

# RULE ADOPTIONS

## AGRICULTURE

### (a)

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

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

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

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

**Adopted Recodification with Amendments: N.J.A.C.  
2:76-2.10 as 2.7**

Proposed: June 17, 2013, at 45 N.J.R. 1449(a).

Adopted: January 31, 2014, by the State Agriculture Development  
Committee, Susan E. Payne, Executive Director.

Filed: March 6, 2014, as R.2014 d.057, **with substantial and  
technical changes** not requiring additional public notice and  
comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: April 7, 2014.

Expiration Date: January 15, 2017.

#### Summary of Public Comments and Agency Responses:

The State Agriculture Development Committee (SADC) received  
comments from the following organizations and individuals during the  
public comment period, which ended on August 16, 2013:

1. New Jersey Farm Bureau (NJFB)
2. Warren County Agriculture Development Board (Warren CADB)
3. Deborah A. Post
4. Township of Hampton (Hampton)
5. Cape May County Board of Chosen Freeholders (Freeholders)
6. Middle Township
7. Borough of West Cape May (Borough)
8. Robert L. Myers
9. Curtis Bashaw

#### General Comments

1. COMMENT: NJFB commented that it appreciates the effort the  
State Agriculture Development Committee (“SADC” or “Committee”) has  
put into developing the agricultural management plan (AMP), including  
involving the agricultural community during the process and maintaining  
the integrity of the Right to Farm Act (“RTFA” or “Act”), and feels the  
rules will have a positive impact on the agriculture industry in New  
Jersey.

RESPONSE: The SADC agrees that the rules will have a positive  
impact and that it is important to maintain the integrity of the RTFA.

2. COMMENT: The Cape May County Freeholders praised the  
SADC’s goal of protecting farmers, recognizing the daunting task of  
finding the best words and formulae to accomplish that end. The  
Freeholders were appreciative of the efforts made by SADC staff to help  
residents of Cape May County understand the AMP.

RESPONSE: The SADC appreciates the comment.

3. COMMENT: Deborah Post commented that the rules limit farmers’  
use of their land, which is private property. She also commented that  
the RTFA and the powers given to the SADC were not meant to be an  
invitation for a confiscation of private property rights. Ms. Post said  
that unless farmland is deed restricted, the SADC does not have authority  
to establish standards and limits on private property.

RESPONSE: The SADC disagrees with the comments, as the SADC  
does have the authority pursuant to the RTFA to set forth accepted  
agricultural management practices for RTFA protection purposes. The  
RTFA confers the extra benefit of certain protections to commercial  
farms, provided they meet the Act’s eligibility requirements and AMP  
standards. AMP standards are not restrictions but rather standards with  
which commercial farm owners or operators may choose to comply if  
they wish to be eligible for RTFA protection.

4. COMMENT: The Borough of West Cape May commented that the  
AMP contains no enforcement provisions.

RESPONSE: The RTFA confers the extra benefit of certain  
protections to commercial farms, provided they meet the Act’s eligibility  
requirements and AMP standards. AMP standards are not something that  
a county agriculture development board (CADB) or the SADC enforces.  
Rather, the consequence of not complying is ineligibility for RTFA  
protection.

5. COMMENT: The Cape May County Freeholders commented that  
the AMP should expressly clarify that its protections apply equally to all  
commercial farms, whether or not they have been preserved via  
municipal, county, and/or State preservation programs, as this would  
add integrity and important functionality to the AMP and RTFA as guiding  
documents.

RESPONSE: The SADC seeks to align RTFA protection with  
agricultural activities permitted on preserved farms. However, given the  
important statutory and regulatory restrictions associated with the deeds  
of easement on preserved farmland, complete alignment between the  
RTFA and farmland preservation programs is not always possible or  
advisable. Therefore, preserved farms may be subject to additional  
requirements associated with conformance with the deed of easement.

6. COMMENT: Robert L. Myers commented that, as a neighbor of a  
commercial farm, he believes that the proposed AMP is too lenient and  
inadequately considers other municipal, county, and State land use  
planning objectives. Mr. Myers was particularly concerned about traffic,  
signage, and noise, and he stated that there was no recognition in the  
proposed rule of proportionality between a farm and its neighbors.

RESPONSE: The SADC developed the AMP over several years based  
on outreach with and input from the agricultural community and public.  
The AMP strives, based on guidance from the RTFA, to provide a proper  
balance among the varied and sometimes conflicting interests of  
agricultural and other uses. The CADBs are required to balance those  
interests as well in their decision-making, and their decisions are  
appealable to the SADC. The SADC further notes that to be eligible for  
RTFA protection, a farm’s activities cannot pose a direct threat to public  
health and safety.

#### General Comments about the Amount of Detail in the AMP and Flexibility of AMP Standards

7. COMMENT: There were a number of general comments about the  
format and scope of the AMP, including comments about the AMP’s  
performance-based standards. NJFB expressed its support of the AMP’s  
performance-based standards, stating that the standards are not overly  
prescriptive and allow for flexibility, which are keys for maintaining a  
viable agricultural industry in New Jersey. Deborah Post felt that the  
rules were not flexible enough and were too restrictive. Hampton  
Township felt the rules were too broad and should have more mandatory  
requirements. Middle Township felt the AMP should encourage RTFA  
protection of various activities at wineries.

RESPONSE: The SADC developed the AMP over several years based  
on outreach with and input from the agricultural community and public.  
The agricultural industry is always evolving, and the intent of the rules  
is to establish standards on which farmers, the public, municipalities, and  
CADBs can rely and that are performance-based rather than prescriptive.  
The AMP provides reliable, Statewide guidance to farmers,

municipalities, and others while providing flexibility to commercial farms complying with the AMP.

Regarding language use, the modifiers “may” and “shall” are used appropriately and judiciously throughout the rules. The rules also provide for flexibility using a performance-based approach, and the rules are business-friendly by setting forth reliable, flexible standards. Previously, farmers may have been treated differently by different municipalities around the State, creating uncertainty in the agricultural community. Whether specific events fall within the scope of the RTFA and AMP is discussed in other comments and responses, under the topic section about specific activities and events.

#### Comments Regarding Standards Related to Noise

8. COMMENT: West Cape May, Robert L. Myers, and Curtis Bashaw stated that noise from on-farm direct marketing facilities, activities, and events should be addressed in more detail in the AMP and that greater municipal regulation of noise was needed. Robert Myers said the AMP’s buffer standards do not adequately address noise from on-farm direct marketing facilities, activities, and events, and that the AMP should differentiate between amplified and non-amplified music, and that music volume, specifically at events, should be enforced and regulated by the local police department. West Cape May commented that, except in connection with an event management plan, the AMP makes no reference to noise or traffic regulation, adding that commercial farms should be subject to municipal noise regulations. West Cape May also commented that the definition of “ancillary entertainment-based activity” should be refined to clearly define acceptable background/incidental music, including allowable sound or decibel levels. Curtis Bashaw commented that the AMP’s reference to music in the definition of “ancillary entertainment-based activities” was vague and that it was insufficient to protect neighbors from excessive noise. Mr. Bashaw said that the AMP should clarify what makes music “background” and what constitutes acceptable background music (for example, whether or to what degree it includes live or amplified music). He also suggested music be limited to occurring inside an on-farm direct marketing facility, that it should be called “incidental music that may accompany marketing activities,” and that background music should be subject to ordinances and not be protected in the same way as noise that is generated from direct farm production activities (for example, tractors and animals).

RESPONSE: The SADC recognizes the commenters’ concerns regarding noise but declines to make the suggested changes. Rather than adding a broad new limit on noise that may have unintended consequences, the SADC believes that the issue of noise is best dealt with by the CADBs in the context of each individual RTFA case, given the case’s land use context and surroundings. The SADC also notes that because agricultural activities are exempt from the State Noise Control rules, N.J.A.C. 7:29, municipalities do not have unfettered authority to regulate noise associated with agricultural activities and events, such as those occurring with on-farm direct marketing operations.

The SADC also notes consideration of noise in the AMP’s provisions for buffers. The introduction to the section notes that buffers may be utilized as an effective tool to mitigate impacts such as noise, dust, and light spillage. The rest of the section then discusses setbacks and screening in a performance-based manner, and those types of impacts are addressed implicitly.

#### Comments Regarding Whether and How Specific Activities and Events are Eligible for RTFA Protection

9. COMMENT: One question raised by several commenters was whether certain activities and events, often in the context of wineries, were eligible for RTFA protection and whether they should be included in the AMP. Some commenters expressed support for the protection of specific activities and events (Middle Township, Cape May Board of Chosen Freeholders), while other commenters felt that certain activities should not be protected (Hampton Township, Borough of West Cape May, Curtis Bashaw). In general, commenters felt that the activities, and whether they were protected or not, should be clearly noted in the AMP. Some commenters said that the rules, as written, were not clear regarding what was protected.

The Cape May Board of Chosen Freeholders supported the idea of developing a performance-based approach with broader general marketing criteria that CADBs could balance in determining whether certain activities were eligible for RTFA protection. The freeholders also commented that, except for farm markets, the AMP lacks comprehensive criteria that CADBs and others can use to determine which marketing efforts are included and which are excluded, adding that this can lead to excessive or arbitrary regulation and interpretation, unfairly constraining farmers.

Commenters expressed support for and against the following specific activities and events: life-celebratory events – for example, weddings, birthdays, graduations, and anniversaries, primarily at wineries (Middle, Cape May Board of Chosen Freeholders, West Cape May, Curtis Bashaw); restaurants (Hampton, West Cape May, Curtis Bashaw); catering facilities (Hampton, West Cape May); and other marketing activities and events at wineries. The Cape May County Board of Chosen Freeholders, after noting that the AMP protected wine tastings and wine festivals, said it didn’t see a distinction between those activities, and, for example, golden wedding anniversaries or civic association award meetings “at which tastings, display, and sales of a winery’s products are a prime part of the event.”

Curtis Bashaw added that the AMP does not specifically mention food sales and celebratory life events in the AMP’s sections for hours, lighting, and sanitary facilities. West Cape May said the AMP’s definitions of “on-farm direct marketing activities” and “on-farm direct marketing events” should be more clearly defined to address specific activities and distinguish between agricultural and other commercial activities.

10. COMMENT: The Cape May County Board of Chosen Freeholders commented that they would be more comfortable with language in the AMP that employed an approach determining whether a farm’s marketing effort should receive RTFA protection by looking not to the gross income of a specific effort or the name by which an event or activity is classified, but rather through inquiries about whether the marketing efforts promote the sale of a farm’s agricultural products, helping the farm survive, or whether the marketing efforts honor the true measures of the farm’s essential agricultural nature. The Cape May County Board of Chosen Freeholders expected that the AMP would not discourage activities that may help farms remain economically self-sufficient and viable, without harm to their essential agricultural nature. Overall, the Cape May County Board of Chosen Freeholders were concerned about providing CADBs with more comprehensible rationales to apply in evaluating specific challenged events at specific sites.

11. COMMENT: Middle Township commented that many other states more liberally permit agritourism events and that the AMP should be revamped to explicitly protect celebratory events, festivals, and other events, provided they comply with public safety concerns such as traffic, noise, and congestion. West Cape May commented that restaurants, catering facilities, life-event facilities, and recreational facilities should be explicitly excluded, saying that including them would inappropriately expand the notion of agriculture into the conventionally commercial realm.

RESPONSE TO COMMENTS 9, 10, AND 11: Most “celebratory” events would not meet the definition of on-farm direct marketing events at N.J.A.C. 2:76-2A.13(b) in the AMP, and the SADC previously ruled that not every marketing tool employed to attract customers to a winery, including a “celebratory” event, is protected by the RTFA. (*In the Matter of Hopewell Valley Vineyards, Hopewell Township, Mercer County*, SADC ID No. 786 (Hearing Officer’s Findings and Recommendations of the State Agriculture Development Committee, March 24, 2011, pages 21-23)). While it is conceivable that an event such as a wedding could be protected as a type of retail marketing provided that an overwhelming majority of the food and beverages served were produced from the output of the farm, the SADC believes that protecting such uses would require promulgation of a separate AMP to address the conditions under which RTFA protection could be available.

The SADC recognizes the evolving nature of the agricultural industry, including the wine industry and winery operations, and will look at these activities more closely in the future, as the need arises. N.J.S.A. 4:1C-9.j gives the SADC the ability to add additional agricultural activities to the list of activities eligible for RTFA protection, and the SADC has the

ability to develop additional AMPs for other activities. If an activity or event does not fit within the authority granted the SADC in N.J.S.A. 4:1C-9j, a legislative change would be required to include the activity or event within the scope of the RTFA.

#### General – Municipal Consideration-Related Comments

12. COMMENT: The Township of Hampton commented that the notice of proposal Summary, but not the rule itself, stated that CADBs must give appropriate consideration to local regulations and balance the public interest expressed in those local laws with the farmer's interest in conducting legitimate agricultural operations. Hampton noted that the notice of proposal Summary cited *Township of Franklin v. den Hollander*, 172 N.J. 147 (2002) in support of this idea and commented that the concept should be set forth in the final rule as being applicable to all site-specific agricultural management practices (SSAMP) matters considered by the CADB or SADC.

RESPONSE: The SADC agrees that CADBs must give appropriate consideration to municipal input and local ordinances when considering a commercial farm's request for an SSAMP determination. RTFA case law, such as the *den Hollander* decision, should not be copied or paraphrased in other RTFA rules, however, as the most appropriate legal approach is to leave such case law, without paraphrasing, in its original format. Greater awareness about RTFA case law and interpretations is important, and the SADC can include these topics in future educational materials it may develop.

#### General – Jurisdiction-Related Comments

13. COMMENT: Several commenters (Hampton Township, Borough of West Cape May, Curtis Bashaw, and Robert L. Myers) said that municipalities should have more control of and/or a greater role in regulating specific aspects of on-farm direct marketing operations, such as hours, lighting, signs, parking, buffers/setbacks, and events.

Robert L Myers commented that the proposed rules are too lenient and vague, to the exclusion of other public and private goals and objectives, and that a more reasonable and balanced system is needed that would provide for a greater municipal role.

The Borough of West Cape May stated that it is very concerned about agriculture-related activities conforming to the RTFA's original intent, and that municipalities should retain an appropriate degree of control over on-farm direct marketing activities and events. West Cape May commented that hours of operation, lighting, signs, parking, buffers, and setbacks are issues that are best handled by municipalities, and that the AMP should be amended to state that those issues are subject to individualized municipal regulation. West Cape May also commented that specific aspects of on-farm direct marketing events should be left to individual municipalities to regulate.

RESPONSE: The SADC recognizes the commenters' concerns while noting that regarding RTFA matters, CADBs and the SADC have primary jurisdiction over agricultural management practices involving commercial farms. The AMP sets forth the generally accepted agricultural management practices for on-farm direct marketing operations, including standards for the issues mentioned in the comment. It is possible for municipalities to adopt local regulations on the same topics, however such local regulations could be preempted by the RTFA if a qualified commercial farm was complying with the AMP's standards. The adoption of stricter municipal standards is not recommended for this reason.

#### N.J.A.C. 2:76-2.3(b) – SSAMP Notification-Related Comments

14. COMMENT: With regard to the notification provision for requests for SSAMP determinations, N.J.A.C. 2:76-2.3(b), the Township of Hampton commented that CADBs or the applicant should be required to serve a full copy of the farm's application and accompanying documents on the affected municipality(s).

RESPONSE: N.J.A.C. 2:76-2.3(b) states that a CADB shall advise the SADC and the municipality(s) in writing of the nature of the application within 10 days of the request. The SADC notes that some SSAMP applications implicate municipal ordinances while others do not. With this in mind, a CADB may determine whether or not to include a full copy of the farm application in its N.J.A.C. 2:76-2.3(b) notification. In a given case, if a full copy is not provided initially but the municipality

would like a copy, the CADB can provide a copy at the municipality's request.

#### N.J.A.C. 2:76-2.3(h)3 – Jurisdiction, Roles, and Consideration-Related Comments

15. COMMENT: NJFB supports the ability of CADBs to waive, reduce, and/or determine the non-applicability of SSAMP checklist items in its review of an SSAMP application filed by a commercial farm, saying this allows for consideration of site-specific elements.

RESPONSE: The SADC agrees that CADBs, when reviewing SSAMP applications, have the discretion to determine what a commercial farm needs to submit based on the nature of the application and relevant site-specific elements.

16. COMMENT: The Township of Hampton commented that the discretion to allow waivers should be vested in the CADB only, not the board staff. Hampton added that waiver decisions should be discussed during a public hearing, where the public can have input and where discussions are on the record. Hampton said this will usually require routine, mundane, and quick discussions but will eliminate concerns or suspicions that an applicant is being given special treatment by CADB staff outside of the public hearing process.

RESPONSE: The SADC disagrees that a public hearing should be required regarding this initial, preparatory application stage of determining what a commercial farm should submit using the CADB's review checklist. While a CADB may delegate initial checklist review and waiver decisions to board staff, the SADC agrees it is the board that ultimately makes final determinations regarding waivers and what should be submitted using the CADB's checklist. This is contained in N.J.A.C. 2:76-2.3(i), which states that it is the board that determines whether a farm's application and checklist items are complete. To clarify this point, the SADC is changing N.J.A.C. 2:76-2.3(h)3 as follows (addition in bold; deletions in brackets): "... The board may delegate this function to board staff, **with final review and decision making authority vested in the board.** In making such decisions, the board and[or] board staff shall consider relevant site-specific elements such as, but not limited to, the following ..."

#### N.J.A.C. 2:76-2.3(h)4 – Jurisdiction-Related Comments

17. COMMENT: NJFB supports the provision at N.J.A.C. 2:76-2.3(h)4 that states that, subject to N.J.A.C. 2:76-2.3(k), CADBs may retain jurisdiction over any or all municipal ordinances and/or county resolutions related to a commercial farm's application for an SSAMP determination.

RESPONSE: The SADC agrees with the comment and notes that in the case of farm markets and on-farm direct marketing facilities, that CADBs may retain primary jurisdiction and that the construction of building and parking areas must be in conformance with municipal standards, except as otherwise provided for in N.J.A.C. 2:76-2A.13(r)2.

18. COMMENT: The Township of Hampton commented that the first sentence of N.J.A.C. 2:76-2.3(h)4 should be changed to read, "Subject to the provisions of (k) below and of N.J.S.A. 4:1C-9(c) ..." to have it comply with the RTFA language that the construction of buildings and parking areas for farm markets be in conformance with municipal standards. Hampton made this specific comment after observing that "the construction of building and parking areas (be) in conformance with municipal standards" should be included somewhere in the proposed regulation.

RESPONSE: The SADC will not make the suggested change, as the RTFA gives CADBs and the SADC primary jurisdiction over compliance with and/or potential preemption of local ordinances as they relate to farm markets and other agricultural practices. This includes primary jurisdiction over whether a commercial farm's construction of building and parking areas for the farm's farm market are in conformance with municipal standards. The SADC also notes that N.J.A.C. 2:76-2A.13(r)2 provides an avenue for relief from these municipal standards should the standards be overly restrictive.

19. COMMENT: The Township of Hampton recommended changing the word "related" to the phrase "as they apply" in N.J.A.C. 2:76-2.3(h)4, saying that otherwise, CADBs will have the impression they can acquire

jurisdiction over the ordinances themselves, which Hampton said would be usurpation of the municipality's law-making authority.

RESPONSE: The SADC will make the suggested change, as it will add clarity that CADBs and the SADC are not taking control of the local ordinances themselves but rather that CADBs and the SADC have primary jurisdiction over whether local ordinances are impacting agricultural practices and may be preempted through the RTFA.

#### **N.J.A.C. 2:76-2.3(k) – Jurisdiction-Related Comments**

20. COMMENT: NJFB supports the provision within N.J.A.C. 2:76-2.3(k) that states in cases where a municipal ordinance, county resolution, or any portion thereof exceeds State regulatory standards, CADBs shall have the authority to determine whether the ordinance, resolution, or portion thereof that exceeds such State regulatory standards is preempted by the CADB's approval of a commercial farm's SSAMP.

RESPONSE: The SADC appreciates the comment and notes that the first part of N.J.A.C. 2:76-2.3(k) reiterates how CADBs cannot preempt State laws and rules delegated to the municipality or county for administration and enforcement. Only if a local ordinance or resolution exceeds the delegated State standards may a CADB consider whether or not the portion exceeding the State standards should be preempted.

#### **N.J.A.C. 2:76-2.5(c) – Jurisdiction-Related Comments**

21. COMMENT: The Township of Hampton asked that the following be added at the end of N.J.A.C. 2:76-2.5(c): "If the Board or Committee, as applicable, determines that the municipality or county's standards or requirements for the commercial farm owner or operator's agricultural operations or practices are not unduly restrictive or that the municipality or county is not unreasonably withholding approvals related to the commercial farm owner or operator's agricultural operation or practices, then the commercial farm owner or operator's request shall be denied."

RESPONSE: The SADC will not make the suggested change, noting that the general idea suggested by Hampton is already implied by the use of the "if" clause at the beginning of existing N.J.A.C. 2:76-2.5(c). For clarification purposes, the SADC will add the following sentence to the end of N.J.A.C. 2:76-2.5(c): "The board, or Committee in counties where no board exists, shall review the matter and make a determination regarding whether RTFA protection is warranted."

#### **On-Farm Direct Marketing AMP**

##### General – Jurisdiction-Related Comments

22. COMMENT: The Township of Hampton commented that the AMP does not include standards related to the size of on-farm direct marketing facilities and the height of facilities' structures. Hampton said that size standards are related to neighborhood and environmental impacts, for example, drainage and impervious cover, and that the AMP should be revised to specify that size and height standards fall within the municipality's jurisdiction, pursuant to N.J.S.A. 4:1C-9.c. Hampton said the AMP should be revised to require CADB deference to municipal requirements regarding facility construction in this regard.

RESPONSE: The SADC recognizes that on-farm direct marketing involves a variety of types and sizes of facilities, activities, and events and that it would be impossible for the AMP to address every detail and situation. If a topic is not addressed in the AMP and an RTFA determination is sought by a commercial farm, the farm may request a site-specific AMP determination from the CADB. In the event of an RTFA complaint, a CADB would similarly review the site-specific nature of the matter. In both instances, the CADB would consider the facts of the individual case and issue a decision. The SADC believes that the municipal standards referred to in N.J.S.A. 4:1C-9.c do not relate to community design based size and height standards pertaining to on-farm direct marketing facilities. Rather, they relate to physical construction standards for farm market building and parking areas to make sure such areas are safe for the public. Regarding Hampton's concerns related to drainage and impervious cover, the SADC notes that the RTFA cannot preempt municipal jurisdiction as it pertains to achieving compliance with State stormwater management rules (subject to the limitations in N.J.A.C. 2:76-2.3(k)).

##### N.J.A.C. 2:76-2A.13(c) – Jurisdiction-Related Comments (Hours)

23. COMMENT: Curtis Bashaw commented that the 6:00 A.M. to 10:00 P.M. (or 11:00 P.M.) hours of operation for marketing activities are excessive, that they should be limited to 8:00 A.M. to 6:00 P.M., and that extensions should only be allowed by the municipality.

RESPONSE: The SADC will not make the suggested change, as it believes the AMP's hours of operation standards provide an appropriate range within which commercial farms may effectively operate.

##### N.J.A.C. 2:76-2A.13(d) – Jurisdiction-Related Comments (Lighting)

24. COMMENT: The Township of Hampton commented that regarding lighting used to illuminate parking areas, there should be qualifying language similar to what is used in N.J.A.C. 2:76-2A.13(h), "In the absence of municipal standards for lighting as a component of construction of parking areas ..." Hampton commented that otherwise, the AMP will deviate from the scope of N.J.S.A. 4:1C-9.c.

RESPONSE: The SADC will not make the suggested change, as the SADC does not believe the language in N.J.S.A. 4:1C-9.c regarding the construction of building and parking areas relates to lighting.

##### N.J.A.C. 2:76-2A.13(i) – Jurisdiction-Related Comments (Buffers)

25. COMMENT: The Township of Hampton commented that having setback standards for the location of building and parking areas for on-farm direct marketing facilities infringes on the authority reserved for municipalities in N.J.S.A. 4:1C-9.c. Hampton suggested N.J.A.C. 2:76-2A.13(i)2i be revised with the following introductory sentence: "In the absence of municipal standards for the construction of building and parking areas, the following standards shall apply to the location of building and parking areas for on-farm direct marketing facilities ..."

RESPONSE: The SADC will not make the suggested change, as the SADC does not believe the language in N.J.S.A. 4:1C-9.c regarding the construction of building and parking areas relates to setbacks.

##### N.J.A.C. 2:76-2A.13(k) – Jurisdiction-Related Comments (Use of Structures or Improvements in Conjunction with On-Farm Direct Marketing (OFDM) Activities and Events)

26. COMMENT: The Township of Hampton suggested that a provision be added at N.J.A.C. 2:76-2A-13(k)3 stating that the construction of structures or improvements for on-farm direct marketing activities and events shall also conform to municipal standards pursuant to N.J.S.A. 4:1C-9.c.

RESPONSE: The SADC will not make the suggested change. The section of the RTFA cited by Hampton is associated with farm markets or on-farm direct marketing facilities, and not with on-farm direct marketing activities and events.

##### N.J.A.C. 2:76-2A.13(p) – Jurisdiction, Roles, and Consideration-Related Comments (Approval of Site Plan Elements for New or Expanded On-Farm Direct Marketing Facilities)

27. COMMENT: Regarding approval of site plan elements for new or expanded on-farm direct marketing facilities, NJFB said it strongly supports the option in the AMP that farmers can seek such approval from the CADB by requesting an SSAMP determination. NJFB commented that municipalities are not always educated in common agricultural practices and may not be best suited to make decisions that could impact farm businesses.

RESPONSE: N.J.A.C. 2:76-2A.13(p) lays out the basic options commercial farms may pursue, stating that farms seeking to establish a new, or expand an existing, on-farm direct marketing facility may apply to the municipality and/or the CADB for approval of site plan elements. This provision, along with the revised Right to Farm procedure rules regarding SSAMP determinations, N.J.A.C. 2:76-2.3 and 2.4, reflects the realities of on-farm direct marketing (OFDM) facility review, that is, the availability of CADB/SADC primary jurisdiction through the Right to Farm Act, the ability of commercial farms to choose how to begin their process of seeking approval, and the relative strengths and abilities of CADBs/SADC and municipalities regarding reviews of site plan elements and agricultural proposals.

The process of seeking approval of site plan elements for an OFDM facility could follow several paths. A commercial farm might apply to the municipality and have all of the elements approved in their entirety, or a commercial farm might apply to the CADB for complete approval. In the alternative, the farm might apply to the municipality, discover conflicts in

a few select areas, and then apply to the CADB for an SSAMP determination seeking relief on just those areas. Another option is that a farm might apply to the CADB for an SSAMP determination, receive SSAMP approval for many items, and then be referred by the CADB to the municipality for review of some other items, with the CADB opting to retain jurisdiction over some, all, or none of those other items. On the other hand, the farm may choose to seek approval of site plan elements by talking with or applying to the municipality, and then be directed by the municipality to the CADB for approval of some or all elements. Which of these processes takes place depends on how the commercial farm decides to seek approval at the outset, and how the CADB or municipality subsequently responds when taking on the review and making a determination. Nevertheless, whatever path the commercial farm chooses in seeking approval, the CADB is free to refer any items to the municipality over which the CADB feels it does not have the needed expertise to properly decide.

While the SADC agrees that municipalities may not always be familiar with common agricultural practices, municipalities do have experience reviewing site plans in general. At the same time, while CADBs are very familiar with common agricultural practices, in some cases CADBs may not be as familiar with reviewing site plan elements.

The SADC acknowledges the concern that because municipalities may not be familiar with agriculture, a municipality's site plan element review process for on-farm direct marketing facilities could potentially be onerous or unduly restrictive. With this in mind, and because the Right to Farm Act gives CADBs and the SADC primary jurisdiction over agricultural matters, N.J.A.C. 2:76-2A.13(p) specifies that a commercial farm may also seek approval of site plan elements from the CADB.

28. COMMENT: The Township of Hampton suggested changing "may" to shall" in N.J.A.C. 2:76-2A.13(p)1, commenting that otherwise, there is no requirement for a farm to obtain review of site plan elements from either the municipality or the CADB. Hampton added that it objects to how N.J.A.C. 2:76-2A.13(p) allows commercial farms the option of avoiding municipal site plan review. Hampton stated that this subsection negates the municipality's role by allowing a commercial farm to circumvent municipal site plan procedures that largely deal with health, safety, building, and parking issues, noting that municipal land use boards regularly review such matters and have the expertise to do so. Hampton commented that as part of the deference accorded to municipalities per *den Hollander, supra*, and N.J.S.A. 4:1C-9, the AMP should specify the following process: Site plans should be submitted to the municipal land use board, and if the board denies the application, the commercial farm would then have the option to appeal the land use board's decision or to file an SSAMP application with the CADB. Hampton said this process will insure the municipality has a voice and the CADB will have access to the municipality's position and reasoning. Alternatively, if the SADC disagrees with this suggested process, Hampton suggested that the rule be revised to state that the CADB shall formally request review of and comment on the SSAMP application by the municipal land use board and that the CADB shall consider those comments and applicable municipal standards in making its determination.

RESPONSE: Regarding the use of "may" versus "shall" in N.J.A.C. 2:76-2A.13(p)1, the SADC will not make the suggested change, noting that not all municipalities have review requirements for establishing new, or expanding existing, on-farm direct marketing facilities.

Still, the SADC recognizes that the wording of N.J.A.C. 2:76-2A.13(p)1 could be made clearer to explain that a farm is seeking approval of site plan elements to establish or expand a facility. With this in mind, the SADC will change the wording for clarification by relocating "approval of site plan elements" to the beginning of the paragraph.

The SADC disagrees with Hampton Township that the municipality's role and input are negated when a commercial farm is seeking approval of site plan elements for an on-farm direct marketing facility. As noted in the Response to Comment 27, a farm's process of seeking approval could follow many paths and involve the municipality and/or the CADB. Further, although the RTFA gives CADBs and the SADC primary jurisdiction over agricultural matters, CADBs and the SADC must give appropriate consideration to municipal input and local ordinances when considering a commercial farm's request for an SSAMP determination, as

discussed in *Township of Franklin v. den Hollander*, 172 N.J. 147 (2002). The RTFA process rules regarding SSAMP determinations, N.J.A.C. 2:76-2.3(b) and 2.4(b), specify that the municipality shall be notified when a farm requests an SSAMP determination, and the RTFA hearing procedures rules, N.J.A.C. 2:76-2.8(c), specify that the municipality shall be given written notice of the SSAMP public hearing.

With regard to the comment that municipalities' input and ordinances be included and considered more formally in the rules, the SADC believes that the procedures outlined in the rules are proper and sufficient. The SADC notes it could also provide additional guidance by revising its policy guidance documents for SSAMP requests and RTF complaints (Policy P-2 and Policy P-3) to highlight municipal notice and consideration requirements. The SADC intends to revise these documents to match the specifics of the new rules. Where appropriate, the documents can also include RTFA case law educational reminders.

#### N.J.A.C. 2:76-2A.13(r)2 – Jurisdiction-Related Comments

29. COMMENT: A few comments were made about N.J.A.C. 2:76-2A.13(r)2, which states that 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 CADB, or SADC in counties where no CADB exists, make a determination in a matter by requesting an SSAMP determination.

NJFB commented that it strongly supported this provision, while the Township of Hampton opposed it and commented it should be deleted.

Specifically, the Township of Hampton said that N.J.A.C. 2:76-2A.13(r)2 appears to be an attempt to override municipal authority, but that this authority is not preempted by the RTFA. Hampton said farmers can seek recourse through the courts to contest the provisions of an ordinance on these topics. Hampton also said N.J.A.C. 2:76-2A.13(r)2 conflicts with N.J.A.C. 2:76-2.3(k), which states that CADBs shall have no authority to determine a commercial farm's compliance with State laws and regulations delegated to the municipality for enforcement, including stormwater management and construction code requirements.

RESPONSE: N.J.S.A. 4:1C-9 lists the following as among the activities eligible for protection: "Provide for the operation of a farm market, including the construction of building and parking areas in conformance with municipal standards." The statute does not require municipal approval for parking; rather, the statute requires that the construction of parking conform to municipal standards.

In terms of the RTFA and primary jurisdiction, CADBs may retain primary jurisdiction over compliance with and/or potential preemption of local ordinances as they pertain to farm markets and other agricultural practices, as N.J.A.C. 2:76-2A.13(r)2 and 2.3(h)4 outline and describe. CADBs may retain jurisdiction and determine whether a commercial farm's construction of building and parking areas for its farm market are in conformance with municipal standards.

The SADC disagrees that N.J.A.C. 2:76-2A.13(r)2 conflicts with N.J.A.C. 2:76-2.3(k), as these rules address distinct circumstances. N.J.A.C. 2:76-2.3(k) provides for situations in which local government administers and enforces, by ordinance, a State law delegated to the municipality, but the ordinance contains a provision exceeding a standard set forth by statute. N.J.A.C. 2:76-2.3(k) properly recognizes that the municipality's additional standard is not a State law and is to be treated no differently than any other local ordinance in the context of the RTFA.

N.J.A.C. 2:76-2A.13(r)2 is not directed at municipal ordinances exceeding standards established in a State law delegation. Instead, that paragraph effectuates the SADC's interpretation that the requirement to conform with municipal standards set forth in N.J.S.A. 4:1C-9 is intended to ensure that public safety is achieved through the use of sound construction techniques and materials for building and parking areas. The SADC does not believe that it provides municipalities carte-blanche ability to enforce excessive, overly restrictive building and parking codes that defeat the ability of a farm to operate a farm market (for example, requiring the use of Belgium block curbing, bricks or historically accurate lighting fixtures). To allow preemption of such municipal standards, the CADB or the SADC must not merely balance all competing interests in its review but also must find that the municipal standards are unduly

restrictive and that the farmer has demonstrated a legitimate agriculturally-based reason for not complying.

30. COMMENT: The Township of Hampton suggested adding a provision to the AMP to have CADBs, or the SADC where applicable, make periodic (annual) review of farms that had received SSAMP determinations to see whether the farms continue to be eligible for protection. Hampton commented the CADB or SADC should determine each year whether a farm meets the RTFA's definitions of "commercial farm" and "farm market," should require the farm to submit sufficient credible evidence, and should send written notice of each determination to the municipality within 10 days of the determination.

RESPONSE: The SADC will not make the suggested change, as there is no legal requirement in the RTFA for a CADB or the SADC to review SSAMP determinations after they have been made. A CADB or the SADC need only review a matter if an issue arises or a new complaint is filed pursuant to the RTFA, or if the CADB or the SADC had determined, as part of an SSAMP resolution, that additional monitoring or follow-up was necessary in a particular case.

#### Comments of a Clerical Nature

##### N.J.A.C. 2:76-2.3(f)

31. COMMENT: The Township of Hampton commented that N.J.A.C. 2:76-2.3(f)1 seemed to be incorrectly numbered.

RESPONSE: The SADC appreciates the comment and notes that N.J.A.C. 2:76-2.3(f)1 is similar in arrangement to N.J.A.C. 2:76-2.7(c)1. N.J.A.C. 2:76-2.3 and 2.7 are structured differently, and the SADC agrees that N.J.A.C. 2:76-2.3(f)1 may seem repetitive or incorrectly codified. The SADC will revise N.J.A.C. 2:76-2.3 by relocating N.J.A.C. 2:76-2.3(f)1 as N.J.A.C. 2:76-2.3(c). Existing N.J.A.C. 2:76-2.3(d) being deleted as duplicative of the relocated text.

##### N.J.A.C. 2:76-2.7

32. COMMENT: The Township of Hampton commented that the references to "(c)" in N.J.A.C. 2:76-2.7(g), (h), (i), and (k) should be changed to "(e)."

RESPONSE: The SADC appreciates the comment, but will not make the change suggested by Hampton; rather the SADC will change the reference to "(c) above" in the four subsections noted by the commenter to "this section" for better clarity, as it is N.J.A.C. 2:76-2.7 as a whole that sets forth the dispute, while subsection (c) is about inspection of operations.

#### RTFA Procedural Rules – Additional Comments (Section-By-Section)

33. COMMENT: The Cape May County Board of Chosen Freeholders was concerned that the proposed changes to the RTFA procedures, with an absence of enforcement provisions and impact assessments, coupled with an absence of additional State funding, may not sufficiently equip CADBs to take on their newly proposed responsibilities to conduct site plan reviews, hold hearings on RTFA complaints and SSAMP requests, and issue detailed resolutions. The Freeholders expressed concern about the costs and effects of implementing provisions that they said would shift new administrative and jurisdictional powers to the CADBs, without adequate funding. The Freeholders also believed the AMP should fully describe the expected impacts of the newly proposed CADB procedures.

RESPONSE: The SADC recognizes the Freeholders' concerns while also noting that the RTFA procedural rules and AMP are not adding new responsibilities to CADBs, but rather are helping to clarify existing RTFA protections and CADB jurisdiction, and helping to clarify generally accepted agricultural management practice standards. While the RTFA gives CADBs primary jurisdiction over agricultural matters – including potentially the review and approval of site plan elements, which may be a more technical process – CADBs may benefit from, for instance, the expertise of their county planning, engineering, and other county staff. In some cases, CADBs have collaborated with municipalities regarding some aspects of review, while still retaining RTFA jurisdiction. Where CADBs lack the required technical resources, they may delegate review of such matters back to the municipalities in order to ensure that the health and welfare of the public is protected.

34. COMMENT: The Cape May County Board of Chosen Freeholders commented that the rules do not account for the lack of enforcement power in local CADBs.

RESPONSE: As noted in the Response to Comment 4, the RTFA confers the extra benefit of certain protections to commercial farms, provided they meet the Act's eligibility requirements and AMP standards. The RTFA does not provide for enforcement authority to a CADB, but, a new complaint may be filed against a commercial farm pursuant to the RTFA, which would be reviewed by a CADB or the SADC to determine RTFA protection.

#### **N.J.A.C. 2:76-2.3 - Determinations of Site-Specific Agricultural Management Practices Where a Board Exists**

35. COMMENT: The NJFB supports the ability of a farmer and CADB staff to hold a pre-application meeting to discuss SSAMP application requirements and board jurisdiction and procedures.

RESPONSE: The SADC appreciates NJFB's comment on this provision, N.J.A.C. 2:76-2.3(a)1. A pre-application meeting can help parties become familiar with the SSAMP process.

36. COMMENT: The Borough of West Cape May generally endorsed the proposed amendments to the rules governing SSAMP determinations and RTFA complaints. The Borough also specifically commented that N.J.A.C. 2:76-2.3(b) should require that municipal notice be sent to the clerk, not the zoning or construction official or the planning or zoning board. The Borough also suggested that N.J.A.C. 2:76-2.3(h)3 should require CADBs to notify the municipality if the board seeks to waive or reduce compliance with a municipal standard, and that N.J.A.C. 2:76-2.3(j)8 should include municipal engineering staff and/or licensed professionals, in addition to those of the county, for consultation.

RESPONSE: The SADC will revise N.J.A.C. 2:76-2.3(b) to indicate that municipal notice should be made to the municipal clerk. The clerk can then forward the notice to the appropriate municipal staff or entities.

Regarding the suggestion related to N.J.A.C. 2:76-2.3(h)3, the SADC notes that N.J.A.C. 2:76-2.3(h)3 is not focused on a board's consideration of municipal standards, but rather on the items on the board's SSAMP review checklist. If the intent of the comment was to say that CADBs should give notice to the municipality if an SSAMP application seeks a waiver or reduced compliance with a municipal standard, the SADC notes that municipalities must be notified regarding the nature of the SSAMP application, pursuant to N.J.A.C. 2:76-2.3(b), and that the SADC will revise its SSAMP guidance document (Policy P-3) to highlight that municipal input must be considered when SSAMP requests implicate municipal regulations.

The SADC notes, in response to the Borough's suggestion related to N.J.A.C. 2:76-2.3(j)8, that subsection (j) also includes "Any other organization or person which may provide expertise concerning the particular practice." Accordingly, the SADC will not make the suggested change.

#### **N.J.A.C. 2:76-2.8 - Hearing Procedures for Right-to-Farm Cases**

37. COMMENT: NJFB supports the new Right to Farm hearing procedures, N.J.A.C. 2:76-2.8, saying they will save commercial farm owners time and money.

RESPONSE: The SADC appreciates NJFB's comment and notes that N.J.A.C. 2:76-2.8 is designed to help clarify the hearing procedures for SSAMP requests and Right to Farm Act complaints. To the extent the new process is more streamlined, all of the other parties that may be involved may save time and money.

38. COMMENT: The Township of Hampton suggested that in N.J.A.C. 2:76-2.8(c)2ii, the phrase "together with the certified list of property owners" be added after "proof of service."

RESPONSE: The SADC will change N.J.A.C. 2:76-2.8(c)2ii to specify that regarding the notice requirements for RTFA hearings, a commercial farm's proof of notice should also include the certified list of property owners to whom notice was given. The commercial farm is responsible for obtaining the certified list of property owners pursuant to N.J.A.C. 2:76-2.8(c)1ii in order to provide proper notice of the RTFA hearing, so presenting the CADB with the list in the commercial farm's possession is not burdensome. In addition, submittal of the certified list of property owners to the CADB is consistent with the longstanding practice

before municipal land use boards confirming proper notice, as the commercial farm is entitled to rely on the information contained in the list in accordance with N.J.S.A. 40:55D-12.b.

**N.J.A.C. 2:76-2A.13(b) – Definitions**

39. COMMENT: Deborah Post commented that the definition of “farm market” should be revised to clarify that the 51 percent requirement need not be related to products produced on the farm market’s site or on contiguous properties, so long as products are generated by the farm market owner elsewhere in New Jersey, qualifying as “local,” or on a different commercial farm qualifying for Farmland Assessment.

RESPONSE: The SADC declines to make the suggested change, as the definition of “farm market” is statutory (see N.J.S.A. 4:1C-3).

40. COMMENT: The Township of Hampton commented that the AMP’s definition of “agricultural output of a commercial farm” generously expands the types of products that are eligible for RTFA protection by including ingredients that are not grown on the farm. Hampton gave the example of a grain or hay mixture, with 51 percent of the mix coming from the farm and 49 percent coming from another source, to describe something that should not be considered part of the farm’s agricultural output. Hampton expressed concern that the definition will give off-farm products greater protection than what is contemplated by the RTFA and will distort the 51/49 ratio of what may be sold from a farm market.

RESPONSE: The SADC appreciates the comment while noting that the AMP’s definition of “agricultural output of a commercial farm” properly recognizes that a farm’s agricultural output may include the items specified in N.J.S.A. 4:1C-9.a that a commercial farm produces, as well as the value-added or processed products produced from those items. The SADC disagrees that the definition will distort the RTFA’s protections regarding farm markets, as the definition includes the clear qualifier that in terms of these value-added or processed products, the retail sale of such products are protected only if the primary and predominant ingredients used to produce the products are grown or raised on the commercial farm on which the farm market is located.

41. COMMENT: The Township of Hampton commented that the AMP’s definitions of “products that contribute to farm income,” “complementary products,” and “supplementary products” appear to “allow the exception to swallow the rule,” saying that by not including the word “related” before “complementary products” and before “supplementary products” in the definitions, the required relationship between these products and a farm’s agricultural output is not present. Hampton said that this creates a disconnect between the products that may be sold within the 49 percent category and the products that make up the farm’s agricultural output as the 51 percent category.

Hampton cited a portion of a 2011 SADC Right to Farm Act decision, *In the Matter of Hopewell Valley Vineyards, Hopewell Township, supra*, in support of its position that a clear nexus be required between “products that contribute to farm income” and the farm’s agricultural output. Without this nexus, Hampton said that an unintended consequence may be that RTFA protection is given for the sale and marketing of items bearing no or little genuine relationship to a given farm’s agricultural output.

RESPONSE: The SADC agrees that an on-farm direct marketing facility’s “products that contribute to farm income” must have a clear connection to the farm’s agricultural output to be eligible for RTFA protection. However, the SADC disagrees that the definitions referenced need additional language to support this conclusion. The terms complementary and supplementary, and their use and definitions within the AMP, highlight the required relationship that “contributing” products must have to the agricultural output of a commercial farm. A commercial farm’s “products that contribute to farm income” will possess the appropriate nexus to the RTFA’s protection of agricultural production activities if the products are complementary to or supplement the commercial farm’s agricultural output.

42. COMMENT: The Township of Hampton commented that the phrase “promotional items” in the AMP’s definition of “complementary products” should be clarified, saying it as an undefined category and that it appears intended to mean items like souvenirs. Hampton said this intent

should be made clear and that there should be a separate, narrowly drawn definition of “promotional items,” so there is no misunderstanding that not every product that attracts customers to a farm market qualifies for RTFA protection. Hampton proposed the following definition for promotional items: “Souvenir items such as shirts, bags, calendars, caps and pens and the like bearing the name or logo of the commercial farm given away or sold to current or prospective customers to promote the agricultural output of the commercial farm.”

RESPONSE: The SADC agrees that further defining the term “promotional items” within the definition of “complementary products” would enhance the understanding of the definition. The SADC will change the definition of “complementary products” by adding examples of promotional items.

43. COMMENT: Robert L. Myers commented that the use of the terms “incidental” and “accessory to” in the AMP’s definitions rendered them unnecessarily vague. Mr. Myers suggested the following changes: adding “clearly” before “incidental” in the definition of “ancillary entertainment-based activities” and defining the “de minimus fee” associated with such activities; substituting or adding “clearly incidental” instead of “accessory to” in the definitions of “farm based recreational activities” and “on-farm direct marketing”; making it clear that a farm market facility or on-farm direct marketing facility is a building and does not include the productive agricultural land or soils; and including a provision in the definition of “on-farm direct marketing events” to specify that such events should be scheduled and located in a way that accounts for impacts on adjacent properties.

RESPONSE: The SADC will not make the suggested changes, as it believes the AMP’s definitions are sufficiently clear as written. Additional or alternative language is not necessary to understand the use and meaning of “incidental,” “accessory to,” “de minimus,” or “facility.”

44. COMMENT: The Cape May County Freeholders commented that the AMP’s definitions of “products that contribute to farm income,” “complementary products,” and “supplementary products” acknowledge the reality and necessity of coupling other items and activities with farm products in order for a farm to successfully market those products, thereby remaining economically viable.

RESPONSE: The SADC agrees that selling “products that contribute to farm income” can help attract customers to the farm market. The SADC notes that there are also some commercial farms that sell only what they grow. For the purposes of RTFA protection, “products that contribute to farm income” must be complementary or supplementary, as set forth in N.J.A.C. 2:76-2A.13(b), and have a clear connection to the farm’s agricultural output.

**N.J.A.C. 2:76-2A.13(d) – Lighting**

45. COMMENT: Deborah Post commented that where N.J.A.C. 2A.13(d)1 states, “This lighting shall provide, at a minimum, the amount of light necessary for customer safety,” the mandatory “shall” language should be modified to include only a farmer’s reasonable best efforts and judgment, and to recognize the financial and physical impracticality of requiring fully lit farm fields. Ms. Post commented that the regulation could create litigation concerns. She also commented that lighting requirements should be restricted to areas with moving vehicles and that lighting elsewhere on the farm should be provided at the farmer’s discretion.

RESPONSE: The SADC will not make the suggested change, as it believes the portion of N.J.A.C. 2:76-2A.13(d)1 cited in the comment sets forth an acceptable public health and safety-related and performance-based standard. This standard does not require that all of a farm’s fields must be lit or fully-lit, but rather that any areas used by customers, if used after dark, should have adequate lighting. The standard is performance-based in that it does not prescribe a specific amount of required lumens and types of lights. Rather, what should be provided is simply the amount of light deemed appropriate and necessary for customer safety.

46. COMMENT: Robert L. Myers commented that temporary lighting removal within 30 days of an event should be reduced to a 10-day removal period.

RESPONSE: The SADC will not make the suggested change, as 30 days provides a flexible, but not extensive, timeframe within which to

remove temporary lighting. During this period, the lighting will also not be turned on, as the activities or events will have ended.

**N.J.A.C. 2:76-2A.13(e) – Sanitary Facilities**

47. COMMENT: The Township of Hampton commented that its planner recommends that the time at N.J.A.C. 2:76-2A.13(e)1ii be reduced from 90 to 60 minutes, especially in instances when it is intended that children are to attend or participate.

RESPONSE: The SADC appreciates the comment but will not make the suggested change. N.J.A.C. 2:76-2A.13(e)1ii, which states that a commercial farm shall provide sanitary facilities if an on-farm direct marketing activity or event promotes customers staying on-site for more than 90 minutes, provides for an amount of time that the SADC considers reasonable as an AMP standard. Farms are not precluded from providing sanitary facilities to a greater extent than what is outlined in the AMP, and some farms do in fact go further regarding sanitary facilities as a best management hospitality practice.

48. COMMENT: Deborah Post commented that the reference to “hand-sanitizing” in N.J.A.C. 2:76-2A.13(e)3 needs to be defined, and she suggested that running water in reasonable proximity be specified as an acceptable minimum standard. Ms. Post expressed concerns about the AMP resulting in farm visitors littering farm fields with anti-bacterial wipes and gel bottles.

RESPONSE: The SADC will not make the suggested change, as it would be overly prescriptive and burdensome to certain agricultural operators. For clarification purposes, the SADC revises N.J.A.C. 2:76-2A.13(e)3 to include the same descriptive information that appears in N.J.A.C. 2:76-2A.13(m)5iv, regarding hand sanitizing facilities, namely, that “hand-sanitizing facilities include running water with soap, antibacterial hand wipes, waterless hand sanitizers, and/or other hand-washing stations.”

**N.J.A.C. 2:76-2A.13(g) – Sign Standards**

49. COMMENT: Robert L. Myers commented that the AMP does not balance road frontage with allowed signage, and that signage for farms with thousands of feet of road frontage need to be regulated differently than those with minimal frontage.

RESPONSE: While the SADC considers the AMP’s sign standards to be reasonable and appropriate, it understands that each farm’s layout and configuration is different. Accordingly, the AMP provides a maximum allowable signage regime within which a commercial farm operation can comply in order to obtain RTFA protection. A CADB must take into account the commercial farm operation’s location and frontage and balance those factors with the AMP’s sign standards.

**N.J.A.C. 2:76-2A.13(h) – Parking Standards**

50. COMMENT: Deborah Post commented that N.J.A.C. 2:76-2A.13(h)2i., which notes that “the number of spaces provided shall be sufficient to accommodate the normal or anticipated traffic volume,” should be modified because “sufficiency is a number that is not knowable.” Ms. Post commented that the language should be revised to: 1) require that a farm to make a best effort to provide parking based on anticipated parking needs; and 2) reflect that having sufficient parking to meet the demands of a peak demand day may be impossible.

RESPONSE: The SADC will not make the suggested changes because the AMP cited already incorporates the performance-based standard of having sufficient parking based on anticipated volume. N.J.A.C. 2:76-2A.13(h)1 also notes that areas temporarily devoted to parking may be used when additional parking capacity is needed.

51. COMMENT: Deborah Post commented that N.J.A.C. 2:76-2A.13(h)2ii., which notes that parking areas should have safe ingress and egress points, should be amended to discourage municipalities from denying reasonable requests for road access. Ms. Post commented that farmers should be able to determine what is safe themselves without needing burdensome road entry permits.

RESPONSE: Ingress and egress points and traffic circulation are essential components of an agricultural management practice in ensuring the protection of public health and safety are essential to providing RTFA protection to farm market operations. One criterion for RTFA protection is that the commercial farm not pose a direct threat to public health and safety; accordingly, a CADB or the SADC must address traffic, vehicular

circulation, and parking safety issues posed by the commercial farm operation and, as such, it is not appropriate to allow farmers themselves to determine what is safe, as suggested by the commenter. Whether a road access permit may be needed depends on site-specific conditions, the government entity having jurisdiction over the road, and the State Highway Access Management Code, N.J.A.C. 16:47. Finally, the SADC notes that since the underlying rationale for any AMP is to provide standards for the operation of commercial farms, not to direct municipal action or to set forth the consequences of municipal inaction, the SADC declines to add a provision to discourage municipalities from denying reasonable requests for road access.

52. COMMENT: Deborah Post commented that N.J.A.C. 2:76-2A.13(h)2iii., which states, “Where applicable, parking areas shall accommodate bus traffic and allow for the safe unloading of bus passengers,” should be revised because “where applicable” is an unclear qualifier. Ms. Post commented that a farm should not be denied RTFA protection due to its bus policies, as not all farms allow bus groups, or field facilities, as not all farms have the field facilities to safely park buses.

RESPONSE: The SADC believes the “where applicable” language in this subparagraph of the AMP adequately addresses the commenter’s concerns. However, the SADC will revise the paragraph for clarification purposes to indicate “[w]here applicable, on farms that allow buses ...”

53. COMMENT: Deborah Post commented that the phrase “such that bare ground is not parked on” should be deleted from N.J.A.C. 2:76-2A.13(h)4ii, which states, “Areas temporarily devoted to parking may include, but are not limited to, hay field, grass fields, pastures, and other crop fields, provided they have vegetative or organic mulch cover, such that bare ground is not parked on.” Ms. Post commented that even the best planned parking areas could be made muddy as a result of the weather, and this should not keep a farm that needs to stay open from getting RTFA protection.

Ms. Post similarly commented that N.J.A.C. 2:76-2A.13(h)4v should be deleted, saying the standard to provide safe and sufficient traction during wet conditions is impossible to meet if the weather turns a field to mud.

RESPONSE: The SADC will not make the suggested changes, as both subparagraphs set forth non-prescriptive performance standards that are intended to foster safe parking areas.

54. COMMENT: Deborah Post commented that N.J.A.C. 2:76-2A.13(h)4iii, which states that “[t]he slope of the land shall be considered to address issues related to drainage, puddles, and pockets of standing water, and safety,” is unclear in its purpose and meaning. Ms. Post commented that the slope of a farm field is a natural condition and that farmers should not be required to grade, implement “stormwater management,” or do other slope remediation in order to accommodate temporary parking needs.

RESPONSE: The SADC will not make any changes to the subparagraph, as the purpose of the subparagraph is to identify specific land characteristics that a commercial farm should consider regarding the location of areas temporarily devoted to parking and other related matters. N.J.A.C. 2:76-2A.13(h)4i notes that 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.

55. COMMENT: N.J.A.C. 2:76-2A.13(h)4iv states that “[d]uring dry conditions, areas temporarily devoted to parking shall be mowed, so that vegetation does not come in contact with the underside of customer vehicles.” Deborah Post commented that the last clause, requiring that vegetation not come in contact with the underside of vehicles, should be deleted and replaced with the clarification that farm visitors should acknowledge the associated reasonable risks of visiting the farm, such as vegetation touching their vehicles.

RESPONSE: The SADC will not make the suggested deletion, as the performance-based standard in this subparagraph is a generally accepted standard for public safety considerations, specifically related a fire hazard. However, the SADC will revise the subparagraph add, for clarification purposes, “so as to minimize fire hazards related to vegetation coming in contact with the underside of customer vehicles,”

and delete “so that vegetation does not come in contact with the underside of customer vehicles.”

56. COMMENT: Deborah Post commented that N.J.A.C. 2:76-2A.13(h)4vi, which states, “[a] commercial farm shall mark, sign, or otherwise indicate where vehicles should be parked,” is vague. Ms. Post said that farmland does not lend itself to having painted lines for parking, that most farms manage parking with staff directing cars, and that excessive signage may be ignored or misleading.

RESPONSE: The SADC disagrees that N.J.A.C. 2:76-2A.13(h)4vi is vague, as this subparagraph sets forth a reasonable public health and safety performance-based measure. In conjunction with different on-farm direct marketing facilities, activities, or events, commercial farms may use staff to assist with parking. The use of staff for this purpose is included within the N.J.A.C. 2:76-2A.13(h)4vi phrase “or otherwise indicate.” However, the SADC will clarify the subparagraph by changing “or otherwise indicate” to “or indicate through staff direction or other means ...”

#### **N.J.A.C. 2:76-2A.13(i) – Buffer Standards**

57. COMMENT: The Township of Hampton suggested changing “may” to “shall” in N.J.A.C. 2:76-2A.13(i)1i, commenting that otherwise, there is no reason to have buffer standards since farm operators will be free to disregard them. Hampton commented that buffers are necessary to ensure that adjacent properties are protected from a farm’s activities and facilities.

RESPONSE: The SADC acknowledges the importance of buffers but will not make the suggested change. There are other techniques that might be employed to address these concerns, including changes to the agricultural operation, so use of the word “may” rather than “shall” as it applies to utilizing buffers is appropriate. It will be up to the CADB to determine whether an operation will need to take additional steps in order to protect public health and safety and to mitigate unreasonably adverse impacts on neighbors. There are other techniques that might be employed to address these concerns, including changes to the agricultural operation, so use of the word “may” rather than “shall” as it applies to utilizing buffers is appropriate.

58. COMMENT: The NJFB feels that the 50-foot front, side, and rear-yard setback standards set forth in N.J.A.C. 2:76-2A.13(i)2 for new or expanded on-farm direct marketing facilities’ permanent structures are too large and should be reduced, saying the setbacks may cause some valuable agricultural land to be taken out of production.

RESPONSE: The SADC declines to make the change, noting that N.J.A.C. 2:76-2A.13(i)2v gives CADBs the ability to require lesser setback distances based on consideration of a number of criteria, including the physical features and constraints of the farm property.

59. COMMENT: NJFB commented on how the AMP’s buffer standards in N.J.A.C. 2:76-2A.13(i)2ii through vii apply differently to existing on-farm direct marketing facilities, activities, and events than to new operations. NJFB expressed support for the language that says existing operations, including existing areas permanently devoted to parking, are not subject in their current layout and configuration to the provisions of N.J.A.C. 2:76-2A.13(i)2ii through iv. NJFB further commented that farms with existing operations can go to the CADB for a site-specific AMP determination.

The Township of Hampton commented that this section of the AMP should be amended to define what “current” and “existing” mean, for example, defining the terms such that they mean “as of the effective date of the RTFA.” Hampton said that if the terms refer to a farm market operated on the date an SSAMP application is filed, farmers will make changes in advance of their SSAMP request to establish their modified operation as “existing.” Hampton also suggested that language be added to give CADBs authority to impose AMPs and best management practice requirements on existing facilities, activities, and events when complaints are filed with the CADB or when requested by a municipality.

RESPONSE: The SADC appreciates the comments and recognizes the importance of having the AMP specify appropriate buffer standards for existing on-farm direct marketing operations, which may involve pre-established configurations, as well as for new or expanded operations.

The SADC agrees that clarifying what “existing” means will enhance the understanding of the AMP’s standards. With this in mind, the SADC

adds as new N.J.A.C. 2:76-2A.13(i)4 that “existing” as used in subsection (i) means existing as of April 7, 2014, the effective date of the AMP.

Regarding the ability of farms to seek site-specific AMP determinations, the SADC notes that farms may seek such determinations for currently operating, as well as for new or expanded on-farm direct marketing facilities, activities, or events. The SADC also notes that site-specific AMP determinations must be consistent with the practices set forth in the AMP, as noted in N.J.A.C. 2:76-2A.13(r)1.

The SADC disagrees with the suggestion that CADBs be given authority to impose AMPs, and notes that AMPs are not rules that CADBs enforce, but rather are sets of standards that farms may choose to follow to satisfy an eligibility requirement for receiving RTFA protection.

60. COMMENT: Deborah Post commented that the history of an agritourism business being in existence prior to a neighbor moving in next to the farm should be included in N.J.A.C. 2:76-2A.13(i)1iii as an additional consideration for making determinations about the extent or necessity of buffers. Ms. Post said that a newly arriving neighbor who purchased adjacent property with the knowledge of agritourism occurring next door has a lesser right to demand buffers than a long-time resident who experiences a new agritourism operation.

RESPONSE: The SADC will not make the suggested change, as it is unnecessary. N.J.A.C. 2:76-2A.13(i)1iii(1) and (2) already note the following as considerations: the nature of existing adjacent property uses, and the nature and scale of the commercial farm’s on-farm direct marketing operation. N.J.A.C. 2:76-2A.13(i)2iii(4) also mentions existing, occupied residences, and N.J.A.C. 2:76-2A.13(i)2v provides for the ability of commercial farms to request SSAMP determinations that take site-specific conditions into consideration.

61. COMMENT: Deborah Post commented that the requirement in N.J.A.C. 2:76-2A.13(i)3ii, that vegetative screening achieve 75 percent screening within five years, should be deleted. Ms. Post commented that this standard promotes the use of fast growing invasive plant species and that a farmer should be able to use slower-growing and more majestic native species.

RESPONSE: The SADC will not make the suggested change, as screening may consist of vegetation and/or structures, and five years is an acceptable time for vegetative screening to become established.

#### **N.J.A.C. 2:76-2A.13(k) – Use of Structures or Improvements in Conjunction with On-Farm Direct Marketing Activities and Events and N.J.A.C. 2:76-2A.13(l) – Impact of On-Farm Direct Marketing Activities and Events on the Land**

62. COMMENT: Deborah Post commented that N.J.A.C. 2:76-2A.13(k) and (l) should be deleted because the SADC does not have the authority to limit the use of structures or use of the land unless the land is deed-restricted under a farmland preservation program. Ms. Post commented that the rule would deny RTFA protection to farmers who dedicate all or parts of their barns to a non-agricultural use.

RESPONSE: The SADC disagrees with the comments, as subsections (k) and (l) are permissive rather than limiting, and the SADC does have the authority, pursuant to the RTFA, to set forth accepted agricultural management practices for RTFA protection purposes. The RTFA protects agricultural production activities and also specific activities related to marketing a farm’s production, and the AMP establishes appropriate standards to ensure that activities eligible for protection do not have an adverse impact on the farm’s agricultural production capacities. Regarding the use of barns, subsection (k) specifies how structures and improvements may be used or constructed in conjunction with on-farm direct marketing activities and events; this includes the potential use of all or parts of barns for on-farm direct marketing activities and events, provided the standards in subsection (k) are met.

#### **N.J.A.C. 2:76-2A.13(m) – On-Farm Direct Marketing Activities**

63. COMMENT: The NJFB commented that the AMP’s hayrides and wagon rides standard that hayride wagon operators have a current motor vehicle operator’s license, N.J.A.C. 2:76-2A-13(m)4v(6), be removed. NJFB commented that the other provisions in this subsection are sufficient to protect public health and safety and have more bearing on a

person's ability to safely operate a tractor, adding that tractors are completely different from motor vehicles.

RESPONSE: The SADC disagrees with the suggested change, as having a valid driver's license is an important indicator of the ability to drive a vehicle in a manner that protects passenger safety.

64. COMMENT: The Warren CADB recommended the SADC consider adding a provision stating that farmers should use a secure hitch-pin when pulling people in wagons.

RESPONSE: The SADC appreciates the CADB's comment but believes the basic agricultural management practice standards in the hayrides and wagon rides paragraph, N.J.A.C. 2:76-2A-13(m)4, are sufficiently protective of public safety as written.

65. COMMENT: Deborah Post commented that N.J.A.C. 2:76-2A.13(m)1i, which says that "[v]isitors [involved in pick-your-own activities] shall be informed of any rules to follow and instructed as to which fields they are permitted harvest," was unclear and unnecessary. Ms. Post said it is not possible for farmers to communicate with every visitor on a busy day and that how farmers choose to communicate with their customers should be a private business decision.

RESPONSE: The SADC disagrees with the commenter, as N.J.A.C. 2:76-2A.13(m)1i is an appropriate agricultural management practice and is clear as written. This subparagraph also sets forth performance-based standards that allow commercial farms to make their own business decisions regarding how best to provide rule-information and other instruction.

66. COMMENT: Deborah Post deemed impractical the requirement in N.J.A.C. 2:76-2A.13(m)1i that pick-your-own fields be marked. Ms. Post commented that picking fields change rapidly and are not always known in advance, that excessive signage is not read, and that the use of signs should be at the discretion of farmers based on their best judgment.

RESPONSE: The SADC believes that N.J.A.C. 2:76-2A.13(m)1i is an appropriate agricultural management practice. Identifying which fields are open for pick-your-own activities helps to inform visitors where they may and may not go, which may be important if there are other fields or areas that for safety reasons are not open to visitors.

**N.J.A.C. 2:76-2A.13(n) – Event Management Plans for On-Farm Direct Marketing Events**

67. COMMENT: The Township of Hampton expressed its concern that a commercial farm, under N.J.A.C. 2:76-2A.13(n), could proceed with an event despite a municipality's concerns that the plan did not sufficiently protect public health and safety. Hampton stated that a streamlined procedure should be established in which a municipality presents its concerns about a plan to the SADC, and the SADC makes an expedited determination whether the event(s) may proceed. Hampton added that any plan, especially those submitted for multiple events, should specify the date(s) of the event(s) and that proof of adequate liability insurance should also be submitted with all plans.

RESPONSE: The SADC recognizes there are public health and safety issues that must be considered when a farm has an on-farm direct marketing event where the expected volume of traffic and visitors for the event is significantly greater than the volume regularly accommodated by the farm's on-farm direct marketing facility. The SADC disagrees that another procedure needs to be established should a municipality have concerns about a farm's plans, as the RTFA already outlines a formal complaint process. If a municipality is aggrieved by the operation of a commercial farm, including an event management plan a farm has developed, the municipality may file a complaint with the CADB and follow the established RTFA process.

The SADC notes that N.J.A.C. 2:76-2A.13(n)2i addresses Hampton Township's concerns, by stating that such plans must note multiple occurrences of an event. However, the SADC will add, for clarification purposes that the single event management plan note the multiple occurrences and "the future dates" of the event. The SADC also will recodify N.J.A.C. 2:76-2A.13(n)2i as (n)3.

The SADC recognizes that maintaining adequate liability insurance may be an agricultural industry best management business practice, but it is not an AMP standard that must be met to qualify for RTFA protection.

The AMP encourages farmer-municipality coordination on health and safety issues by requiring the farmer shall provide a copy of the plan to the municipality as an advisory notice 30 days in advance of the event.

68. COMMENT: Robert L. Myers commented that marketing events should be restricted to no more than one per season or four per year with a two-day limit on each event.

RESPONSE: The SADC will not make the suggested change, as it is not appropriate for the AMP to specify a maximum frequency or number of events. Operations and local conditions vary around the State.

69. COMMENT: Robert L. Myers commented that the AMP's parking requirements for events are vague, and that it should specify the required number of spaces depending on expected event attendance.

RESPONSE: The SADC will not make the suggested change as it believes that N.J.A.C. 2:76-2A.13(n), combined with the parking standards at N.J.A.C. 2:76-2A.13(h), describes appropriate performance-based standards for parking in conjunction with on-farm direct marketing operations.

70. COMMENT: The Borough of West Cape May commented that the proposed use of an event management plan to handle large-scale events is not a sufficient substitute for municipal control. The Borough felt that the AMP does not sufficiently address limitations on the frequency of marketing events and activities, saying that individualized municipal control is warranted. In particular, West Cape May commented that the AMP should direct that municipalities specify the number and frequency of events that are annually permitted on a particular property. Alternatively, West Cape May suggested that the AMP dictate a low number of permitted events that, if exceeded, would require municipal approval. West Cape May also commented that the permitted hours of operation are too generous and that such hours are best left to the individual municipality.

71. COMMENT: The Borough of West Cape May commented it that it was not clear when an event management plan would be required, and what entity would make that determination. The Borough was also concerned that the AMP did not consider the monetary requirements involved (insurance, bonding, or payment of the cost of police, fire, and emergency services) and the impact on traffic and congestion.

RESPONSE TO COMMENTS 71 AND 72: The SADC recognizes the Borough of West Cape May's concerns, while noting that CADBs and the SADC have primary jurisdiction over agricultural management practices, including on-farm direct marketing event management plans. The SADC believes that N.J.A.C. 2:76-2A.13(n)1 provides the best possible descriptive criteria for when a plan is needed, considering the varied nature and size of farm operations around the State. It is the farmer who decides whether a plan is needed in accordance with the criteria in N.J.A.C. 2:76-2A.13(n)1. Insurance and payments for public safety protection are private business matters as opposed to agricultural management practice standards, and N.J.A.C. 2:76-2A.13(n) specifies how addressing traffic management is a necessary component of a plan.

73. COMMENT: Deborah Post commented that there is no statutory authority in the RTFA to require that event management plans be filed with and/or approved by a municipality. Ms. Post commented that municipalities are often hostile to agritourism operations and that this requirement creates municipal interference, which the RTFA is supposed to protect against. Ms. Post commented that any requirement for municipally approved plans should only be the result of the municipality filing an RTFA complaint and the complaint being upheld after the municipality demonstrates "good cause" for such a plan based on a specific, documented threat to public safety. Ms. Post gave the following as an example: A farm whose operation regularly disrupts traffic flow or creates unsafe road conditions might need to work with the municipality to rectify the issues. Otherwise, she said, farms that manage their operations safely and without incident should be given the deference to rely on their own qualifications to manage their own affairs without municipal involvement. Ms. Post commented that subsection (n) should be revised to become an optional guideline that says that plans only need to be submitted if a farm believes it would help municipal relations.

RESPONSE: As written, N.J.A.C. 2:76-2A.13(n) does not specify that an event management plan be approved by a municipality, but rather that the plan be shared with the municipality as an advisory notice, to facilitate any farmer-municipality coordination that may be necessary. If

a municipality has a complaint about a plan, it can file a complaint with the CADB, request mediation, or seek other informal resolution.

**N.J.A.C. 2:76-2A.13(o) – Overnight Lodging**

74. COMMENT: The Cape May County Board of Chosen Freeholders commented that there was no rationale for the AMP's exclusion of overnight marketing activities and for why the time of day during which an event occurs has any bearing on whether it is validly related to marketing a farm's agricultural or horticultural output. The Freeholders believed that the exclusion is inconsistent with State-supported agritourism and ecotourism goals, which they said are especially critical in the State's non-urban counties.

RESPONSE: The SADC recognizes that some farms offer overnight lodging and camping and that these activities are important to those that offer them. However, the SADC considers overnight accommodations to be beyond the scope of the RTFA at this time, in part because such accommodations involve residential standards beyond the SADC's expertise and are already regulated by other entities. Overnight accommodations also have difficulty fitting within the AMP's on-farm direct marketing related definitions. With this in mind, the AMP notes that the AMP shall not be construed as extending RTFA protection to such accommodations. This does not mean that farms cannot offer overnight accommodations, only that such activities are subject to relevant State, county and local laws.

**N.J.A.C. 2:76-2A.13(p) – Approval of Site Plan Elements for New or Expanded On-Farm Direct Marketing Facilities**

75. COMMENT: Deborah Post commented that a specific statement should be added to the AMP to clarify that a farm's efforts to work cooperatively with a municipality regarding agritourism should not be construed as subjecting the farm to the Municipal Land Use Law, N.J.S.A. 40:55D-53.2, except where approval for a new permanent structure is sought, nor should it be construed as an intent to allow municipalities to charge fees for plan reviews or approvals.

RESPONSE: The SADC will not make the suggested change, as the RTFA's ability to preempt municipal and county regulations is clear within the RTFA, the *den Hollander* decision, and other case law. In terms of seeking approval of site plan elements for new or expanded on-farm direct marketing activities, N.J.A.C. 2:76-2A.13(p) outlines how a commercial farm may seek such approval from the municipality and/or CADB. If a farm chooses to seek such approval from a municipality, then there may be review fees associated with the municipality's review.

**N.J.A.C. 2:76-2A.13(q) – Relevant Federal and State Laws, Rules, and Regulations**

76. COMMENT: Deborah Post commented that N.J.A.C. 2:76-2A.13(q) could be interpreted to mean that the RTFA is subordinate to the statutes listed, but she said that the RTFA is intended to protect farmers from burdensome rules and regulations. Ms. Post commented that requiring compliance with the Highlands Act is vulnerable to being interpreted as meaning that on-farm direct marketing activities are not agricultural activities. Ms. Post said that agricultural activities are exempt from Highlands regulations and the AMP should explicitly state that agritourism is an exempt agricultural activity.

RESPONSE: The RTFA requires compliance with relevant Federal and State laws, rules, and regulations in order to be eligible for protection. The SADC agrees that under the New Jersey Department of Environmental Protection's Highlands Water Protection and Planning Act rules, N.J.A.C. 7:38, "agricultural development" is excluded in the definition of "major Highlands development." The SADC also notes that N.J.A.C. 2:92, "agricultural development in the Highlands," promulgated by the New Jersey Department of Agriculture, may apply.

**N.J.A.C. 2:76-2A.13(r) – Additional Provisions**

77. COMMENT: The NJFB commented that regarding N.J.A.C. 2:76-2A.13(r)1, it supports that the AMP does not preclude a commercial farm from requesting an SSAMP determination for on-farm direct marketing facilities, activities, and events that may not be specifically identified in the AMP, noting that farmers are always adapting and that they should be able to receive RTFA protection for the new practices they adopt.

RESPONSE: The SADC agrees that the AMP does not preclude a commercial farm from requesting an SSAMP determination regarding on-farm direct marketing facilities, activities, or events. A farm may request an SSAMP determination for an operation or practice that is described or not described in the AMP. SSAMP determinations made by CADBs or the SADC, however, must be consistent with the standards and provisions set forth in the AMP, as noted in N.J.A.C. 2:76-2A.13(r)1.

**Summary of Agency-Initiated Changes:**

The SADC determined that "such as pick your own activities" in N.J.A.C. 2:76-2A.13(i)2vii should be deleted upon adoption. This text was inadvertently added in the notice of proposal, but is not appropriate as the definitions of "on-farm direct marketing activity" and "on-farm direct marketing event" do not include pick-your-own activities. Pick-your-own operations are defined as a direct marketing method, not an activity or event.

The SADC further determined that the introductory sentence, as proposed in N.J.A.C. 2:76-2A.13(m) was lengthy and unnecessarily repeated words appearing previously in the rule text. In order to achieve better economy of language, the subsection has been revised for clarity to remove the duplicative text.

**Federal Standards Statement**

A Federal standards analysis is not required because the adopted 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.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

**SUBCHAPTER 2. RIGHT TO FARM**

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

(a) In counties where a board exists, a commercial farm owner or operator that meets the eligibility criteria pursuant to N.J.S.A. 4:1C-3 and 9 may 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 clerk(s) of\*** 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.

**\*[(c)]\* \*(d)\* determine 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.)

**\*[(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\*, **with final review and decision making authority vested in the board\***. 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]\* **as they apply\*** 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.

(j) In 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;

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

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.

(l) 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 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.

(m) Any person aggrieved by any decision of a board regarding site-specific agricultural management practices may appeal the decision to the Committee in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 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 decision.

1.-2. (No change.)

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

(a) In counties where a board does not exist, a commercial farm owner or operator that meets the eligibility criteria pursuant to N.J.S.A. 4:1C-3 and 9 may 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) 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) 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 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 agency 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 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. **\*The board, or Committee in counties where no board exists, shall review the matter and make a determination regarding whether RTFA protection is warranted.\***

(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.

2:76-2.7 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.

(c) 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 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. 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.

(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).

1. 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 decision of the board 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 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.)

(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 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.

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]\* **\*this section\*** 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]\* **\*this section\*** 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 a site-specific agricultural management practice determination and, if so, the status of the board's determination.

2. Upon receipt of the complaint, the Committee shall review the board's determinations that the dispute 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. As part of its review, the Committee may contact the farm owner to provide additional information. If the Committee determines that the dispute 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 permitted activities set forth in N.J.S.A. 4:1C-9, then the Committee shall dismiss the complaint. The Committee'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, and the municipality(ies) in which the farm operation is located.

i. (No change in text.)

(i) If the Committee determines that the dispute subject to \*[(c) above]\* **\*this section\*** 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]* **\*this section\*** 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\*, **along with the certified list of property owners,\*** 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. **\*Examples of promotional items include, but are not limited to, souvenir items such as commercial farm-branded shirts, hats, and bags.\***

“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 through 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. **\*Hand-sanitizing facilities include running water with soap, antibacterial hand wipes, waterless hand sanitizers, and/or other hand-washing stations.\***

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, **\*on farms that allow buses,\*** 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]\* \*as to minimize fire hazards related to\*** vegetation **\*[does not come]\* \*coming\*** 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 **\*through staff direction or other means\*** 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]\* **\*that\*** 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.

**\*4. For the purposes of this subsection, existing on-farm direct marketing facilities, activities, or events are those facilities, activities, or events that are in operation as of April 7, 2014, the effective date of the AMP.\***

(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]\* **\*Standards for certain on-farm direct marketing activities 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.]\* **\*3.\*** 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 **\*and the future dates\*** 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 **\*approval of site plan elements\*** 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 **\*such\*** 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

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

## CIVIL SERVICE

(a)

### CIVIL SERVICE COMMISSION

#### General Rules and Department Organization Definitions

#### Selection and Appointment

#### Examination Announcements and Applications

#### Adopted Amendments: N.J.A.C. 4A:1-1.3 and 4A:4-2.1, 2.6, and 2.17

Proposed: April 15, 2013, at 45 N.J.R. 783(a).