

STATE AGRICULTURE DEVELOPMENT COMMITTEE

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

Adopted Amendments: N.J.A.C. 2:76-2.3, 2.4, 2.5, 2.7, 2.9 and 2.10 and N.J.A.C. 2:76-2B.2

Proposed: June 17, 2013 at **45 N.J.R. 1449**

Adopted: _____

Filed: _____, 2013, as R.2013 , d.____, **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.

Effective date: _____

Expiration date: _____

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 took place June 17 to August 16, 2013:

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

N.J.A.C. 2:76-2A.13

Agricultural Management Practice for On-Farm Direct Marketing Facilities, Activities, and Events

N.J.A.C. 2:76-2.3, 2.4, 2.5, 2.7, 2.8, 2.9 and 2.10

Right to Farm Management Practices and Procedures

General comments

COMMENT: NJFB commented that it appreciates the effort the SADC has put into developing the AMP, including involving the agricultural community during the process and maintaining the integrity of the Right to Farm Act (RTFA), 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.

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.

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.

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.

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 RTF 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.

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

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, 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 below under the topic section about specific activities and events.

Comments regarding standards related to noise

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 (e.g., 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 (e.g., 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 regulations, N.J.A.C. 7:29-1.1 et seq., 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

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 – e.g., 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.

COMMENT: The Cape May County 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 RTF 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 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 Freeholders were concerned about providing CADBs with more comprehensible rationales to apply in evaluating specific challenged events at specific sites.

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 THE ABOVE THREE COMMENTS: 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 #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 RTF 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. 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-9(j), a legislative change would be required to include the activity or event within the scope of the RTFA.

Comments related to CADB vs. municipal jurisdiction and roles, and municipal consideration

- **CADB vs. municipal jurisdiction and roles regarding the “farm market” language in the RTFA**
- **Jurisdiction related to other aspects of on-farm direct marketing operations**
- **Municipal consideration and notification**

General – Municipal consideration-related comments

COMMENT: The Township of Hampton commented that the rule 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 rule 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 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

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’s 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 comments above. 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.

RTF procedural rules

2:76-2.3(b) – SSAMP Notification-related comments

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 with 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.

2:76-2.3(h)3 – Jurisdiction, roles, and consideration-related comments

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.

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 board 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 board’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 amends N.J.A.C. 2:76-2.3(h)3 as follows: “...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...”

2:76-2.3(h)4 – Jurisdiction-related comments

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.

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 does 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.

COMMENT: The Township of Hampton recommended changing the word “related” to the phrase “as they apply” in the third line of 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 makes 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.

2:76-2.3(k) – Jurisdiction-related comments

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 regulations 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.

2:76-2.5(c) – Jurisdiction-related comments

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 does 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 adds the following language 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

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, e.g., 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 a RTFA determination is sought by a commercial farm, the farm may request a site-specific AMP determination from the CADB. In the event of a 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 Township'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)

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 does 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)

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 does 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)

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 does 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)

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 does 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)

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 OFDM facility review, i.e., 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.

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 section 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 does 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 amend the wording for clarification: “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.”

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 the previous comment, 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 RTF 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 RTF 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 to the municipality.

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

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: The RTFA at 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 N.J.A.C. 2:76-2.3(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 regulations address distinct circumstances. Section 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. Section 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.

Section 2A.13(r)2 is not directed at municipal ordinances exceeding standards established in a state law delegation. Instead, that section 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 (e.g., 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.

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 does not make the suggested change, as CADB and SADC responsibilities do not include annual review of every SSAMP determination a CADB and the SADC has made. A CADB need only review a matter if an issue arises or a new complaint is filed pursuant to the RTFA, or if the CADB 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)

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 N.J.A.C. 2:76-2.7 are structured differently, and the SADC agrees that section 2.3(f)1 may seem repetitive or incorrectly numbered. The SADC will revise section 2.3 by moving paragraph 2.3(f)1 up one level and inserting it between subsection (b) and (c). It will become a new subsection (c), with the current subsection (c) being re-lettered as subsection (d) and the old subsection (d) being deleted as duplicative.

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

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 and does not make the change suggested by Hampton, but rather makes the following, related change: Where “N.J.A.C. 2:76-2.7(c)” is referenced in N.J.A.C. 2:76-2.7(g), (h), (i), and (k), the SADC will change it to “N.J.A.C. 2:76-2.7” for better clarity.

RTF procedural rules – Additional comments (section by section)

General comments

COMMENT: The Cape May County Board of Chosen Freeholders was concerned that the proposed changes to the RTF 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 RTF 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.

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 comments above, the RTFA confers the extra benefit of certain protections to commercial farms, provided they meet the Act's eligibility requirements and AMP standards, but it does not provide for enforcement. However, 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

COMMENT: The New Jersey Farm Bureau (NJFB) supports the ability of a farmer and CADB staff to hold a pre-application meeting to discuss site-specific agricultural management practice (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.

COMMENT: The Borough of West Cape May generally endorsed the proposed amendments to the rules governing SSAMP determinations and RTF 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 revises N.J.A.C. 2:76-2.3(b) as follows, to add clarifying language that municipal notice should be made to the municipal clerk: “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.” 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 subparagraph (j) also includes “Any other organization or person which may provide expertise concerning the particular practice.” Accordingly, the SADC does not make the suggested change.

N.J.A.C. 2:76-2.8 Hearing procedures for Right to Farm cases

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 complaints. To the extent the new process is more streamlined, all of the other parties that may be involved may save time and money

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 amends N.J.A.C. 2:76-2.8(c)2ii. to specify that regarding the notice requirements for RTF hearings, a commercial farm’s proof of notice should also include the certified list of property owners to whom notice was given. This provision was inferred in the original proposal, but the inclusion of this language clarifies the SADC’s intent.

The section as amended reads, “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.”

AMP– Additional comments (section by section)

N.J.A.C. 2:76-2A.13(b) – Definitions

COMMENT: Deborah Post commented that the definition of “farm market” should be revised to clarify that the 51% 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.

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% of the mix coming from the farm and 49% 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-9a. 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.

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% category and the products that make up the farm’s agricultural output as the 51% category.

Hampton cited a portion of a 2011 SADC Right to Farm 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 in the above comment 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.

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 amends the definition of “complementary products” by adding another sentence as follows: “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.”

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 does 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,” and “facility.”

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 outlined 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

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 does not make the suggested change, as it believes the portion of N.J.A.C. 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.

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 does 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

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 does 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.

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 does 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 as follows to include the same descriptive information that appears in N.J.A.C. 2:76-2A.13(m)5iv. regarding hand sanitizing facilities: “A commercial farm shall provide hand-sanitizing facilities for visitors to utilize after the use of sanitary facilities. 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

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 RTF 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

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: 1) to require that a farm to make a best effort to provide parking based on anticipated parking needs, and 2) to reflect that having sufficient parking to meet the demands of a peak demand day may be impossible.

RESPONSE: The SADC does not make the suggested changes because the AMP subsection cited in the comment 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.

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 right-to-farm 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. 16:47-1.1 et seq. Finally, we note 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.

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 subsection of the AMP adequately addresses the commenter’s concerns. However, the SADC revises the paragraph as follows for clarification purposes: “Where applicable, on farms that allow buses, parking areas shall accommodate bus traffic and allow for the safe unloading of bus passengers.”

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 does not make the suggested changes, as both paragraphs set forth non-prescriptive performance standards that are intended to foster safe parking areas.

COMMENT: Deborah Post commented that N.J.A.C. 2:76-2A.13(h)4iii., which states that “The 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 does not make any changes to the subsection, as the purpose of the paragraph 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.

COMMENT: N.J.A.C. 2:76-2A.13(h)4iv. states that “During dry conditions, areas temporarily devoted to parking shall be mowed, so that vegetation does not come in contact with the underside of customer vehicles.” 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 does not make the suggested deletion, as the performance-based standard in this subsection is a generally accepted standard for public safety

considerations, specifically related a fire hazard. However, the SADC revises the paragraph as follows for clarification purposes: “During dry conditions, areas temporarily devoted to parking shall be mowed, so as to minimize fire hazards related to vegetation coming in contact with the underside of customer vehicles ~~so that vegetation does not come in contact with the underside of customer vehicles.~~

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 section 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 revises the paragraph as follows for clarification purposes: “A commercial farm shall mark, sign, ~~or otherwise indicate~~ or indicate through staff direction or other means where vehicles should be parked.”

N.J.A.C. 2:76-2A.13(i) – Buffer standards

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 does not make the suggested change. 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. 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.

COMMENT: The New Jersey Farm Bureau (NJFB) feels that the 50-foot front, side, and rear-year 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.

COMMENT: NJFB commented on how the AMP's buffer standards in N.J.A.C. 2:76-2A.13(i)2ii. through (i)2vii. 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 (i)2iv. 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, e.g., 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 the following clarifying language in a new N.J.A.C. 2:76-2A.13(i)4: "For the purposes of N.J.A.C. 2:76-2A.13(i), existing on-farm direct marketing facilities, activities, or events are those operations which are in operation as of the effective date of the AMP." The SADC simultaneously deletes the word "existing" from N.J.A.C. 2:76-2A.13(i)2vii., as the word "existing" had been used in a different context here as in the new N.J.A.C. 2:76-2A.13(i)4.

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.

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 does not make the suggested change. 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.

COMMENT Deborah Post commented that the requirement in N.J.A.C. 2:76-2A.13(i)3ii., that vegetative screening achieve 75% 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 does 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 OFDM activities and events

N.J.A.C. 2:76-2A.13(l) – Impact of OFDM activities and events on the land

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 (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 (k) are met.

N.J.A.C. 2:76-2A.13(m) – On farm direct marketing activities

COMMENT: The New Jersey Farm Bureau (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 section 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.

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 section, N.J.A.C. 2:76-2A-13(m)4, are sufficiently protective of public safety as written.

COMMENT Deborah Post commented that N.J.A.C. 2:76-2A.13(m)1i., which says that “Visitors [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 comment, as N.J.A.C. 2:76-2A.13(m)1i. is an appropriate agricultural management practice and is clear as written. This subsection 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.

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

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 makes the following change for clarification purposes: "If an event of the type described in section (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 section (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."

The SADC also will renumber N.J.A.C. 2:76-2A.13(n)2i as N.J.A.C. 2:76-2A.13(n)3, and change the reference from "subparagraph i" to "paragraph 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.

COMMENT: Robert L. Myers commented that marketing events should be restricted to no more than one per season or 4 per year with a 2-day limit on each event.

RESPONSE: The SADC does 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.

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 does 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.

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.

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: 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.

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 a 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

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 which 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 RTF 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

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 does 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

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 further 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 NJDEP's Highlands Water Protection and Planning Act regulations, N.J.A.C. 7:38-1.1 et seq., "agricultural development" is excluded in the definition of "Major Highlands Development." The SADC also notes that N.J.A.C. 2:92-1.1 et seq., "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

COMMENT: The New Jersey Farm Bureau (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 a site-specific AMP (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 Right to Farm 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:

1. N.J.A.C. 2:76-2A.13(m) – “[The on-farm direct marketing activities standards for on-farm direct marketing facilities, activities, and events on commercial

farms]* ***Standards for certain on-farm direct marketing activities*** shall be as follows:

Federal Standards Statement

A Federal standards statement analysis is not required because the proposed new rules and amendments to N.J.A.C. 2:76-2.3, 2.4, 2.5, 2.7, 2.9 and 2.10 and N.J.A.C. 2:76-2B.2 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) (No change from proposal.)

(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) 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.

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

1.-2. (No change.)

[(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) (No change from proposal.)

(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) (No change from proposal.)

(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. (No change from proposal.)

2. (No change from proposal.)

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. – iv. (No change from proposal.)

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. (No change from proposal.)

(i) – (m) (No change from proposal.)

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

(a) – (c) (No change from proposal.)

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) – (e) (No change from proposal.)

2:76-2.7 Disposition of conflicts between any person aggrieved by the operation of a commercial farm

(a) – (f) (No change from proposal.)

(g) If the board determines that the dispute subject to *[(c) above]* ***N.J.A.C. 2:76-2.7*** 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]* ***N.J.A.C. 2:76-2.7*** 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. – 2. (No change from proposal.)

(i) If the Committee determines that the dispute subject to *[(c) above]* ***N.J.A.C. 2:76-2.7*** 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. – 3. (No change from proposal.)

(j) (No change from proposal.)

(k) Any person aggrieved by the decision of the board regarding a complaint against a commercial farm in accordance with *[(c) above]* ***N.J.A.C. 2:76-2.7*** 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. – 2. (No change from proposal.)

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

(a) – (b) (No change from proposal.)

(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. (No change from proposal.)

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. (No change from proposal.)

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. (No change from proposal.)

3. (No change from proposal.)

(d) (No change from proposal.)

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

(a) (No change from proposal.)

(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 though a broadening of the range of products available and an enhancement of the experience of purchasing the agricultural output of the commercial farm.

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

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

“Sanitary facilities” means restrooms or portable toilets.

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

(c) – (d) (No change from proposal.)

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

1. – 2. (No change from proposal.)

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. (No change from proposal.)

(f) – (g) (No change from proposal.)

(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. (No change from proposal.)

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

i. – ii. (No change from proposal.)

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. (No change from proposal.)

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

i. – iii. (No change from proposal.)

iv. During dry conditions, areas temporarily devoted to parking shall be mowed, *[so that vegetation does not come in contact with the underside of customer vehicles]* ***so as to minimize fire hazards related to vegetation coming in contact with the underside of customer vehicles*;**

v. (No change from proposal.)

vi. A commercial farm shall mark, sign, *[or otherwise indicate]* ***or 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. (No change from proposal.)

2. The setback requirements are as follows:

i. – vi. (No change from proposal.)

vii. *[Existing on-farm]* ***On-farm*** direct marketing activities or events, such as pick your own activities, which are offered and located in different fields over time shall not be considered new activities or events under this paragraph.

3. (No change from proposal.)

4. For the purposes of N.J.A.C. 2:76-2A.13(i), existing on-farm direct marketing facilities, activities, or events are those facilities, activities or events that are in operation as of the effective date of the AMP.

(j) – (l) (No change from proposal.)

(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. – 6. (No change from proposal.)

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

1. (No change from proposal.)

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) (No change from proposal.)

(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. – iii. (No change from proposal.)

(q) - (r) (No change from proposal.)

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

(No change from proposal.)

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