

**Guidelines for Review of Local Laws That Define “Farm Operations”,
“Farm”, “Agriculture”, “Farmland” or Any Similar Term**

Pursuant to Article 25-AA, the term “farm operation” is used to identify and define commercial enterprises, through the use of land, buildings, equipment and practices, to carry-out an agricultural enterprise. Over the years, the State Legislature has amended the Agriculture and Markets Law (AML) to enhance the breadth of what constitutes a farm operation, including the type of crops, livestock and livestock products considered to be part of an agricultural enterprise.

In the administration of the AML regarding a municipality’s definition of “farm,” “agriculture,” “farmland” or any similar term used to describe an agricultural/farm operation in its zoning code, the Department compares the municipal definition to the State’s definition of “farm operation” as defined below. If a municipal definition does not encompass the breadth of crops, livestock, livestock products and farm enterprises identified in the AML, the local law may be deemed to be unreasonably restrictive and in violation of AML §305-a (1).

When a municipality examines its local laws for consistency with the AML, it is important to take into consideration certain aspects of the State’s definition of “farm operation.” Under the AML, a farm operation includes the production, preparation and marketing of crops, livestock and livestock products that are produced on land that is owned or rented, contiguous or non-contiguous to one another. Land can be owned or rented in another town or county and still be considered part of the farm operation. Furthermore, start-up farms may also be protected under the AML as long as the land is located within an agricultural district. Start-up farms will be described in another section of this document.

Definition of Farm Operation in the AML

301(11). "Farm operation" means the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a “commercial horse boarding operation” as defined in subdivision thirteen of this section, a “timber operation” as defined in subdivision fourteen of this section, “compost, mulch or other biomass crops” as defined in subdivision sixteen of this section and “commercial equine operation” as defined in subdivision seventeen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

301(2). "Crops, livestock and livestock products" shall include but not be limited to the following:

- a. Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.
- b. Fruits, including apples, peaches, grapes, cherries and berries.
- c. Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions.
- d. Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.
- e. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed

buffalo, fur bearing animals, wool bearing animals, such as alpacas and llamas, milk, eggs and furs.

f. Maple sap.

g. Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump.

h. Aquaculture products, including fish, fish products, water plants and shellfish.

i. Woody biomass, which means short rotation woody crops raised for bioenergy, and shall not include farm woodland.

j. Apiary products, including honey, beeswax, royal jelly, bee pollen, propolis, package bees, nucs and queens. For the purposes of this paragraph, "nucs" shall mean small honey bee colonies created from larger colonies including the nuc box, which is a smaller version of a beehive, designed to hold up to five frames from an existing colony.

301(13). "Commercial horse boarding operation" means an agricultural enterprise, consisting of at least seven acres and boarding at least ten horses, regardless of ownership, that receives ten thousand dollars or more in gross receipts annually from fees generated either through the boarding of horses or through the production for sale of crops, livestock, and livestock products, or through both such boarding and such production. Under no circumstances shall this subdivision be construed to include operations whose primary on site function is horse racing. Notwithstanding any other provision of this subdivision, a commercial horse boarding operation that is proposed or in its first or second year of operation may qualify as a farm operation if it is an agricultural enterprise, consisting of at least seven acres, and boarding at least ten horses, regardless of ownership, by the end of the first year of operation.

301(14). "Timber operation" means the on-farm production, management, harvesting, processing and marketing of timber grown on the farm operation into woodland products, including but not limited to logs, lumber, posts and firewood, provided that such farm operation consists of at least seven acres and produces for sale crops, livestock or livestock products of an annual gross sales value of ten thousand dollars or more and that the annual gross sales value of such processed woodland products does not exceed the annual gross sales value of such crops, livestock or livestock products.

301(16). "Compost, mulch or other organic biomass crops" means the on-farm processing, mixing, handling or marketing of organic matter that is grown or produced by such farm operation to rid such farm operation of its excess agricultural waste; and the on-farm processing, mixing or handling of off-farm generated organic matter that is transported to such farm operation and is necessary to facilitate the composting of such farm operation's agricultural waste. This shall also include the on-farm processing, mixing or handling of off-farm generated organic matter for use only on that farm operation. Such organic matter shall include, but not be limited to, manure, hay, leaves, yard waste, silage, organic farm waste, vegetation, wood biomass or by-products of agricultural products that have been processed on such farm operation. The resulting products shall be converted into compost, mulch or other organic biomass crops that can be used as fertilizers, soil enhancers or supplements, or bedding materials. For purposes of this section, "compost" shall be processed by the aerobic, thermophilic decomposition of solid organic constituents of solid waste to produce a stable, humus-like material.

301(17). “Commercial equine operation” means an agricultural enterprise, consisting of at least seven acres and stabling at least ten horses, regardless of ownership, that receives ten thousand dollars of more in gross receipts annually from fees generated through the provision of commercial equine activities including, but not limited to riding lessons, trail riding activities or training of horses or through the production for sale of crops, livestock, and livestock products, or through both the provision of such commercial equine activities and such production. Under no circumstances shall this subdivision be construed to include operations whose primary on site function is horse racing, notwithstanding any other provision of this subdivision, an agricultural enterprise that is proposed or in its first or second year of operation may qualify as a commercial equine operation if it consists of at least seven acres and stables at least ten horses, regardless of ownership, by the end of the first year of operation.

Start-Up Farm Periods

In the administration of the AML, the Department has considered the needs of “start-up” farm operations when the land used for agricultural purposes is located within a county adopted, State certified agricultural district. The Department examines the activity to be conducted, level of investment and involvement in the farm; soil and topographic characteristics of the property; agricultural knowledge of the landowner; and other factors that may specifically apply to a proposed agricultural activity. Concerning protections afforded under AML §305-a to farm operations, including “start-up farms,” municipalities should allow a reasonable period of time to establish the farm operation and its production of crops/livestock/livestock products. The Department considers the following start-up periods to be reasonable for a farm to achieve the level of production of its own goods that may be required by a local government for certain processing and marketing activities conducted by the farm¹:

Crops: 2 years

Hops: 3 years

Livestock: 2 years

Nurseries and Greenhouses: 2 years

Aquaculture: 2 years

Apiaries: 2 years

Christmas Trees: 8-10 years

Maple: 2 years

Orchards and Berries: 3-5 years

¹ Local governments may, of course, provide longer start-up periods in their discretion; and should consider weather, disease and other factors that may impact production.

Vineyards: 5 years

Woody Biomass: 3 years

Acreage and Gross Sales Requirements

Under the AML, a “farm operation” must be a “commercial enterprise.” A “farm operation” is not required to be eligible for receipt of an agricultural assessment or meet the acreage and gross sales requirements to receive an agricultural assessment [AML §301(4) – *Land Used in Agricultural Production*].

In the absence of minimum acreage and gross sales requirements, the Department evaluates such factors as the acreage in production; capital investment and business assets; gross sales of crops, livestock and livestock products; the type of enterprise and number of years in operation. If needed, the Department also evaluates a number of other factors, including, but not limited to:

- 1) the landowner’s intent (especially for “start-up” farms);
- 2) whether the farm is operated in a businesslike manner;
- 3) time and effort spent on farming;
- 4) whether the landowner, or their advisors, have the knowledge needed to carry on the farming activity as a successful business;
- 5) whether the landowner was successful, or has experience with, similar activities in the past;
- 6) whether the landowner can expect future appreciation of the assets used in the business; and
- 7) whether the landowner’s investment is at risk.

Leased and Owned Land

If a farm leases land for inclusion into its operation, crops or livestock grown/raised on leased land are treated the same as crops/livestock grown/raised on owned land. In both instances, the farmer must be producing the crop or raising the livestock as part of their operation; i.e., the farmer must be at financial risk if the crop/livestock fails or succeeds. Farmers either plant themselves or hire custom operators to plant and harvest crops on owned and/or leased land. Farmers may also hire custom operators to raise their livestock. In both instances, however, it is the farmer that provides the seed/livestock, fertilizer, pesticide/herbicide, feed, etc. and pays for the labor and custom applicator to produce/harvest the crop or raise the livestock. In this manner, the harvested crop or livestock raised are the farmer’s, whether the crop yields or finished weight of livestock are successful or diminished.

Conclusion

If an agricultural operation is determined to be a farm operation as defined in AML §301(11), whether it is an existing or start-up agricultural enterprise, it may be afforded protections under the AML if the land is also located within a county adopted, State certified agricultural district.