO and other production fields; pastures and other areas occupied by livestock on a regular basis; non-public areas, such as areas used for the storage of equipment and other items; and areas dedicated to farm-based recreational activities. Covered sales areas include sales areas inside structures and sales areas underneath tents, awnings, and other canopies.

“Sanitary facilities” means restrooms or portable toilets.

“Supplementary products” means the agricultural output of other farms, and additional customary food and drink items.

(c) The hours of operation allowed for on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

1. On-farm direct marketing facilities and activities may be open or offered on weekdays, weekends, holidays, seasonally, for part of the year, or year-round.

2. On-farm direct marketing events may be offered on weekdays, weekends, holidays, seasonally, or for part of the year.

3. Hours of operation may be between 6:00 A.M. and 10:00 P.M. These hours may be temporarily extended to 11:00 P.M. in conjunction with seasonal on-farm direct marketing sales, activities, or events.

(d) The standards for lighting of on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

1. When an on-farm direct marketing facility, activity, or event is open or offered after dark, a commercial farm shall provide, unless specified otherwise in this section, lighting for areas used by customers, such as: walkways, parking areas, sales areas, activity areas, and event areas. This lighting shall provide, at a minimum, the amount of light necessary for customer safety.

2. All lighting shall be provided with lights focused either downward or with an orientation designed to minimize light spilling off the site and to minimize impacts on adjacent off-farm residential buildings and streets. Lights shall not be focused directly onto public roads.

3. Any temporary lighting shall be removed within 30 days after the activity or event has ended.

4. Lighting for on-farm direct marketing purposes shall be turned off within half an hour of the close of business.

5. In addition to lighting referenced in (d)1 through 4 above for on-farm direct marketing purposes, a commercial farm may use lighting for other farm management purposes, for example, for security. Security lighting may be used to help protect a farm’s products or other physical or natural resources and to discourage trespassing and vandalism and is subject to the provisions in (d)2 above.

(e) The requirements for sanitary facilities at on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

1. A commercial farm shall provide sanitary facilities in the following cases:

i. If indoor seating space, outdoor picnic tables, or other areas are made available to enable customers to consume food on-site;

ii. If an on-farm direct marketing activity or event promotes customers staying on-site for more than 90 minutes; and

iii. When required pursuant to N.J.A.C. 8:24, the Sanitation in Retail Food Establishments and Food and Beverage Vending Machines, or N.J.A.C. 5:23, the New Jersey Uniform Construction Code.

2. The number of sanitary facilities provided shall be sufficient to accommodate, without causing long queues, the volume of visitors expected in conjunction with on-farm direct marketing facilities, activities, or events.

3. A commercial farm shall provide hand-sanitizing facilities for visitors to utilize after the use of the sanitary facilities.

4. Sanitary facilities shall be located and managed with an appropriate cleaning schedule, so as to prevent adverse impacts on adjacent properties, such as odors.

(f) The requirements for safety for on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

1. A commercial farm shall provide visitors with any rules or safety procedures associated with the on-farm direct marketing facilities, activities, and events that are provided, offered, or held. This information may be conveyed by farm staff, through posted signs or written handouts, or through other appropriate means, and may include notice that visitors share in the responsibility for their own safety, such as being aware of inherent risks, using common sense, and wearing farm-appropriate attire.

2. Hazardous materials shall be safely stored in a secure location and in compliance with relevant State and Federal laws, rules, and regulations.

(g) The standards for the use of signs for on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

1. A commercial farm may use permanent and temporary signs to promote its on-farm direct marketing facilities, activities, and events.

i. Examples of signs include, but are not limited to, directional signs; advance signs; signs promoting the products available for sale; and facility, activity, and event signs.

2. The following general standards shall apply to all signs used for on-farm direct marketing facilities:

i. Signs shall be installed and maintained in a manner that does not pose a direct threat to public health and safety. Signs shall not interfere with sight distances at street intersections, ingress and egress points to or from parking areas, and other locations;

ii. Signs may be attached to farm buildings, fences, or other structures or be freestanding;

iii. Signs may have information on both sides.

iv. The use and location of signs shall comply with relevant Federal and State laws, rules, and regulations;

v. Along the approach to the farm on the road on which the on-farm direct marketing facility, activity, or event is located, a commercial farm may install advance signs up to one-half mile away from the farm's entrance. Advance signs are designed to alert drivers of an approaching on-farm direct marketing facility, activity, or event and are generally located in close proximity to one another along the road approaching, and leaving, the site upon which the facility, activity, or event is located;

vi. Directional and other signs may be installed at key intersections or other important locations;

vii. A commercial farm shall obtain the permission of the appropriate landowner or easement holder when locating signs at off-farm locations;

viii. Temporary signs promoting a seasonal on-farm direct marketing facility, activity, or event may be installed up to one month prior to the facility, activity, or event's seasonal opening and shall be removed within 15 days of seasonal closing; and

ix. Internally-lit and neon-type signs are not eligible for Right to Farm protection.

3. A commercial farm's primary on-site farm business sign shall comply with the following standards (if the commercial farm has frontage on multiple roads, one primary on-site farm business sign may be placed on each frontage):

i. The sign is set back at least 10 feet from the paved portion of the street right of way;

ii. The maximum size (meaning the physical size of the sign and not the combined square footage of both sides) is 32 square feet; and

iii. The maximum height to the top of the sign does not exceed 15 feet from the ground.

4. The provisions of this subsection shall not apply to a commercial farm's primary on-site farm business sign(s), commercial billboards, New Jersey Department of Transportation Tourist Oriented Directional Signage (TODS), Farmland Preservation signs, signs whose sole purpose is to facilitate and provide for safe traffic movement directly onto or from the farm site, and signs within the interior of the farm that are not intended to be visible from a public right of way. A commercial farm's on-farm direct marketing facility, activity, and event signs shall meet the following criteria:

i. The maximum size of any one sign (meaning the physical size of the sign and not the combined square footage of both sides) is 16 square feet;

ii. The total combined square footage of the signs does not exceed 160 square feet (this is calculated by summing the physical sizes of the signs and not the square footage of the signs' front and back sides); and

iii. If a commercial farm has multiple distinct and separate on-farm direct marketing locations, such as two on-farm direct marketing facilities located on two different properties within the farm management unit, each on-farm direct marketing location may utilize a total combined square footage of signs of 160 square feet, as specified in (g)4ii above.

(h) In the absence of municipal standards for the construction of parking areas applicable to on-farm direct marketing facilities, the standards in this subsection shall apply to facilities' parking areas.

1. A commercial farm's parking areas for on-farm direct marketing facilities, activities, and events may include areas permanently devoted to parking, areas temporarily devoted to parking, or a combination of such areas. Areas permanently devoted to parking means areas utilized by the facility on a daily basis when the facility is open. Areas temporarily devoted to parking means areas utilized by the facility when additional parking capacity is needed on a short-term, temporary basis, such as in conjunction with seasonal on-farm direct marketing sales, activities, or events.

2. The following standards shall apply to all parking areas:

i. Safe, off-road parking shall be provided. Parking shall not be located in a road right of way, and the number of spaces provided shall be sufficient to accommodate the normal or anticipated traffic volume for the commercial farm's on-farm direct marketing facilities, activities, and events;

ii. Ingress and egress points, driveway areas, and parking areas shall be arranged, so as to provide for safe traffic circulation. This arrangement shall allow customers to safely pull off of and onto adjacent roadways, and to safely maneuver to and from parking areas and into and out of parking spaces. On-farm direct marketing facilities need adequate driveway access to enable customers to reach the facility from the adjacent roadway; and

iii. Where applicable, parking areas shall accommodate bus traffic and allow for the safe unloading and loading of bus passengers.

3. The types of surfaces and any physical improvements associated with areas permanently devoted to parking, such as curbing or landscaping, need not involve greater than the minimum level of improvements necessary to protect public health and safety.

4. The following standards shall apply to areas temporarily devoted to parking:

i. Areas temporarily devoted to parking shall require few or no improvements, so that they can easily be converted back to productive agricultural use once a farm's need for short-term additional parking ceases;

ii. Areas temporarily devoted to parking may include, but are not limited to, hay fields, grass fields, pastures, and other crop fields, provided they have vegetative or organic mulch cover, such that bare ground is not parked on;

iii. The slope of the land shall be considered to address issues related to drainage, puddles and pockets of standing water, and safety;

iv. During dry conditions, areas temporarily devoted to parking shall be mowed, so that vegetation does not come in contact with the underside of customer vehicles;

v. During wet conditions, areas temporarily devoted to parking shall be managed to provide vehicles and pedestrians with safe and sufficient traction; and

vi. A commercial farm shall mark, sign, or otherwise indicate where vehicles should be parked.

(i) The standards for buffers for on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

1. The general standards are as follows:

i. A commercial farm may utilize buffers as an effective tool to mitigate the impacts that on-farm direct marketing facilities, activities, or events may pose on adjacent properties, such as noise, dust, and light spillage.

ii. Buffers need not involve greater than the minimum setbacks and/or screening necessary to protect public health and safety and to mitigate unreasonably adverse impacts on adjacent properties.

iii. When making determinations regarding the necessity or extent of buffers, consideration shall be given to the following:

(1) The nature of the existing adjacent property uses;

(2) The nature and scale of the commercial farm's on-farm direct marketing facilities, activities, and events;

(3) The frequency of the commercial farm's activities and events;

(4) The physical features and constraints of the commercial farm property;

(5) The presence or absence of existing on- or off-farm buffers; and

- (6) The economic feasibility of using buffers.
2. The setback requirements are as follows:
- i. The standards in this paragraph shall apply to the location of building and parking areas for on-farm direct marketing facilities.
- ii. The following standards shall apply to new or expanded facilities' permanent structures:
- (1) A 50-foot front-yard setback from the paved portion of the road right of way;
- (2) A 50-foot side-yard setback from the property line; and
- (3) A 50-foot rear-yard setback from the property line;
- iii. The following standards shall apply to new or expanded activities and events:
- (1) A 25-foot front-yard setback from the paved portion of the road right of way;
- (2) A 50-foot side-yard setback from the property line;
- (3) A 50-foot rear-yard setback from the property line; and
- (4) A 100-foot setback from an existing, occupied residence not located on the farm.
- iv. The following standards shall apply to new or expanded areas permanently devoted to parking:
- (1) A 25-foot front-yard setback from the paved portion of the road right of way;
- (2) A 50-foot side-yard setback from the property line; and
- (3) A 50-foot rear-yard setback from the property line.
- v. Setbacks of a lesser distance than those specified in (i)2ii through iv above may be permissible provided the following is met:
- (1) Screening is considered and, if appropriate, installed;
- (2) The combined setback distance and screening arrangement receives approval as a site-specific agricultural management practice pursuant to N.J.A.C. 2:76-2.3 and 2.4;
- (3) The site-specific agricultural management practice determination takes, at a minimum, the following into consideration:
- (A) Adjacent property uses and buffers;
- (B) The scale of the facility and intensity of its use;
- (C) The nature, scale, and frequency of the activities and events;
- (D) The physical features and constraints of the commercial farm property; and
- (E) The economic feasibility of using buffers; and
- (4) For a board or the Committee to make a site-specific agricultural management practice determination departing from the provisions in (i)2ii through iv above, a commercial farm must provide a legitimate farm-based reason for the departure and address the considerations listed in this subparagraph.
- vi. Existing on-farm direct marketing facilities, activities, or events, including existing areas permanently devoted to parking, are not subject in their current layout and configuration to the provisions of (i)2ii through iv above. If such facilities, activities, events, or parking areas are situated at lesser distances than the standards specified in (i)2ii through iv above, the use of screening for buffer purposes shall be considered.
- vii. Existing on-farm direct marketing activities or events, such as pick your own activities, which are offered and located in different fields over time shall not be considered new activities or events under this paragraph.
3. The screening requirements for on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:
- i. Screening, when used for buffer purposes, shall consist of vegetation or structures, such as, but not limited to, trees, bushes, fences, or walls;
- ii. If the screening is comprised of vegetation and if used in conjunction with a facility, the existing or newly planted materials shall be grown in such a manner that there is 75 percent screening of the facility within five years;
- iii. If the screening is comprised of vegetation and if used in conjunction with an activity or event offered in two or more consecutive years, the existing or newly planted materials shall be grown in such a manner that there is 75 percent screening of the activity or event within five years;

iv. If the screening is comprised of a fence, wall, or another existing farm structure, then the fence, wall, or other existing farm structure shall be of sufficient height or construction to provide 75 percent screening of the facility, activity, or event; and

v. If the distance between a new or expanded facility and an existing, occupied residence not located on the farm is less than 100 feet, screening shall be installed.

(j) Outdoor sales areas shall be arranged, so as to not interfere with safe pedestrian and vehicular traffic circulation.

(k) The use of structures or improvements in conjunction with on-farm direct marketing activities and events shall be as follows:

1. Existing agricultural structures or improvements may be used in conjunction with the offering of on-farm direct marketing activities and events, provided this use does not adversely affect the continued use of the structures or improvements for agricultural production purposes.

2. New structures or improvements may be constructed and used in conjunction with the offering of on-farm direct marketing activities and events, provided this construction and use has a negligible impact on the farm's continued use of the land for agricultural production purposes.

i. If such structures or improvements are temporary and used in conjunction with a temporary or seasonal activity, the structures or improvements shall be removed within 30 days of cessation of the activity or event.

3. The use and construction of structures or improvements shall comply with relevant Federal and State laws, rules, and regulations.

(l) On-farm direct marketing activities and events shall have a negligible impact on the farm's continued use of the land for agricultural production purposes.

(m) The on-farm direct marketing activities standards for on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

1. For pick-your-own activities, the following standards shall apply:

i. Visitors shall be informed of any rules to follow and instructed as to which fields they are permitted to harvest;

ii. Fields open for pick-your-own activities shall be clearly marked;

iii. Parking areas may be adjacent to or near pick-your-own fields, particularly if such fields are far from the farm's pick-your-own market area; and

iv. Pick-your-own market areas shall comply with applicable standards for on-farm direct marketing facilities.

2. For choose-and-cut Christmas tree activities, the following standards shall apply:

i. Visitors shall be informed of any activity and equipment rules and where Christmas trees may be selected and cut;

ii. Customers may be allowed to cut their own Christmas trees;

iii. Customers shall not be supplied with power equipment or be permitted to use motorized tree baling equipment; and

iv. Choose-and-cut Christmas tree market areas shall comply with applicable standards for on-farm direct marketing facilities.

3. For corn, sunflower, and other crop mazes, the following standards shall apply:

i. Visitors shall be informed of any rules associated with the maze, including how to exit the maze in the event of an emergency;

ii. Farm staff shall walk through the maze periodically, or periodically observe the maze from an elevated location, to check for lost visitors. Farm staff shall similarly check for lost visitors before closing the maze;

iii. If a maze is open after dark, adequate lighting shall be provided by the commercial farm and/or used by visitors to illuminate the traveled paths. If lighting is provided, the lighting shall be turned off within half an hour of the close of business; and

iv. No smoking or any other open flames shall be permitted in or near the maze.

4. For hayrides and wagon rides, the following standards shall apply:

- i. Wagons shall be in good repair and have sideboards to contain occupants;
- ii. A ladder, ramp, footstool, steps, or other stable device or component shall be used to assist with safe boarding of and disembarking from wagons;
- iii. When using a tractor to tow wagons, the left and right brakes of the tractor shall be locked together;
- iv. No smoking or any other open flames shall be permitted on hayrides and wagon rides; and
- v. Wagon operators shall:
 - (1) Plan routes in advance;
 - (2) Be familiar with and have experience operating the tractor and wagon equipment;
 - (3) Be familiar with and have experience using draft animals, if applicable, and the wagon equipment;
 - (4) Evenly distribute passengers on the wagons and instruct passengers to remain seated during the ride;
 - (5) Operate tractor and wagon equipment in low gears and at safe speeds; and
 - (6) Have a current motor vehicle operator's license.

5. For livestock and animal activities, the following standards shall apply:

- i. A farm employee or activity attendant shall regularly monitor activities in which visitors may have incidental contact with agricultural animals. Incidental contact includes, but is not limited to, agricultural animal display, petting, or feeding areas;
- ii. A farm employee or activity attendant shall be present at all times to monitor activities in which visitors are permitted to have direct contact with agricultural animals. Direct contact includes, but is not limited to, horseback riding, pony rides, and animal shows, competitions, or demonstrations;
- iii. All agricultural animals having incidental or direct contact with the public shall be observed daily for health problems by a farm employee or activity attendant. Sick animals or animals behaving strangely shall be prevented from having contact with the public;
- iv. Hand-sanitizing facilities shall be provided and readily available if an activity is offered in which visitors may have incidental or direct contact with agricultural animals. Hand-sanitizing facilities include running water with soap, antibacterial hand wipes, waterless hand sanitizers, and/or other hand-washing stations. Visitors shall be advised to sanitize their hands after contact with agricultural animals;
- v. Visitors shall be advised not to feed agricultural animals unless the feed has been specifically provided by the farm;
- vi. Visitors shall be advised that their pets and animals shall not be allowed in areas with agricultural animal activities unless in connection with a specific agricultural purpose, including, but not limited to, agricultural animal shows, competitions, or demonstrations; and
- vii. The management of animals shall comply with the Animal Welfare Act, 7 U.S.C. § 54, and the Humane Treatment of Domestic Livestock rules, N.J.A.C. 2:8, as applicable, and any other relevant State and Federal laws, rules, or regulations.

6. For bonfires, the following standards shall apply:

- i. A commercial farm conducting a bonfire shall comply with Uniform Fire Code requirements, N.J.A.C. 5:70-2.7, and any other relevant State and Federal laws, rules, or regulations.
- ii. A farm employee shall be present for the duration of the bonfire to monitor and oversee the activity.

(n) The event management plan for on-farm direct marketing events shall include the following:

1. If the expected volume of traffic and visitors for an event is significantly greater than the volume regularly accommodated by a commercial farm's on-farm direct marketing facility, such that the increased volume of traffic is likely to interfere with the movement of normal traffic or emergency vehicles on- and off-site, the farm shall create and implement a written event management plan to address public health and safety issues including, but not limited to, emergency vehicle access, traffic management, and public health management.

i. A complete copy of the plan shall be provided to the clerk of the municipality in which the commercial farm is located at least 30 days in advance of the event as an advisory notice and to enable coordination between the commercial farm and municipality that may be necessary regarding emergency vehicle access, traffic, and public health management.

ii. Emergency vehicle access management includes establishing the location(s) and manner in which emergency vehicles may access the farm if necessary.

iii. Traffic management includes:

(1) Providing safe ingress and egress, vehicular traffic flow, and pedestrian traffic flow;

(2) Utilizing parking attendants, signs, or other parking-related instructions to facilitate vehicular and pedestrian traffic flow onto, off of, and within the farm. Local police officers may be hired to assist with traffic management;

(3) Establishing areas temporarily devoted to parking based on the volume of visitors expected; and

(4) Establishing overflow parking areas in the event the planned-for parking capacity is exceeded.

iv. Public health management includes:

(1) Providing sanitary facilities sufficient to accommodate, without causing long queues, the volume of visitors expected;

(2) Providing hand-sanitizing facilities for visitors to wash or sanitize their hands after the use of the sanitary facilities;

(3) Locating sanitary facilities and managing them with an appropriate cleaning schedule, so as to prevent adverse impacts on adjacent properties, such as odors;

(4) Providing trash and recycling receptacles to accommodate the volume of visitors expected in order to prevent the accumulation of trash on the ground; and

(5) Properly training and equipping commercial farm staff on how to handle an emergency situation during the event including, but not limited to, whether and how police, fire, or other entities should be contacted based on an actual emergency.

2. A commercial farm may satisfy the provisions of (n)1 above by obtaining a special events permit, or its equivalent, from the municipality in which the commercial farm is located.

i. If an event of the type described in (n)1 above occurs periodically or more than once per year and occurs under the same basic conditions, a commercial farm may satisfy the provisions of (n)1 above for the multiple events by submitting a single event management plan that notes the multiple occurrences of the event.

(o) This section shall not be construed to extend Right to Farm protection to overnight accommodations of any kind, including, but not limited to, lodging and camping.

(p) The approval of site plan elements for new or expanded on-farm direct marketing facilities shall be as follows:

1. A commercial farm seeking to establish a new, or expand an existing, on-farm direct marketing facility may apply to the municipality and/or the county agriculture development board for approval of site plan elements.

i. A commercial farm applying to a municipality for approval of site plan elements may request that the municipality consider waiving or reducing review requirements based on a consideration of relevant site-specific elements, such as the following: the farm's setting and surroundings; the scale of the facility and intensity of its use; the type and use of the public road on which the facility is located; and the minimum level of improvements necessary to protect public health and safety. Nothing in this paragraph shall be construed as authorizing a municipality to waive or reduce review requirements required by State or Federal law, rule, or regulation.

ii. A commercial farm applying to a county agriculture development board or the Committee for approval of site plan elements shall request a site-specific agricultural management practice determination pursuant to N.J.A.C. 2:76-2.3 and 2.4.

iii. If a commercial farm has previously obtained approval for an on-farm direct marketing facility, then such a facility closing seasonally and reopening the following year with the same total

square footage of indoor and/or outdoor covered sales area as previously approved shall not be considered a new facility.

(q) On-farm direct marketing facilities, activities, and events shall comply with relevant Federal and State laws, rules, and regulations, including, but not limited to:

1. The Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq.;
2. The Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq.;
3. The New Jersey Uniform Construction Code, N.J.A.C. 5:23;
4. The New Jersey Uniform Fire Code, N.J.A.C. 5:70;
5. The Stormwater Management rules, N.J.A.C. 7:8;
6. The State Highway Access Management Code, N.J.A.C. 16:47;
7. The Sanitation in Retail Food Establishments and Food and Beverage Vending Machines rules, N.J.A.C. 8:24; and
8. The Pinelands Comprehensive Management Plan, N.J.A.C. 7:50.

(r) Additional miscellaneous provisions for on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

1. This agricultural management practice does not preclude a commercial farm from requesting a site-specific agricultural management practice determination for on-farm direct marketing facilities, activities, and events pursuant to N.J.A.C. 2:76-2.3 and 2.4. A board or the Committee, pursuant to N.J.A.C. 2:76-2.3 and 2.4, may make site-specific agricultural management practice determinations for facilities, activities, and events, provided such site-specific agricultural management practice determinations are consistent with the practices set forth in this section.

2. If a commercial farm believes a municipality's standards for the construction of building and parking areas applicable to on-farm direct marketing facilities are unduly restrictive, or believes a municipality is unreasonably withholding local zoning approval related to a facility, the commercial farm may request that the appropriate board, or the Committee in counties where no board exists, make a determination in the matter by requesting a site-specific agricultural management practice pursuant to N.J.A.C. 2:76-2.3 and 2.4.

[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.2 Eligibility of pick-your-own operations for Right to Farm protections

Pick-your-own operations rules are set forth in N.J.A.C. 2:76-2A.13.

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

LOCAL FINANCE BOARD

Tax Collection Administration

Proposed Redooption: N.J.A.C. 5:33

Authorized By: Local Finance Board, Thomas H. Neff, Chair as to N.J.A.C. 5:33-1 (save for N.J.A.C. 5:33-1.2); Thomas H. Neff, Director, Division of Local Government Services, as to N.J.A.C.

5:33-1.2, 2, and 3; and Richard E. Constable, III, Commissioner, Department of Community Affairs, as to N.J.A.C. 5:33-4. Authority: N.J.S.A. 52:27BB-10 and 32; 54:4-122.9; 40A:5-43; 40A:9-145.3c; 54:4-6.10; 54:4-8.81; 40A:4-27.3(d); and 17:16F-15 et seq.

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

Proposal Number: PRN 2013-102.

Submit written comments by August 16, 2013 to:

Patricia McNamara, Executive Secretary
Local Finance Board
Department of Community Affairs
P.O. Box 803
Trenton, New Jersey 08625-0803

The agency proposal follows:

Summary

N.J.A.C. 5:33 establishes rules for the administration of tax collection, the certification requirements for tax collectors, the administration of the tenant property tax rebate program, and the performance of mortgage escrow account transactions by tax collectors. Pursuant to N.J.S.A. 52:14B-5.1.b, the rules concerning tax collection administration, N.J.A.C. 5:33, are scheduled to expire on May 16, 2013. However, as this notice of proposed reoption has been filed prior to May 16, 2013, the expiration date of these rules is hereby extended 180 days to November 12, 2013 pursuant to N.J.S.A. 52:14B-5.1c(2).

The authority for the Local Finance Board (Board) to regulate tax collection administration is found at N.J.S.A. 52:27BB-10 and 32. These sections authorize the Local Finance Board to promulgate reasonable rules and regulations, forms, and practices for the interpretation and administration of State laws within the jurisdiction of the Division of Local Government Services in the Department of Community Affairs, which include tax collection administration. Authority for the Director of the Division of Local Government Services (Director) to establish rules applicable to bank collection of tax payments and the certification of tax collectors is found under N.J.S.A. 54:4-122.9.b and 40A:9-145.3c, respectively. The Director's authority to promulgate regulations concerning administration of the Tenant Property Tax Rebate Program, including regulating the distribution of Regional Efficiency Aid Program (REAP) aid through said Program, is found at N.J.S.A. 40A:4-27.3.d, 54:4-6.10, and 54:4-8.81. The authority of the Commissioner of the Department of Community Affairs (Commissioner) to promulgate rules applicable to mortgage escrow account transactions by tax collectors is found at P.L. 1990, c. 69, §15.

The Board, the Director, and the Commissioner have reviewed the rules proposed for reoption and have determined them to be necessary, reasonable, and proper for the purposes for which they were originally promulgated. There is a continued need to set rules to ensure Statewide consistency and a high level of professional competence in the administration of municipal tax collection practices, tenant rebate procedures, and mortgage escrow account transactions. The rules promulgated at N.J.A.C. 5:33 fulfill this need and serve to uphold the integrity of these respective administrative processes. The Local Finance Board approved the proposed reoption of N.J.A.C. 5:33 at its May 8, 2013 meeting.

The rules at N.J.A.C. 5:33 were originally adopted in 1990, having been amended and supplemented over the years pursuant to statutory changes and new developments in property tax collection. Redooption of N.J.A.C. 5:33 is essential to ensuring fairness and integrity in the realm of public procurement along with the most efficient use of public funds.

The rules proposed for reoption in Subchapter 1 address a variety of different issues related to tax collection practices. The sections in this subchapter are described as follows:

N.J.A.C. 5:33-1.1 was repealed on September 5, 1995. The section is being held in reserve for future use.

N.J.A.C. 5:33-1.2 establishes tax collection procedures and notification requirements applicable to municipalities engaging the services of a bank or trust company to collect tax or utility receipts on their behalf.