

RULE PROPOSALS

INTERESTED PERSONS

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

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

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

AGRICULTURE

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Agricultural Management Practices: Generally Accepted Operations and Practices

Proposed Amendments: N.J.A.C. 2:76-2A.5, 2A.6, 2A.8, and 2A.9

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

Authority: N.J.S.A. 4:1C-5.f.

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

Proposal Number: PRN 2023-121.

Submit written comments by February 16, 2024, to:

Susan E. Payne, Executive Director
State Agriculture Development Committee
PO Box 330
Trenton, NJ 08625-0330
or through email: SADC@ag.state.nj.us.

The agency proposal follows:

Summary

The Right to Farm Act, N.J.S.A. 4:1C-1 et seq. (Act), affords protection to an eligible commercial farm from unduly restrictive municipal rules, and with an irrebuttable presumption that the commercial agricultural operation, activity, or structure is not a public or private nuisance, provided the farm conforms to recommended agricultural management practices (AMPs) in rules adopted by the State Agriculture Development Committee ("SADC" or "Committee"). See N.J.S.A. 4:1C-9 and 10, respectively. This notice of proposal seeks to update and amend four specific AMPs addressing commercial vegetable production (N.J.A.C. 2:76-2A.5); commercial tree fruit production (N.J.A.C. 2:76-2A.6); on-farm composting operations (N.J.A.C. 2:76-2A.8); and fencing installation for wildlife control (N.J.A.C. 2:76-2A.9).

The AMPs proposed to be amended incorporate by reference publications by Rutgers Cooperative Extension (Rutgers) and a Natural Resource, Agriculture and National Engineering Service (NRAES) field guide. NRAES is a nonprofit program sponsored by eight land grant universities in the eastern United States dedicated to increasing the public availability of research on various agricultural activities and farming methods.

The proposed amendments correct out-of-date information about these publications, such as the name of the current version, regulatory citations, factsheet numbers, and where the publications can now be obtained by the

public. In addition, three of the proposed amendments allow for the automatic incorporation of future versions of the publications by reference, as permitted pursuant to N.J.A.C. 1:30-2.2.

The proposed amendment at N.J.A.C. 2:76-2A.8 makes the composting of slaughter waste on commercial farms eligible for the Act's protections, provided the activity is consistent with the published Rutgers' recommended practices. In addition, composting activities must be managed to minimize objectionable odors.

As the Committee has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments at N.J.A.C. 2:76-2A.5, 2A.6, 2A.8, and 2A.9 will provide significant social benefits. The utilization by commercial farmers of updated agricultural management practices can minimize the potential for conflicts with neighbors and local government officials over the operation of the farm. The proposed amendments will also have a positive social impact by continuing to make commercial farms eligible for protection pursuant to the Act, thus helping maintain the viability of New Jersey's agricultural operations.

Economic Impact

The proposed amendments to the rules establishing commercial vegetable production, commercial tree fruit production, and fencing installation for wildlife control AMPs will have a positive impact on the State economy by promoting the continued implementation of these updated generally accepted agriculture practices, which will enhance the viability of agriculture throughout the State. The amendments may also help reduce the expense involved in resolving disputes in non-Right to Farm Act proceedings when parties are aggrieved by commercial farm operators' practices which conform to the AMPs to be updated by this rulemaking.

The proposed amendment to the AMP for on-farm composting operations, N.J.A.C. 2:76-2A.8, permitting the composting of livestock mortalities and slaughter waste on a farm, may have a positive economic impact upon both farmers and consumers. During recent years there has been a sharp decline in the number of butcher and slaughter plants in New Jersey. The loss and consolidation of such slaughtering facilities has impacted the ability of State livestock farmers to economically process meat. On-farm, small-scale slaughter facilities and mobile units will allow farmers to process their animals and bring meat products to market. Rather than paying fees to a rendering company to dispose of slaughter residuals processed on the farm, pursuant to the updated AMP, this material can be composted on a farm more efficiently, responsibly, and economically, resulting in benefits to both farmers and consumers.

Federal Standards Statement

A Federal standards analysis is not required because the subject matter of the proposed amendments are governed by the Act and do not include standards or requirements that exceed those imposed by Federal law.

Jobs Impact

The proposed amendments are not expected to result in the generation or loss of jobs in the State.

Agriculture Industry Impact

For the reasons set forth in the Summary and Social Impact statement above, the proposed amendments will have a positive impact on the agriculture industry. In addition, the proposed amendments will help commercial farmers engage in best farming practices that can lead to more efficient, cost-effective agricultural operations.

Regulatory Flexibility Statement

The proposed amendments impose no reporting, recordkeeping, or other compliance requirements upon small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Housing Affordability Impact Analysis

SADC does not anticipate that the proposed amendments will evoke a change in the average costs of housing or have any impact on housing affordability, as the rules will help commercial farmers engage in best farming practices that can lead to more efficient, cost-effective agricultural operations.

Smart Growth Development Impact Analysis

The proposed amendments will have a positive impact on smart growth, and there is an extreme unlikelihood that these proposed amendments will evoke a change in the housing production in Planning Areas 1 and 2, or within designated centers, pursuant to the State Development and Redevelopment Plan in New Jersey, because these proposed amendments update AMPs, which promote the economic viability of farms located in PA-4 and PA-5.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The SADC has evaluated the proposed amendments and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

SUBCHAPTER 2A. AGRICULTURAL MANAGEMENT PRACTICES: GENERALLY ACCEPTED OPERATIONS AND PRACTICES

2:76-2A.5 Commercial vegetable production agricultural management practice

(a) Pursuant to the authority [of] **at** N.J.A.C. 1:30-2.2, the State Agriculture Development Committee hereby adopts and incorporates by reference the Rutgers Cooperative Extension “[2000] **Mid Atlantic Commercial Vegetable Production Recommendations, 2022/2023**” as **amended and supplemented, to be** the commercial vegetable production agricultural management practice, subject to the modifications as stated [in] **at** (c) below.

[(b) The Rutgers Cooperative Extension will revise its publication annually to include new information. The adoption and incorporation by reference in (a) above does not include future supplements and amendments.]

(b) The “Mid Atlantic Commercial Vegetable Production Recommendations, 2022/2023” is available on the Rutgers Cooperative Extension website at <http://njaes.rutgers.edu/pubs/>.

(c) The recommendations concerning sewage sludge addressed by the “[2000] **Mid Atlantic Commercial Vegetable Production Recommendations, 2022/2023**” in the section entitled “Sewage Sludge” or any other section, are excluded from the commercial vegetable production agricultural management practice. **The application of sewage sludge/biosolids to soils used for vegetable production is not a recommended agricultural management practice.**

[(d) Copies of the “2000 Commercial Vegetable Production Recommendations” may be purchased from Rutgers, The State University of New Jersey, Publications Distribution Center, RCE, Cook College, 57 Dudley Road, New Brunswick, NJ 08901-8520.]

2:76-2A.6 Commercial tree fruit production agricultural management practice

(a) Pursuant to the authority [of] **at** N.J.A.C. 1:30-2.2, the State Agriculture Development Committee hereby adopts and incorporates by reference the Rutgers Cooperative Extension “**2021/2022** New Jersey Commercial Tree Fruit Production Guide [2000],” as **amended and supplemented, to be** the commercial tree fruit production agricultural management practice.

(b) Rutgers Cooperative Extension will update its publication as changes in **pesticide and chemical** labels and restrictions warrant. [The adoption and incorporation by reference in (a) above does not include future supplements and amendments.]

[(c) Copies of the “New Jersey Commercial Tree Fruit Production Guide 2000” may be purchased from Rutgers, The State University of New Jersey, Publications Distribution Center, RCE, Cook College, 57 Dudley Road, New Brunswick, NJ 08901-8520. In addition, the publication is available free of charge on the Rutgers Cooperative Extension site on the World Wide Web at <http://www.rce.rutgers.edu/>.]

(c) The “2021/2022 New Jersey Commercial Tree Fruit Production Guide” is available on the Rutgers Cooperative Extension website at <http://njaes.rutgers.edu/pubs/>.

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

(a) Pursuant to the authority [of] **at** N.J.A.C. 1:30-2.2, the State Agriculture Development Committee hereby adopts and incorporates by reference the Natural Resource, Agriculture, and Engineering Service’s “Field Guide to On-Farm Composting,” NRAES-114, as **amended and supplemented, and the Rutgers Cooperative Extension Bulletin E347, “Livestock Mortality and Butcher Waste Composting: Rutgers Recommended Practices,” as amended and supplemented,** as the agricultural management practice for on-farm compost operations operating on commercial farms, provided that:

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

2. The finished compost product is not distributed or sold to off-farm users, except as set forth [in] **at** N.J.A.C. 2:76-2B.3(b)3;

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

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

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

6. When livestock mortality and butcher waste are used as part of the compost mixture:

i. **The livestock mortality and butcher waste shall have been generated on the commercial farm; and**

ii. **The on-farm composting activities shall be managed to minimize objectionable odors.**

(1) The activities shall be in conjunction with and conform to a farm conservation plan that meets the planning criteria for odor resource concerns;

(2) As measured at the property lines of the commercial farm, odor related to the activities shall not be greater than “2–Light” as set forth in the odor intensity scale of the Air Pollution Investigation Guidelines published by the New Jersey Department of Environmental Protection at 39 N.J.R. 3999(c); and

7. The recommendations concerning local ordinances in the “Livestock Mortality and Butcher Waste Composting: Rutgers Recommended Practices” in the section entitled “Best Management Practices: Burial of Normal Mortalities” are excluded from this agricultural management practice for on-farm compost operations on commercial farms.

(b) (No change.)

(c) [Copies of the] **The “Field Guide to On-Farm Composting”** [may be purchased from the Natural Resource, Agriculture, and Engineering Service, Cooperative Extension, 152 Riley Robb Hall, Ithaca, NY 14853-5701. Purchasing information is also available on the Natural Resource, Agriculture, and Engineering Service’s site on the World Wide Web at <http://www.NRAES.ORG>.] **is available on the Cornell University Library eCommons website at <https://ecommons.cornell.edu/handle/1813/67148>.**

(d) The “Livestock Mortality and Butcher Waste Composting: Rutgers Recommended Practices” is available on the Rutgers Cooperative Extension website at <http://njaes.rutgers.edu/pubs/>.

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

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

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

i. With respect to high-tensile woven wire fencing, the Rutgers Cooperative Extension publication entitled “High-Tensile Woven Wire Fences for Reducing Wildlife Damage,” FS [8XX] 889, which the State Agriculture Development Committee hereby adopts and incorporates by reference, as amended and supplemented, pursuant to N.J.A.C. 1:30-2.2[;]. **This publication is available on the Rutgers Cooperative Extension website at <http://njaes.rutgers.edu/pubs/>;**

ii. With respect to electric fencing, the Rutgers Cooperative Extension publication entitled “Vertical Seven-Wire Deer Control Fence,” FS 151, which the State Agriculture Development Committee hereby adopts and incorporates by reference, as amended and supplemented, pursuant to N.J.A.C. 1:30-2.2[; and]. **This publication is available from the Rutgers Cooperative Extension, Department of Agricultural and Natural Resources, 88 Lipman Dr., New Brunswick, NJ 08901;**

iii. With respect to portable electric fencing, the Rutgers Cooperative Extension publication entitled “Portable Electric Fencing for Preventing Wildlife Damage,” FS888, which the State Agriculture Development Committee hereby adopts and incorporates by reference, as amended and supplemented, pursuant to N.J.A.C. 1:30-2.2. **This publication is available on the State Agriculture Development Committee website at <http://nj.gov/agriculture/sadc>; and**

[iii.] iv. (No change in text.)

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

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

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Agricultural Mediation Program

Proposed Amendments: N.J.A.C. 2:76-18.2 and 18.10

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

Authority: N.J.S.A. 4:1C-5.f.

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

Proposal Number: PRN 2023-122.

Submit written comments by February 16, 2024, to:

Susan E. Payne, Executive Director
State Agriculture Development Committee
PO Box 330
Trenton, NJ 08625-0330
or through email: SADC@ag.state.nj.us.

The agency proposal follows:

Summary

The State Agriculture Development Committee (“SADC” or “Committee”) administers the New Jersey agriculture mediation program as set forth at N.J.A.C. 2:76-18. The State program provides a voluntary and cost-free opportunity for parties to mediate agriculture-related disputes before an SADC-certified mediator.

The U.S. Department of Agriculture, Farm Services Agency (USDA-FSA) has been annually certifying New Jersey’s mediation program since the program’s inception in 2000, in accordance with Federal agricultural mediation program rules at 7 CFR 785. Federal certification of New Jersey’s program allows the State to receive USDA-FSA grant funding to cover part of the State mediation program’s annual administrative costs and expenses.

The SADC proposes to amend N.J.A.C. 2:76-18.2 to clarify and expand the types of disputes, which may be mediated pursuant to the State program. The mediation of the additional disputes set forth in the proposed amendments was authorized by the Federal Agriculture Improvement Act of 2018, Pub. L. 115-334 (commonly known as the 2018 Farm Bill). No changes are proposed to the existing list of issues subject to mediation: nuisance allegations; wetlands determinations; and compliance with farm programs, including conservation, agricultural credit, rural loan programs, and pesticides.

The proposed amendments clarify that mediation is available for disputes regarding activities addressed in the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., as well as other matters that could affect a farm’s agricultural productivity or viability; conflicts between farmers and neighbors or other persons, and conflicts between farmers and local government entities; agricultural lease issues; family farm transition disputes; any issues authorized for mediation by Federal agricultural laws or regulations; and such other issues determined by the New Jersey Secretary of Agriculture, as appropriate, in order to serve the agricultural community.

N.J.A.C. 2:76-18.10 governs the annual renewal of mediator certification for the State program. The rules currently require a minimum of 18 hours of core mediator knowledge skills and training in order for a mediator to qualify for SADC certification, but do not include a continuing training requirement. The proposed amendment requires that, in order for mediators to remain eligible to hear disputes pursuant to the State program, mediators must complete annually four hours of continuing education relating to at least one of the following: mediation and negotiation concepts and skills; other professional matters related to mediation such as ethical issues, case management skills, conflict management and communication skills, and mediation in virtual or hybrid settings; knowledge of agricultural topics appropriate for the State program; and mediation topics covered in a continuing training satisfying R. 1:40-12(b). The annual training can be in-person or virtual.