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**RULE PROPOSALS**

**AGRICULTURE**

**STATE AGRICULTURE DEVELOPMENT COMMITTEE**

*39 N.J.R. 2561(a)*

**Proposed Amendments:** *N.J.A.C. 2:76-2A.8 and 6.15*

**Proposed New Rules:** *N.J.A.C. 2:76-2A.10; 2B.3; and 6.24*

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**Eligibility of Equine Activities for Right to Farm Protection; Agricultural Management Practice for Equine Activities on Commercial Farms; Permissible Activities on Preserved Farms; Agricultural Management Practice for On-Farm Compost Operations**

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

Authority: N.J.S.A. 4:1C-5f and 4:1C-9i and 10.4.

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

Proposal Number: PRN 2007-229.

Submit comments by September 14, 2007 to:

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

The agency proposal follows:

**Summary**

The State Agriculture Development Committee (Committee) proposes these new rules and amendments pursuant to the Right to Farm Act (RTF Act), *N.J.S.A. 4:1C-1* et seq., and the New Jersey Agriculture Retention and Development Act, *N.J.S.A. 4:1C-11* et seq. The proposed new rules, *N.J.A.C. 2:76-2A.10*, 2B.3 and 6.24, will expand the list of protected activities under the RTF Act to: include equine service activities; set forth agricultural management practices

with which farmers would need to comply to be eligible for protections of the Act; and clarify which equine activities are permitted on preserved farms and under what conditions. The proposed amendment to *N.J.A.C. 2:76-2A.8* changes the agricultural management practice regarding "on-farm compost operations" previously adopted by the Committee, to make it consistent with the proposed new rules.

As explained in greater detail below, the Committee originally proposed *N.J.A.C. 2:76-2A.10* and 2B.3 on July 19, 2004 but did not adopt them. See 36 *N.J.R. 3326(a)*. The new rules that are now being proposed include significant changes to the 2004 proposals as well as a rule addressing equine activities on preserved farms, which was not previously proposed.

The RTF Act provides commercial farms with protection against private and public nuisance suits and unduly restrictive municipal regulations. It includes a list of agricultural activities that may be entitled to such protections, and authorizes the Committee to expand the list of protected agricultural activities through rulemaking. The list of protected activities in the Act does not include equine service activities, such as equine boarding and training, which are very common in New Jersey, nor do these activities fit into any of the broader categories of protected activities.

The equine industry is a significant contributor to the economy and quality of life in New Jersey. Without right-to-farm protections, responsible commercial equine operations are threatened by restrictive municipal ordinances and nuisance suits. Proposed *N.J.A.C. 2:76-2A.10* and 2B.3 will extend right-to-farm protections to specific equine service activities and set standards for those operations seeking protection.

Proposed new *N.J.A.C. 2:76-2B.3(b)* expands the list of protected agricultural activities to include raising, breeding, keeping, boarding, training, and rehabilitation of horses and complementary equine activities associated with those activities including, but not limited to, clinics, open houses, demonstrations, educational camps, farm events, competitions, and rodeos. The complementary activities are entitled to right-to-farm protections as long as they are related to the marketing of horses that are raised, bred, kept, boarded, trained or rehabilitated on the farm, and are in compliance with municipal requirements.

The July 2004 proposal included horse riding and driving lessons in the list of protected activities in proposed *N.J.A.C. 2:76-2B.3*, but these activities have been omitted from this proposal. This brings the protected equine activities under the RTF act, which applies to "commercial farms" engaged in agricultural production, into consistency with the concepts of agricultural production established under the Farmland Assessment Act.

Proposed new *N.J.A.C. 2:76-2B.3(b)* also protects the sale and distribution of manure and composted products produced on the farm to off-farm users as long as the manure is generated on the farm and composted products are made on the farm from materials generated on the farm. Vehicular activity occurring on the farm for the purposes of the sale and distribution of manure is also eligible for the protections of the Right to Farm Act. When the SADC first proposed *N.J.A.C. 2:76-2A.10* in 2004, it specifically excluded from right-to-farm protection the sale and distribution of manure and composted products produced on the farm to off-farm users. After reexamining this issue, the Committee now believes that the Act can protect such activities as long as the manure is generated on the farm and the compost is produced on the farm from waste entirely generated on the farm, with the exception of soil amendments. Off-site vehicular activity involved in the sale and distribution of the manure or composted products would not be protected under the current proposed rule. As the Hunterdon County Agriculture Development Board noted in its 2004 public comment, many State and Federal governmental entities are promoting on-farm composting as a methodology for equine farms to manage the farms' nutrient production, as well as using the compost on-site or making it available for off-farm uses or sale.

The Committee is proposing to simultaneously amend *N.J.A.C. 2:76-2A.8* to make it consistent with proposed *N.J.A.C. 2:76-2B.3(b)3*. The Committee's agricultural management practice for on-farm compost operations, *N.J.A.C. 2:76-2A.8*, currently provides for right-to-farm protections for on-farm compost operations if they comply with the "Field Guide to On-Farm Composting," published by the Cooperative Extension of Ithaca, New York. The rule states

that right-to-farm protection is not available to an operation if it distributes or sells the finished compost product to off-farm users. The Committee proposes to amend this rule to provide an exception to this condition if the compost has been generated from horse manure in compliance with proposed N.J.A.C. 2:76-2B.3(b)3.

When the Committee proposed the equine rules in July 2004, the vast majority of comments it received from members of the public and governmental entities expressed concern over the fact that the proposed rule could offer right-to-farm protections to farms that predominantly offer services, such as boarding, and which have minimal or no agricultural production. The public also expressed a concern with the magnitude, land use intensity and impervious cover associated with large structures built exclusively for equine service activities.

In response to these concerns, the Committee conducted a detailed analysis of commercial equine operations in the State. As a result of this analysis and the concerns expressed by the public, the Committee has amended the original proposed N.J.A.C. 2:76-2B.3 to ensure that farms providing predominantly service activities - with little agricultural production or capacity for production - are not afforded right-to-farm protection. Specifically, proposed N.J.A.C. 2:76-2B.3(c) sets forth land use conditions that a farm would have to meet to qualify for the protections of the RTF Act. The subsection includes a sliding scale that limits the extent to which equine-related buildings, parking areas and other improvements may occupy available production acreage on a farm. For example, on a farm with 100 acres available for production, equine improvements could not exceed 15 to 25 percent or 15 to 25 acres. It will be the responsibility of each county agriculture development board to determine the permissible percentage within this range, based on a local consideration of the level of non-agricultural development in the area. The "production area" of a farm is defined in N.J.A.C. 2:76-2B.3(a) as the area of the farm that is available for agricultural production. This definition excludes wetlands and the area occupied by equine-related infrastructure, also defined in this rule.

To further address this concern raised by the public, the Committee has added a condition in proposed N.J.A.C. 2:76-2B.3(c)5 that prohibits right-to-farm protection for equine operations where the concrete and asphalt area exceeds 15 percent of the area occupied by equine-related infrastructure and the area that is in or is available for agricultural production.

The SADC has also redefined some of the terms included in the July 2004 proposal after additional collaboration with equine experts in the State. The Morris County Agriculture Development Board had suggested in its comment to the 2004 rule proposal that "boarding," "keeping" and "raising" be more clearly defined and the Committee has responded to that comment by redefining these terms. Proposed N.J.A.C. 2:76-2B.3(a) also includes definitions of new terms it has introduced.

Proposed N.J.A.C. 2:76-2B.3(d) sets forth the method by which the Committee will evaluate whether a farm meets the restrictions on equine-related infrastructure set forth in proposed N.J.A.C. 2:76-2B.3(c).

Proposed N.J.A.C. 2:76-2B.3(e) states what types of income can be used to satisfy the production requirements in the definition of "commercial farm" set forth in the Right to Farm Act, *N.J.S.A. 4:1C-3*. Specifically, income from breeding, imputed income from pasturing horses, income from the sale of a horse that was trained or raised on the commercial farm for at least 120 days prior to the time of sale, and income from fees associated with raising a horse on the commercial farm for at least 120 days, may be used to satisfy the production requirements of the Act.

The Committee had received two comments when it proposed N.J.A.C. 2:76-2B.3 in July 2004, contending that fees received from boarding and training should be able to be used to satisfy the production requirements of the definition of commercial farm. The Committee notes that it has amended the original proposal to allow income from the sale of a horse that was trained or raised on the farm for at least 120 days prior to the time of sale. The Committee notes that only production activities can be used to satisfy the requirements in the RTF Act's definition of commercial farm. Because boarding and training are deemed agricultural service activities, fees from these activities cannot be used to satisfy the production requirements.

Proposed N.J.A.C. 2:76-2B.3(f) states that the following types of income cannot be used to satisfy the production requirements of the RTF Act: fees from boarding, training, riding and driving lessons, equine-assisted therapy, and training, and monetary proceeds from racing.

Proposed N.J.A.C. 2:76-2B.3(g) requires that a commercial equine operation be in compliance with a farm conservation plan prepared in accordance with the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG). The FOTG is the technical reference prepared by NRCS that prescribes practices and standards for the conservation and management of soil, water and related natural resources. This requirement was not in the July 2004 proposal.

To receive the protections of the RTF Act, a farmer must be in compliance with agricultural management practices (AMPs) promulgated by the Committee (or with generally accepted practices in the absence of a promulgated AMP). The Act authorizes the SADC to adopt AMPs pursuant to the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. Proposed new rule *N.J.A.C. 2:76-2A.10* sets forth an AMP for commercial equine activities.

When the Committee proposed *N.J.A.C. 2:76-2A.10* in July 2004, it proposed to adopt and incorporate by reference a publication of Rutgers Cooperative Extension entitled "Agricultural Management Practices for Commercial Equine Operations," with a few conditions. Upon further evaluation of the AMP and in consultation with equine experts in the State, the Committee decided to draft a separate AMP, and not adopt the Rutgers publication. It has extracted from the Rutgers publication those areas of equine operations that generate the most right-to-farm complaints, and addressed them in a broader manner.

Proposed *N.J.A.C. 2:76-2A.10* addresses four areas that are the most likely to generate conflicts between equine operations, their residential neighbors, and municipalities: stocking rates (or horse density); manure management; maintenance and dust management of riding and training areas; and fencing.

Farm stocking rates are to be determined on a case-by-case basis. If a farm primarily uses pasture for the source of nutrition and exercise for its horses, proposed *N.J.A.C. 2:76-2A.10(c)* sets forth seven factors to be considered in evaluating the appropriate number of horses the farm can support. For farms that utilize a drylot regime or "no regular turnout" regime, proposed *N.J.A.C. 2:76-2A.10(c)* requires that stocking rates be determined based on an evaluation of the farm's manure management and dust management practices, using the guidelines set forth in proposed *N.J.A.C. 2:76-2A.10(d)* and (e).

In drafting the stocking rates component of the AMP, the Committee consulted many equine experts and concluded that it is impossible to establish one stocking rate for all of the unique and varying horse farms in the State. Instead, it has provided guidelines to assist CADBs in determining the most appropriate stocking rate for a particular farm. CADBs and the Committee should consult with an equine expert, who should use the guidelines in the AMP, to determine the appropriate number of horses that should be residing on a particular farm.

The SADC received a comment from the Morris County Agriculture Development Board after it proposed the AMP in July 2004, in which the CADB expressed concern that the stocking rate section of the AMP would be unenforceable because the turnout times for each animal would be impossible to monitor. In response, the Committee notes that the AMP is not a rule with which all horse farms are required to comply. Rather, it is a gauge upon which CADBs and/or the Committee will use to determine if a farm is eligible for right-to-farm protection. Such determinations will be dependent upon the representations of the farmers as well as a site visit to the farm by an equine expert to verify the farmer's representations. If, after a farm is granted right-to-farm protection, the CADB is notified that the farmer changed his horse management scheme or implemented a different scheme, then the CADB would investigate the matter, with the assistance of equine experts. This is no different than any other right-to-farm matter where, after the farmer was found to be in compliance with a generally accepted agricultural management practice, the CADB receives an allegation that the farmer is no longer complying with an AMP or with conditions imposed by the CADB or Committee.

As noted above, neither the CADBs nor the Committee have authority to enforce an AMP. Failure to comply with any conditions in an AMP or right-to-farm approval granted by the CADB or Committee means that the farm is no longer entitled to right-to-farm protection.

Proposed *N.J.A.C. 2:76-2A.10(d)* addresses manure management practices. Most, if not all, manure management issues will be addressed by determining whether the manure management practices are in compliance with State agriculture and environmental regulations and with a farm conservation plan prepared in accordance with the Field Office Technical Guide of the Natural Resources Conservation Service. As discussed above, the FOTG is the technical reference prepared by NRCS that prescribes practices and standards for the conservation of soil, water and related natural resources. In addition to these requirements, proposed *N.J.A.C. 2:76-2A.10(d)* sets forth standards for manure disposal, including spreading and storage, and establishes how far manure storage, composting facilities and dumpsters have to be from property lines, residences on adjacent properties, and waters of the State. This subsection also requires manure to be spread in compliance with the FOTG (described above) and the Penn State Agronomy Guide, which is a handbook that addresses all production practices for agronomic crops, including crop, soil, and pest management recommendations.

The standards for riding and training areas are set forth in proposed *N.J.A.C. 2:76-2A.10(e)*. This subsection addresses location, maintenance, and dust management of such areas.

The standards for fencing are set forth in proposed *N.J.A.C. 2:76-2A.10(f)*, and include setbacks, height and types of fencing. When the Committee proposed *N.J.A.C. 2:76-2A.10* in July 2004, the Warren County Agriculture Development Board commented that barbed wire should be an acceptable fencing method. The Rutgers publication, which the 2004 proposed rule incorporated by reference, stated that barbed wire fencing was not acceptable for horses. In response to the public comments and input from equine experts, the Committee drafted proposed *N.J.A.C. 2:76-2A.10(f)* to state that barbed wire fencing is not recommended but that if it is used, the farmer must minimize the risk to horses if he wishes to receive the protections of the RTF Act.

Lastly, proposed *N.J.A.C. 2:76-2A.10(g)* reiterates that commercial equine operations must be in compliance with a farm conservation plan to receive the protections of the RTF Act.

The SADC is also proposing a new rule to address permissible equine activities on preserved farms, which it did not include in the July 2004 proposals. Proposed *N.J.A.C. 2:76-6.24* establishes what equine activities will be permitted on farms that have been preserved through the State farmland preservation program. Specifically, the proposed rule states that breeding, boarding, keeping, raising, rehabilitation and training of horses, as well as horse riding and driving lessons, will be conditionally permitted. There are three conditions under which these activities are permissible. The farm must receive differential property taxation pursuant to the Farmland Assessment Act of 1964, *N.J.S.A. 54:4-23.1* et seq. The equine-related infrastructure on the farm, as defined in proposed *N.J.A.C. 2:76-2B.3(a)*, must occupy no more than 15 percent of the total useable area, as defined in *N.J.A.C. 2:76-2B.3(a)*. Lastly, the farm must be in compliance with a farm conservation plan prepared in accordance with the NRCS Field Office Technical Guide.

Proposed *N.J.A.C. 2:76-6.24* also permits complementary equine activities, such as clinics, open houses, demonstrations, educational camps, farm events and competitions on preserved farms as long as the activities do not interfere with the actual use of the land for agricultural production and the activities utilize the land in its existing condition.

Proposed *N.J.A.C. 2:76-6.24(b)* and (c) address which farms the rule will be applicable to. To date, the Committee has been allowing equine service activities on preserved farms as long as those activities were ancillary to equine production activities, such as breeding and hay production. This was an agency interpretation conveyed to owners of preserved farms who inquired about conducting equine service activities. Proposed *N.J.A.C. 2:76-6.24* will add clarity to the Committee's prior statutory interpretation regarding permissible equine activities on farms that have been preserved through the State's farmland preservation program.

The proposed rule states that it will not be enforceable against, or applicable to, any owner of preserved farmland who was conducting equine service activities in compliance with the Committee's statutory interpretation prior to the adoption of the rule. On the other hand, it will be enforceable against and applicable to: (1) farms preserved after the adoption of the rule; (2) farms preserved prior to the effective date of the rule but which were not used for equine service activities prior to the rule's effective date; (3) farms preserved prior to the rule's effective date but which were not in compliance with the Committee's prior interpretation regarding equine activities; and (4) farms seeking to expand existing equine activities after the effective date of the rule.

The Committee is also proposing to amend *N.J.A.C. 2:76-6.15*, the section that sets forth the terms of the deed restrictions placed on preserved farms. The amendment will add a reference to proposed *N.J.A.C. 2:76-6.24*, which specifies certain equine activities as "common farmsite activities."

As the Committee has provided a 60-day comment period on these proposed new rules, the rules are exempt from the rulemaking calendar requirement pursuant to *N.J.A.C. 1:30-3.3(a)5*.

### **Social Impact**

The proposed amendment and new rules will have a positive social impact. The New Jersey equine industry is a significant component of the State's agriculture industry. The horse is the official State animal and, according to a study released in April 2007 by the Rutgers Science Center, 96,000 acres are directly related to equine activities, including 78,000 acres devoted to pasture and hay production. This acreage is home to 42,500 horses. The proposed amendment and rules will help ensure equine farms are able to remain viable, provide the public with assurance that farms need to meet certain standards to obtain protections of the Right to Farm Act, and provide clear guidance to equine operators regarding permitted activities on preserved farmland.

Equine farms are important to the citizens of New Jersey because they maintain productive open space, provide recreational activities to the public, and help retain the rural agricultural character and scenic beauty in New Jersey. All of these factors contribute to a high quality of life which makes New Jersey a place where people want to live, work and enjoy recreational activities.

By formally allowing equine service activities on preserved farms, the proposed amendments and new rules recognizes the importance of these farms to the State. By limiting the amount of acreage equine structures can occupy on a preserved farm, however, the Committee has struck a balance between allowing these activities on preserved farmland and ensuring that preserved farms retain a reasonable agricultural production component or capacity as their first priority.

Adoption of the agricultural management practice will ensure that only responsible farmers will receive the protection of the Right to Farm Act. Municipal officials as well as neighbors of commercial farms are assured that commercial farm operators who comply with the AMP are adhering to established, recognized agricultural standards that have undergone the scrutiny of State agricultural and equine experts as well as the general public. Further, adoption of the equine activities rule, *N.J.A.C. 2:76-2B.3*, will ensure that farms with little agricultural production or capacity for production will not receive the protections of the Act.

Some organizations and local government entities may want control over equine activities to remain with local government entities. The Committee has amended its original proposal to put some control in the hands of county agriculture development boards. The proposed rules endow such boards with the authority to set the limit on the amount of available production acreage on a farm that may be occupied by equine-related buildings, parking areas and other improvements.

The proposed AMP will also be used to resolve conflicts involving commercial farms. Any person or municipality aggrieved by an agricultural activity on a commercial farm is required to participate in a conflict resolution process set

forth in the Act and associated regulations. The AMP will be the standard used by county agricultural development boards (Boards) and the Committee in determining whether a farm is entitled to the protections of the Act. The commercial farm will be protected from nuisance lawsuits and restrictive municipal regulations only if the Boards or Committee find that it is in conformance with the adopted AMP and meets the other eligibility criteria of the Act.

There is also a significant social benefit for commercial farm operators in that if commercial farms utilize the adopted AMP, the potential for conflicts arising with farm neighbors will be minimized.

### **Economic Impact**

The proposed amendments and new rules will have a positive impact on the State's economy by promoting the continuation of agriculture through the implementation of sound equine agricultural management practices. The equine industry significantly contributes to New Jersey's economy. According to the study released in April 2007 by the Rutgers Equine Science Center, the equine industry - valued at more than \$ 3.5 billion - generates \$ 1.1 billion annually for New Jersey's economy. Of that total impact, \$ 647 million is generated by horse and horse farm owners. Providing right to farm protections to commercial horse farms and specifically allowing equine service activities on preserved farmland will help these farms stay in business and contribute to the economy of the State.

The proposed AMP will also reduce the expense and time that is involved in the Right to Farm Act's conflict resolution process. The AMP will provide standards regarding accepted equine agricultural management practices for all parties to use as a comparative benchmark.

While the costs associated with compliance with the agricultural management practice depend on a variety of factors including the size and type of equine operation, they are not anticipated to be onerous to the commercial farm operator. While the Committee certainly encourages all equine farmers to operate their farms responsibly, compliance with the agricultural management practice is only necessary for those farmers seeking the protections of the Right to Farm Act.

### **Federal Standards Statement**

A Federal standards analysis is not required because the subject matter of the proposed amendments and new rules are governed by the Right to Farm Act, *N.J.S.A. 4:1C-1* et seq., and the New Agriculture Retention and Development Act, *N.J.S.A. 4:1C-11* et seq., and are not subject to any Federal requirements or standards.

### **Jobs Impact**

The proposed amendments and new rules are not expected to result in the generation or loss of jobs in New Jersey.

### **Agriculture Industry Impact**

The proposed amendments and new rules will have a positive impact on the agriculture industry. The equine industry is a stable and significant component of the State's agriculture industry. Providing right to farm protections to commercial equine operations and specifically allowing equine activities on preserved farmland will help ensure that equine farms remain viable. In addition, many equine farms purchase hay from other New Jersey farms. The amendments and rules, therefore, will benefit other types of agricultural operations.

Farms will also be encouraged to follow the recognized standards set forth in the proposed AMP, and, by doing so, the potential for conflicts between the farms and farm neighbors will be minimized.

### **Regulatory Flexibility Analysis**

The majority of preserved farmland and land subject to protection under the Right to Farm Act is owned by small

businesses, as defined under the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. Pursuant to *N.J.S.A. 4:1C-9*, if a commercial farm owner or operator voluntarily agrees to conform to adopted agricultural management practices and is in compliance with all other eligibility requirements, the commercial farm owner or operator will be protected from private and public nuisance lawsuits and municipal regulations. As such, any person or municipality aggrieved by a commercial agricultural operation will be required to participate in a conflict resolution process established by the Committee. The proposed amendments and new rules do not require a commercial farm or a preserved farm seeking to engage in equine activities to incur any costs in terms of reporting or recordkeeping, nor will such farms incur costs for reporting or recordkeeping if they choose to comply with the proposed AMP or the rule regarding permissible equine activities on preserved farmland. The capital costs associated with compliance with the proposed AMP depends on a variety of factors, including, but not limited to, the size and type of commercial farm operation. Compliance with the amendments and rules will not require the commercial farm to employ professional services; accordingly, the amendments and rules will not require them to incur any costs for employment of professional services. If commercial farm operators desire the protections of the Right to Farm Act, the proposed amendments and new rules will provide them with accepted practices for commercial equine operations, but compliance with the AMP should not have an adverse economic impact on the operation.

### Smart Growth Impact

The proposed amendments and new rules would achieve smart growth and implement the State Development and Redevelopment Plan (State Plan). The State Development and Redevelopment Plan designates a Rural Planning Area (Planning Area 4), which comprises much of the countryside of New Jersey where large masses of cultivated or open land surround rural regional, town, village and hamlet centers. The State Plan's intentions in the Rural Planning Area include maintaining large contiguous areas of farmland and promoting a viable agricultural industry. The proposed amendments and new rules should encourage equine operations to enroll in the State's farmland preservation program, as equine activities will now be explicitly permissible on preserved farms. The proposed amendments and new rules will also protect responsible commercial equine operations from nuisance suits and restrictive municipal ordinances, which could otherwise threaten to put the farm out of business. The formal recognition of equine activities on preserved farmland and the protections provided by the proposed amendments and new rules will help assure the continuance and viability of the equine industry in New Jersey, thus furthering the goals in the State Plan's Rural Planning Area.

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

2:76-2A.8 Agricultural management practice for on-farm compost operations [operating on commercial farms]

(a) Pursuant to the authority of *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 the agricultural management practice for on-farm compost operations operating on commercial farms, provided that:

1. (No change.)
2. The finished compost product is not distributed or sold to off-farm users, **except as set forth in N.J.A.C. 2:76-2B.3(b)3**;
- 3.-5. (No change.)
- (b)-(c) (No change.)

2:76-2A.10 [(Reserved)] **Agricultural management practice for equine activities on commercial farms**



(a) This agricultural management practice sets forth standards for equine operations and activities, with which farm operations must be in compliance to receive the protections of the Right to Farm Act, *N.J.S.A. 4:1C-1* et seq.

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

"Drylot" means an area with less than 70 percent vegetative cover used for turnout of horses.

"Stocking rate" means the amount of land area allocated to each horse for a specific period of time.

"Turnout" means the practice of turning horses loose in an area for all or part of the day.

(c) The standards for farm stocking rates are as follows:

1. The following categories of horse management schemes shall constitute the basis for determining the stocking rate for an individual farm, as set forth in (c)2 through 3 below:

i. Pasture regime: Farms that use pasture as a substantial source of nutrition for horses and/or for regular turnout as the horses' primary source of exercise;

ii. Drylot regime: Farms that provide nutrition to horses primarily through purchased or farm-grown feed, and regularly turnout horses on a drylot; and

iii. No regular turnout regime: Farms that provide nutrition to horses solely with purchased or farm-grown feed and that utilize equitation programs for exercise instead of regular turnout.

2. The standards for pasture regime are as follows:

i. Where pasture provides a significant source of nutrition and exercise, at least 70 percent vegetative cover in the pasture shall be maintained by restricting the number of horses and time allowed for turnout, and through pasture management.

ii. Stocking rates for pasture regimes shall be determined on a case-by-case basis using the following factors:

(1) The size of the horse;

(2) The length of turnout time each day;

(3) The yield potential of the pasture;

(4) Pasture management (mowing, irrigating, fertilizing, seeding, and pasture rotation);

(5) Drainage;

(6) Soil type; and

(7) Weather conditions and season.

3. For drylot regime and no regular turnout regime, stocking rates for farms which utilize a drylot regime or no regular turnout regime shall be determined on a case-by-case basis by an evaluation of the farm's manure

management and dust management practices, pursuant to (d) and (e) below.

(d) The standards for manure management are as follows:

1. General provisions concerning manure management are as follows:

i. Manure management includes the storage, removal, disposal and composting of manure generated on the farm.

ii. Manure management, including the siting and size of storage areas and composting facilities, shall comply with:

(1) All relevant State and Federal statutes, rules and regulations; and

(2) A farm conservation plan approved by the local soil and water conservation district pursuant to *N.J.A.C. 2:90* and prepared in accordance with the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG), incorporated herein by reference, as amended and supplemented, available at [http://efotg.nrcs.usda.gov/efotg\\_locator.aspx?map=NJ](http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=NJ).

iii. Equine operations that are deemed concentrated animal feeding operations (CAFO), as defined in *N.J.A.C. 7:14A-1.2*, shall comply with all relevant State and Federal rules and regulations.

2. The standards for manure disposal are as follows:

i. Manure may be disposed of by:

(1) Spreading on the farm;

(2) Removal for off-farm use; and/or

(3) Composting, in conformance with *N.J.A.C. 2:76-2A.8*.

ii. Manure shall be spread in accordance with relevant State and Federal rules and regulations, the NRCS FOTG, incorporated herein by reference, as amended and supplemented, available at [http://efotg.nrcs.usda.gov/efotg\\_locator.aspx?map=NJ](http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=NJ), and the Penn State Agronomy Guide, 2007-2008, incorporated herein by reference, as amended and supplemented and available at <http://agguide.agronomy.psu.edu/>.

iii. The standards for short-term storage of manure are as follows:

(1) If a farm operator disposes of manure by selling or giving it away for off-farm use, he may store the manure for periods no longer than three months.

i. Storage for longer periods may be permitted based on weather conditions and cropping systems of the land where the manure is intended to be applied.

(2) Manure shall be stored in dumpsters or other receptacles and situated on a concrete pad or other surface that complies with NRCS recommendations based on the FOTG, incorporated herein by reference, as amended and supplemented, available at [http://efotg.nrcs.usda.gov/efotg\\_locator.aspx?map=NJ](http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=NJ).

**(3) Manure shall be kept as dry as possible to minimize the breeding of flies.**

**iv. The standards for long-term storage of manure are as follows:**

**(1) If a farmer stores manure for the purpose of holding it until he can spread it on his farm, the storage areas shall conform with the standards contained in the NRCS FOTG, incorporated herein by reference, as amended and supplemented, available at [http://efotg.nrcs.usda.gov/efotg\\_locator.aspx?map=NJ](http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=NJ), or a farm conservation plan prepared in accordance with the NRCS FOTG and approved by the local soil conservation district pursuant to *N.J.A.C. 2:90*.**

**(2) Farmers shall make reasonable efforts to minimize the breeding of flies.**

**3. Manure storage and composting facilities, and dumpsters containing manure that is to be removed from the farm, shall be located at least 50 feet from property lines, 200 feet from residences on adjacent properties, and 100 feet away from waters of the State.**

**(e) The standards for riding and training areas are as follows:**

**1. Riding and training areas include, but are not limited to, indoor and outdoor arenas, racetracks, training tracks.**

**2. Riding and training areas shall be located in a well-drained area of the farm.**

**3. Arenas shall be maintained as follows:**

**i. Manure, shavings and straw shall not be placed in arenas, as these materials can increase the amount of dust in the arena and serve as a breeding area for flies.**

**ii. The arena surface, and the area immediately outside the arena, shall be maintained to prevent weeds, unmowed grass, and an accumulation of debris, which can impede the flow of rainwater out of the arena, and serve as habitat for insects and rodents.**

**4. Dust management requirements shall be as follows:**

**i. The goal of dust management shall be to minimize dust, as dust can never be completely eliminated.**

**ii. Farm operators shall take all reasonable and economically feasible measures to minimize dust production and dissemination, including, but not limited to, applying water, applying other recommended products in accordance with manufacturer guidelines, and establishing and maintaining vegetative buffers or windbreaks.**

**iii. Water application standards are as follows:**

**(1) Water is the most effective dust control and bonding agent in indoor and outdoor arenas.**

**(2) The frequency of watering shall depend upon weather conditions, the type of arena footing, and the intensity of arena use.**

**(3) Water shall be applied to riding and training areas and driveways in the evening, as it allows a deeper absorption of water, and less water is lost due to wind and evaporation.**

(4) If dust is a persistent problem, water shall be applied additional times during the day.

iv. Waste oil shall not be used to control dust.

(f) Fencing standards are as follows:

1. Horse fences may be constructed and maintained around pastures, exercise areas, equine facilities, water bodies, and areas that can pose a danger to people or horses.

2. Fences shall be set back from property lines at a distance that is sufficient to:

i. Prevent horses from causing damage to trees and shrubs on neighboring properties;

ii. Facilitate fence repair;

iii. Facilitate mowing; and

iv. Prevent neighbors from having impermissible access to the horses.

3. For non-electric fences, the fence height shall not be less than four feet nor greater than eight feet.

4. The standards for fencing materials are as follows:

i. Fencing can be constructed of wood, wire mesh, high tensile wire, metal pipe, or other suitable material.

ii. If electric fences, tapes or wire are used, appropriate warning signs shall be posted to alert persons on the farm and on neighboring properties of the fence and its potential hazards.

iii. Barbed wire fencing is not recommended, but if used, risk to horses shall be minimized.

5. Fencing to control wildlife shall conform to *N.J.A.C. 2:76-2A.9*, Fencing installation agricultural management practice for wildlife control.

(g) If the Board or Committee determines that this section does not completely address an agricultural activity being considered for protection under the Right to Farm Act, *N.J.S.A. 4:1C-1* et seq., the Board or Committee shall decide whether those aspects of the activity comply with generally accepted agricultural operations or practices.

#### **2:76-2B.3 Eligibility of equine activities for right to farm protections**

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

"All other land not devoted to agricultural or horticultural use" means land other than that used in connection with the farmhouse that is not devoted to an agricultural or horticultural use nor is necessary to support or enhance land actively devoted to an agricultural or horticultural use. This land is assessed and taxed in accordance with the true value standard.

"Appurtenant woodland" means woodland that is part of a farm qualified for farmland assessment. Usually this land is restricted to woodlots because of slope, drainage capability, soil type or topography. Such land has limited productive use but it provides a windbreak, watershed, buffers or controls soil erosion.

**"Boarding"** means providing horses that are not owned by the owner or operator of a commercial farm with shelter, feed, and care on a continuing basis. "Boarding" shall not be construed to mean "raising" as defined in this section.

**"Concrete and asphalt area"** means the area of the farm occupied by buildings, or the portions of buildings, which have permanent concrete or asphalt flooring and are used in support of equine activities; and paved parking, driveway, and other paved areas used in support of equine activities.

**"Contiguous"** means parcels or lots sharing common boundaries. Parcels or lots separated by roads shall be deemed contiguous.

**"Cropland harvested"** means land that is the heart of a farming enterprise and represents the highest use of land in agriculture. All land from which a crop was harvested in the current year falls into this category.

**"Cropland pastured"** means land that can be and often is used to produce crops, but its maximum income may not be realized in a particular year. Land that is fallow or in cover crops as part of a rotational program falls in this classification.

**"Equine-related infrastructure"** means buildings and other related structures used to conduct equine activities, and paved areas, including parking and driveway areas, used in support of equine activities and any paved appurtenant non-production areas immediately adjacent to or between such buildings, structures, and parking and driveway areas. Equine-related infrastructure shall include agricultural labor housing used to conduct equine activities but shall not include race tracks, the land under and land used in connection with a farmhouse, and all other land not devoted to agricultural or horticultural use, as defined in this section.

**"Keeping"** means providing horses owned by the owner or operator of a commercial farm with shelter, feed, and care on a continuing basis. "Keeping" shall not be construed to mean "raising" as defined in this section.

**"Land under and land used in connection with farmhouses"** means land on which a farmhouse is located, together with such land area as may be devoted to lawns, flower gardens, shrubs, swimming pools, tennis courts and like purposes related to the use and enjoyment of the farmhouse. This is land not deemed to be in agricultural or horticultural use and, therefore, is assessed and taxed in accordance with the true value standard, that is at its residential value.

**"Non-appurtenant woodland"** means woodland which can only qualify for farmland assessment on the basis of being in compliance with a woodland management plan filed with the Department of Environmental Protection. It is actively devoted to the production for sale of tree and forest products.

**"Non-contiguous"** means parcels or lots not sharing common boundaries.

**"Permanent pasture"** means land that is not cultivated because its maximum economic potential is realized from grazing or as part of erosion control programs. Animals may or may not be part of a farm operation for land to fall in this category.

**"Production area"** means the area of the farm, not including the area occupied by equine-related infrastructure, that is in or available for agricultural production and falls within the land use classes "cropland harvested," "cropland pastured," "permanent pasture," "non-appurtenant woodland," or "appurtenant woodland" as established by the State Farmland Evaluation Advisory Committee, and defined in this section, not including freshwater wetlands that have not been modified for agriculture, as determined pursuant to (d) below.

**"Raising"** means promoting the physical growth of horses to their full-grown stage for the purpose of selling the horses for a profit.

**"Rehabilitation"** means the care of horses for the purposes of returning them to good health or useful condition.

**"Total usable area"** means the sum of the production area and the area occupied by equine-related infrastructure, as defined in this section.

**"Training"** means educating horses to increase their salable value as well as enhance their ability to perform specific tasks and interact productively with people for the purpose of selling the horses for a profit.

(b) The following activities are eligible for the protections and benefits of the Right to Farm Act, subject to the requirements set forth in (c), (d), (e), and (f) below:

1. The raising, breeding, keeping, boarding, training, and rehabilitation of horses;
2. Complementary equine activities that are associated with the activities specified in (b)1 above, including, but not limited to, clinics, open houses, demonstrations, educational camps, farm events, competitions, and rodeos, as long as these activities are related to the marketing of horses that are raised, bred, kept, boarded, trained or rehabilitated on the farm, and are in compliance with municipal requirements; and
3. The sale and distribution of manure and composted products produced on the farm to off-farm users, subject to the following:
  - i. The manure must be generated on the farm, and composted products must be generated on the farm from materials generated on the farm, with the exception of soil amendments such as lime or super-phosphates that may be necessary;
  - ii. Vehicular activity occurring on the farm for the purposes of the sale and distribution of manure and composted products described in (b)3i above is eligible for the protections of the Right to Farm Act; and
  - iii. The sale or distribution of manure not generated on the farm, or of compost generated from either some or all off-farm components, is not eligible for the protections of the Right to Farm Act.

(c) The production area of a commercial farm must be greater than the area occupied by equine-related infrastructure in proportions set forth in (c)3 and 4 below.

1. The sum of the production area and the area occupied by equine-related infrastructure, as defined in this section, shall be referred to as the total usable area.
2. If a farm management unit consists of noncontiguous parcels of land, the total usable area shall be determined individually for each non-contiguous parcel.
3. For farms where the total usable area is 150 acres or less, the area occupied by equine-related infrastructure shall not exceed 15 percent to 25 percent of the total usable area.
  - i. It shall be the responsibility of each county agriculture development board (CADB) to determine the permissible percentage of total usable area occupied by equine-related infrastructure based on the level of, or proximity of the farm to, non-agricultural development. In counties where no CADB exists, it shall be the

responsibility of the Committee make this determination.

4. For farms where the total usable area is greater than 150 acres, the area occupied by equine-related infrastructure may not exceed the sum of 15 percent to 25 percent of the first 150 acres of total usable area, as determined by the CADB or Committee pursuant to (c)3(i) above, plus 10 percent of all additional acres of total usable area above the first 150 acres of total usable area.

5. Concrete and asphalt area shall not exceed 15 percent of the total usable area of each non-contiguous parcel of the farm management unit.

(d) Evaluation of the production area under (c) above shall be based on the following:

1. Geographical Information Systems (GIS) aerial mapping and New Jersey Freshwater Wetlands Data provided by the New Jersey Department of Environmental Protection (NJDEP), which will be used to determine the total usable area, the area occupied by equine-related infrastructure, and the concrete and asphalt area.

i. If NJDEP wetlands maps are in dispute, further investigation and onsite analysis may be conducted by a licensed engineer or qualified wetlands consultant and/or a letter of interpretation may be issued by NJDEP to provide a more accurate assessment of the site conditions;

2. The farm's Form FA-1 filed pursuant to the Farmland Assessment Act of 1964, P.L. 1964, c. 48 (*N.J.S.A. 54:4-23.1 et seq.*), which will be used to determine the area occupied by land under and land used in connection with farmhouses, and all other land not devoted to agricultural or horticultural use;

3. A visual on-site inspection of existing equine-related infrastructure and concrete and asphalt areas to verify NJDEP GIS mapping and CADB or Committee determinations.

i. Equine-related infrastructure and concrete and asphalt areas existing on the farm but not on NJDEP GIS maps shall be measured either on-site or through certified engineering drawings obtained from the farmer.

ii. If a matter involves proposed construction, the farmer shall provide estimates of the area on which equine-related infrastructure would be constructed, as well as any proposed concrete and asphalt areas; and

4. The Committee retains final jurisdiction in any dispute regarding a CADB's evaluation under this subsection.

(e) The following income may be used to satisfy the production requirements in the definition of "commercial farm" set forth in *N.J.S.A. 4:1C-3*:

1. Income from breeding, which may include:

i. Income from insemination fees, which involves the collection of semen from horses owned by the farm operator or owner, preparation of semen for insemination, and insemination;

ii. Income from selling semen collected from horses owned by the farm operator or owner;

iii. Income from stallion fees; and

iv. Income from the sale of a horse that has been bred from a mare owned by the farm operator or owner;

2. Imputed income from pasturing horses;

**3. Income from the sale of a horse that was trained or raised on the commercial farm for at least 120 days prior to the time of sale; and**

**4. Income from fees associated with raising a horse on the commercial farm for at least 120 days.**

**(f) The following income cannot be used to satisfy the production requirements in the definition of "commercial farm" set forth in *N.J.S.A. 4:1C-3*:**

**1. Fees from boarding;**

**2. Fees from riding and driving lessons;**

**3. Fees from equine assisted therapy;**

**4. Monetary proceeds from racing; and**

**5. Fees from training horses.**

**(g) To receive the protections of the Right to Farm Act, *N.J.S.A. 4:1C-1* et seq., a commercial equine operation must be in compliance with a farm conservation plan prepared in accordance with the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG), incorporated herein by reference, as amended and supplemented, available at [http://efotg.nrcs.usda.gov/efotg\\_locator.aspx?map=NJ](http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=NJ) and must meet the eligibility criteria set forth in the Act, including the following:**

**1. The commercial farm must be located in an area, in which, as of December 31, 1997, or thereafter, agriculture is a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan or which commercial farm is in operation as of July 2, 1998;**

**2. The operation or agricultural activity at issue shall conform to the agricultural management practice set forth in *N.J.A.C. 2:76-2A.10* or in the event that *N.J.A.C. 2:76-2A.10* does not completely address an agricultural activity being considered for protection under the Right to Farm Act, the activity shall comply with generally accepted agricultural operations or practices;**

**3. The operation or agricultural activity shall be in compliance with relevant Federal or State statutes or rules and regulations adopted thereto; and**

**4. The operation or agricultural activity shall not pose a direct threat to public health and safety.**

2:76-6.15 Deed restrictions

**(a) The following statement shall be attached to and recorded with the deed of the land and shall run with the land:  
"Grantor promises that the Premises shall be owned, used and conveyed subject to:**

**"1. (No change.)**

**"2. The Premises shall be retained for agricultural use and production in compliance with *N.J.S.A. 4:1C-11* et seq., P.L. 1983, c. 32, and all other rules promulgated by the State Agriculture Development Committee, (hereinafter Committee). Agricultural use shall mean the use of the premises for common farmsite activities including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants,**



animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, [and] grazing, **and other activities set forth in N.J.A.C. 2:76-6.24.**

"3.-"23. (No change.)

(b)-(c) (No change.)

#### **2:76-6.24 Common farmsite activities**

**(a) The term "common farmsite activities," set forth in *N.J.A.C. 2:76-6.15(a)*2, shall include the following agricultural activities:**

**1. The breeding, boarding, keeping, raising, rehabilitation and training of horses, horse riding lessons, driving lessons and therapeutic riding lessons (also known as hippotherapy), if:**

**i. The premises receive 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.);**

**ii. Equine-related infrastructure on the premises, as defined in N.J.A.C. 2:76-2B.3(a), occupies no more than 15 percent of the total usable area of the premises, as defined in N.J.A.C. 2:76-2B.3(a), as determined using the procedure set forth in N.J.A.C. 2:76-2B.3(d); and**

**iii. The premises is in compliance with a farm conservation plan prepared in accordance with the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG), incorporated herein by reference, as amended and supplemented, available at [http://efotg.nrcs.usda.gov/efotg\\_locator.aspx?map=NJ](http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=NJ); and**

**2. Complementary activities associated with equine activities described in (a)1 above, such as clinics, open houses, demonstrations, educational camps, farm events, and competitions, only if such activities do not interfere with the actual use of the land for agricultural production and that the activities utilize the premises in its existing condition.**

**(b) Paragraphs (a)1 and 2 above shall not be enforceable against, nor applicable to, any owner of preserved farmland who was conducting equine service activities in compliance with the Committee's prior interpretation regarding equine activities on preserved farmland prior to (the effective date of this rule).**

**(c) Paragraphs (a)1 and 2 above shall be enforceable against and applicable to:**

**1. Farms preserved after (the effective date of this rule);**

**2. Farms preserved prior to (the effective date of this rule) but which were not used for equine service activities prior to (the effective date of this rule);**

**3. Farms preserved prior to (the effective date of this rule) but which were not in compliance with the Committee's prior interpretation regarding equine activities; and**

**4. Farms that seek to expand existing equine activities after (the effective date of this rule).**