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SURVEY OF LOCAL FOOD LAW

MARCH 13, 2013

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SURVEY OF NEW YORK LOCAL FOOD LAW

Pace University, School of Law

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Disclaimer: *This document is for informational purposes only and shall be interpreted as legal advice.*

I. COTTAGE FOOD OPERATION LAWS

A. Background

1. Overview of State Cottage Food Laws

- a. **States with Cottage Food Laws:** Alabama, Arizona, Arkansas, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Mexico, *New York*, North Carolina, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.
- b. **Cottage Food Laws are State Specific.** No uniform law has developed to govern the cottage food industry and there are wide variations in the law from state to state.
- c. **Two different approaches:**
 1. ***Exemption Approach:*** Some states have taken the approach of eliminating virtually all regulations from cottage food operations by exempting cottage food operations from most regulations that govern a typical commercial kitchen.

2. ***Reduction Approach:*** Some states have taken the approach of reducing some of the regulations from cottage food operations by eliminating very few regulations (usually inspection and licensing requirements) but still maintaining significant regulation of the industry.

d. Two Types of Food Limitations

1. ***Enumerated Types.*** Some states have limited cottage food operators to specific types of foods that can be produced. Typically, the statute will specifically list the foods that can be produced by a cottage food operation.
2. ***“Non-Potentially Hazardous” Food Products.*** The most common limitation is that cottage food operators may only produce “non-potentially hazardous” food products.
 - i. Although states have defined this term in different ways, the most common definition provides “non-potentially hazardous” foods are foods that do not require time and temperature control for safety to limit pathogen growth or toxin production.
 - ii. Therefore, if the food must be held under proper temperature controls, such as refrigeration, it is likely not to qualify as “non-potentially hazardous.”

e. Special Labeling Requirements

1. Virtually all states with cottage food laws require some special labeling requirement to designate that the food was made by a cottage food operation with the name and address of the operation. Most of these laws contain specific language and formatting of the label.
2. Examples of Label Requirements
 - i. Contact information for cottage food operation;

- ii. Ingredients;
- iii. Allergy warnings; and,
- iv. Some warning that the food was prepared in an unlicensed, uninspected kitchen.

f. Limitations on Distribution

1. ***Intrastate Commerce.*** It is very important to remind cottage food operators not to sell their products in interstate commerce (i.e. across state lines or through the mail). If so, the operations would be subject to federal food laws and many all of these operations may not be compliant with federal food laws. Virtually every state also has some limitation on the intrastate distribution of cottage food products.
2. ***Direct to consumers limitations.*** Most states have limited the sale of cottage food products through direct to consumer sale limitations, meaning that all states must be direct to the end consumer and not through wholesale or resale. These sales can be at the residence or, often, at farmers' markets. Examples: Arkansas; Florida; Indiana; Iowa; Kansas; Kentucky; Michigan; Missouri; New Hampshire; New Mexico; Texas; Virginia; West Virginia; Wyoming.
3. ***Farmers' markets only.*** Some states have limited sales to farmers' markets only. Example: Illinois
4. ***Charitable vs. non-charitable sales:*** Some states, like Alabama, Minnesota and South Dakota, has place a limitation on sales to charitable, civic and nonprofit events or farmers' markets.
5. ***Grocery stores and restaurants:*** Some states have allowed sales to grocery stores and restaurants along with direct to consumer sales. See e.g., Arizona; Maine; Massachusetts; Ohio; Pennsylvania

g. Limitations on Gross Sales

1. ***Total Goods Sold:*** Some states have limited the size of cottage food operations by placing limits on

the amount of goods that can be sold through the cottage food operation. See e.g., Florida (\$15,000/year), Illinois (\$25,000/year), Iowa (\$20,000/year), Michigan (\$15,000/year), Minnesota (\$5,000/year), Texas (\$50,000/year).

2. **Cottage Food Sold:** Tennessee does not limit gross sales based on dollar amount but rather places a total unit sales limitation on its cottage food operations. See Rules of Tenn Dept of Agricultural, Rules 0080-4-11-.03(4) and 0080-4-11-.03.

B. New York Article 20-C License

New York applies an “**exemption approach**” to cottage food operations by exemption home processed food from the typical requirements of a commercial kitchen under Article 20-C of the NYS Agric. & Mkts § 251-z-1 *et seq.* Pursuant to NY Agric. & Mkts Section 251-z-3, “[n]o person shall maintain or operate a food processing establishment unless licensed biennially by the [NYSDAM].” NYSDAM is given broad discretion with administrative sanctions to ensure that foods are properly protected. See *R & S Bakery, Inc. v. Barber*, 435 N.Y.S.2d 93 (Third Dep’t 1980). Unless exempted, food processing establishments are required to be licensed biennially by NYSDAM. See N.Y. Agric. & Mkts § 251-z-3. “Each day’s operation of a food processing establishment without a license shall constitute a separate violation. . .” N.Y. Agric. & Mkts § 251-z-10.

1. Some Definitions

“**Food**” and “**food products**” under section 251-z-2[3] includes all articles of “food, drink, confectionery or condiment, whether simple, mixed or compound, used or intended for use by man and shall also include all substances or ingredients to be added to food for any purpose.” The statute defines a “**food processing establishment**” as “any place which receives *food or food products* for the purpose of processing or otherwise adding to the value of the product for commercial sale” (i.e., making a “value-added” food product). See NY Agric. & Mkts § 251-z-2[1] (emphasis added). The following are exempted from this definition:

- Establishments that process/manufacture food (products) that are sold **exclusively at retail** for consumption on the premises;
- bottled/bulk water facilities;
- Food processing establishments which are covered by Article 4 (Dairy Products), Article 4-A (Frozen Desserts), Article 5-B (Sale of Meat), Article 5-D (Sale of Poultry and Poultry Products), Article 17-B (Licensing of Food Salvagers) and Article 21 (Milk Control)

- Service food establishments, including vending machine commissaries, under permit and inspection by the NYS Department of Health or local health agency which maintains a program certified and approved by the state commissioner of health;
- Establishments under federal meat, poultry or egg product inspection; or
- Establishments engaged solely in the harvesting, storage, or distribution of one or more **raw agricultural commodities** which are ordinarily cleaned, prepared, treated or otherwise processed before being marketed to the consuming public.

“Processing” under section 251-z-2[3] means “processing foods in any manner, such as by manufacturing, canning, preserving, freezing, drying, dehydrating, juicing, pickling, baking, brining, bottling, packing, repacking, pressing, waxing, heating or cooking, or otherwise treating food in such a way as to create a risk that it may become adulterated if improperly handled.”

“Home Processed Food”: “any food processed in a private home or residence using only the ordinary kitchen facilities of that home . . . but shall exclude potentially hazardous food. . .” Section 276.3 of the NYS Agric. & Mkts Regulations

“Value-Added” Food Products: Value-added food product is generally the process of changing or transforming a product from its original state to a more valuable state. It can also include the production of a product in a manner that enhances its real or perceived value.

2. Exceptions

Pursuant to N.Y. Agric. & Mkts § 251-z-4, NYSDAM may establish exemptions from the food processing license requirement to “avoid unnecessary regulation and assist in the administration of this article without impairing its purposes.” However, said “exemptions may be conditioned upon requirements relating to sanitation, record keeping and reporting as the [NYSDAM] commissioner may require.” Among other exemptions, **home processed food** is exempt from Article 20-C licensing requirements if certain conditions are satisfied. Even though Home Processors are exempt under the Article 20-C license requirement, *they are still subject to inspection by the NYSDAM.*

3. Applying for an Article 20-C License

If a food entrepreneur does not fit under the cottage food operation exemption in New York and must obtain an Article 20-C license, section 251-z-3 sets forth application requirements which include proof of the following:

- That he/she has good character
- That he/she has adequate experience or competency

- That the establishment has adequate facilities and equipment for the business conducted
- That the establishment can maintain cleanliness so that the product will not be adulterated.

FSI-202 form is available at <http://www.agriculture.ny.gov/FS/license/pdfs/FSI-303.PDF> (last visited March 4, 2012). The applicant must also pay \$400 biennially. The license period varies according to the applicant's last name as set forth in the statute.

4. Suspending or Revoking Licenses

Under Section 251-z-5, NYSDAM may decline to grant a new license or renewal, suspend or revoke an Article 20-C license based on the following:

- *False or misleading statement* in the application;
- *Insufficient facilities or equipment* to maintain adequate sanitation for activities;
- Establishment is *not maintained in a clean and sanitary* condition;
- Maintenance of the establishment is such where the food (product) *may be adulterated*;
- Establishment has failed or refused to produce *requisite records* or other information sought;
- The applicant/licensee or any officer, director, partner or owner of 10% or more shares, or any other person in management, has *failed to comply with the statute*;
- The applicant/licensee, officer, director, partners, stockholder, or any other person in management has been convicted of a *felony*.

5. Requirements of a 20-C Licensee

Some of the requirements for Article 20-C licensees are as follows:

Record Keeping: Under Section 251-z-7, licensees are required to keep such records as required by NYSDAM.

Inspections: Under Section 251-z-8, NYSDAM must have access to inspect the premises during *all reasonable hours* “where food or food products are being manufactured, packaged, processed or stored, or where food or food products are being bought, sold or handled.”

Education: Licensees are required to complete an approved food safety education program under Article 20-C.

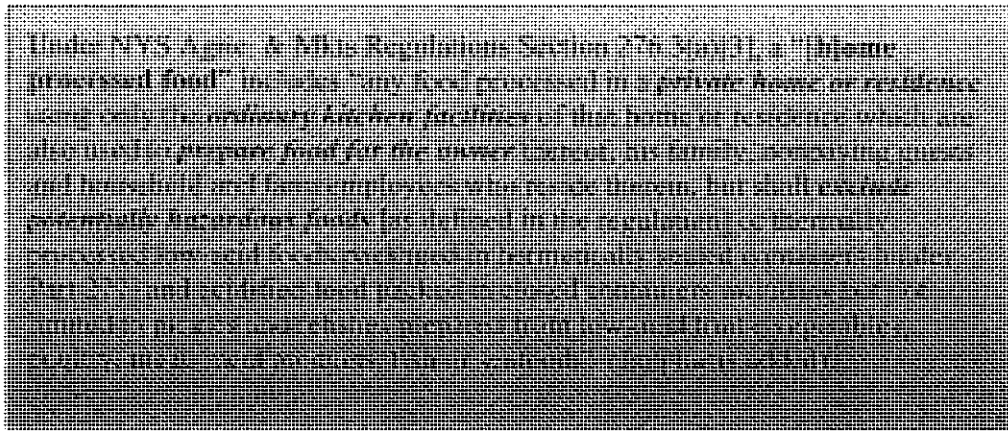
C. New York Cottage Food Operation Law

1. What is "Home Processed Food?"

Home processed food is exempt from Article 20-C licensing requirements if certain conditions are satisfied. However, cottage food operations must be registered with NYSDAM, Division of Food Safety and Inspection by completing FSI-989c available at <http://www.agriculture.ny.gov/FS/consumer/FSI898c.pdf> (last visited March 4, 2013). The cottage food operation must disclose to NYSDAM whether the water supply is municipal or a private well. If the home-based processor is on a private water/well system, then he/she must have a water test analysis performed for Coliform registering with NYSDAM (no more than 3 months old).

2. Non-Potentially Hazardous Foods

Like all states with cottage food operation laws, New York does place limitations on the types of food that can be processed at home and sold for human consumption. New York uses the "non-potentially hazardous" food product limitation. The NYSDAM registration form requires listing the "non potentially hazardous products" that will be processed in a home-based kitchen.



Commercial equipment is not considered an ordinary kitchen facility. Home processors whose residences contain separate segregated facilities for food processing will need to apply for licensing under Article 20-C.

3. Conditions for Exemption

A home-based processor may be exempt from an Article 20-C license so long as the following conditions are satisfied:

1. All finished product containers are clean, sanitary and labeled properly;
2. Food may not be either adulterated or misbranded;

3. Glass containers for jams, jellies, marmalades, etc. have suitable rigid metal covers; and,
4. Are sold only within the state of New York.

See NFSI-898d, "Home Processing" Fact Sheet available at <http://www.agriculture.ny.gov/FS/consumer/processor.html> (last visited March 4, 2013). Furthermore, the home processed food exemption for Article 20-C licensing is restricted to the following non-potentially hazardous home processed foods:

1. Bakery products (e.g., bread, rolls, cookies, cakes, brownies, fudge, and double-crust fruit pies) for wholesale marketing or retail agricultural venues such as farms, farm stands, farmers markets, green markets, craft fairs and flea markets;
2. Traditional jams, jellies, and marmalades made with high acid/low pH fruits;
3. Repacking/blending dried spices or herbs;
4. Snack items such as popcorn, caramel corn and peanut brittle; and,
5. Candy (excluding chocolate).

See NFSI-898d, "Home Processing" Fact Sheet.

If the product requires refrigeration then it is not allowed to be produced under the home processor exemption. New York views food products that may require refrigeration as potentially hazardous. Examples of prohibited items include the following:

1. Fruit/ Vegetable Breads;
2. Pickled or Fermented Foods;
3. Cheesecake, Cream Filled Pastries;
4. Meat, Fish, or Poultry Products;
5. Vegetable Oils, Blended Oils;
6. Garlic and/or Herb in Oil Mixtures;
7. Wine Jellies, Chutneys, Fruit Butters;
8. Cooked or Canned Fruits or Vegetables;
9. Cheese, Yogurt, Fluid Dairy Products; and,
10. Sauces, Salsas, Marinades.

See NFSI-898d, "Home Processing" Fact Sheet.

Please note that the 20-C exemption for home processors does not apply to direct Internet sales (i.e., commercial on-line transactions or e-commerce). However, it is permissible for farms to use the Internet for communication and marketing (e.g., email, website, social media platforms). See NFSI-898d, "Home Processing" Fact Sheet.

Even though some cottage food operations are exempt from Article 20-C licensing requirements, it is still subject to NYSDAM inspection requirements and food labeling regulations.

5. Other Considerations

Commercial operations in a residence may conflict with the local zoning code that prohibit certain commercial activities in residential zones. Variances or special use permits may be required to operate a cottage food operation out of a home. Cottage food operators should consult with an attorney and (if appropriate) local zoning officials for approval before commencing any home based business, including a home-based kitchen to process foods.

Any food operation has potential liability resulting from the sale of food products (i.e. slip-and-fall from customers, product defects, etc.). Cottage food operations are especially susceptible to liability from the sale of its home-processed food. Due to this, it is paramount that these producers review their insurance policies to determine whether they have ample coverage.

- A typical *homeowner's insurance policy* usually does not provide coverage for commercial operations such as cottage food operations. Cottage food operators may also lose coverage on the structure/contents as a result of a loss resulting from the business (i.e. fire loss).
- Although a *commercial insurance policy* will cover losses for general commercial liability (e.g., slip-and-fall), most policies do not provide coverage for products produced by cottage food operation labor.
- *Recall insurance coverage* for product recall can be obtained with a special insurance endorsement. Cottage food operators must evaluate their risk and the costs of insurance to determine the efficiency of maintaining the insurance.

Like all business decisions, cottage food operators should make a cost-benefit and risk-benefit analysis to determine the proper insurance formula. Please note that some farmers' markets require a minimum amount of commercial insurance (e.g., 1 mil.)

II. POULTRY SLAUGHTER GUIDELINES

D. Producer/Grower 1000 Bird Limit Exemption

1. Overview

A New York poultry producer who processes and sells less than 1000 chickens or 250 turkeys (i.e., 1 turkey = 4 chickens) may be subject to the **1000 Bird Limit Exemption** under the Poultry Product Inspection Act ("PPIA"), which requires producers to slaughter poultry in a USDA inspected facility. A farmer may harvest and process chickens and turkeys that he/she raised on farm and may distribute this poultry without mandatory inspection if the following five criteria is met pursuant to under PPIA § 464(c)(4), 9 C.F.R. § 381.10(c), and 9 C.F.R. § 381.175:

1. The poultry producer slaughters no more than 1,000 healthy birds of his/her own farm in a calendar year for distribution as human food;
2. The poultry producer does not engage in buying or selling poultry products other than those produced from poultry raised on his/her farm;
3. The slaughter and processing are conducted under sanitary standards, practices, and procedures that produce poultry products that are sound, clean, not adulterated or misbranded, and fit for human food;
4. The poultry producer keeps the required records; and,
5. The poultry product does not move in interstate commerce (i.e., exchange or transportation of the poultry product stays within the state of New York).

Said exemption applies to so long as the slaughtering *and* processing are both completed on-site. The slaughter equipment used may be owned, rented or provided in the form of a Mobile Poultry Processing Unit ("MPPU"). Please note that this exemption applies per farm – not per farmer. If a New York "farm" is harvesting more than 1,000 chickens or 250 turkeys in an on-farm slaughter facility, then it is required to have an Article 5-A License; otherwise, it must harvest its birds at a USDA processing facility.

Although sales and transportation of poultry products under this exemption are only required to stay intrastate (i.e., within New York), NYSDAM's 2009 guidelines suggest that farms operating under the 1000 bird exemption should maintain control of its product through the sale directly to the consumer by limiting sales to on-farm outlets, roadside stands, or farmers' markets. Thus, a poultry farmers operating under this exemption should not sell directly to a hotel, restaurant or other type of institution.

2. Record Keeping

Poultry producers are required to keep records relating to the slaughter and sale of poultry products to consumers. USDA/FSIS or NYSDAM employees review such records to determine compliance with the 1000 Bird Limit Exemption. Please see the sample logs in the Cornell Small Farms Program, "On-Farm Poultry Slaughter Guidelines and Regulations" (June 2012), enclosed in your materials.

3. Food Packaging & Labeling

Packaging materials must be safe for its intended use pursuant to the Food Drug & Cosmetic Act ("FDCA"). Poultry products may not be packaged in a container that contains any substances that may adulterate the contents or injurious to human health. Only approved labels from the Food & Drug Administration ("FDA") may be used. Proper wrapping a rapid freezing contribute to a longer lasting food product. The goal is to prevent moisture loss from the meat (i.e., freezer burn) and keep air out. Packaging options for poultry products may include: freezer paper, tray wraps, plastic wraps, barrier films and meat trays, and heat-shrink bags that are not vacuumed. Cryovac packaging is not allowed under this particular processing exemption.

New York has adopted the USDA FSIS Mandatory Labeling Requirements. Specifically, the following items are required to be on the principal display panel for all sales of meat or poultry sold in New York:

- (1) Product name and description;
- (2) Inspection Legend and Establishment Number (for farms processing under this exemption, it should say “Exempted – P.L. 90-492”);
- (3) Net weight statement (includes “packed on” date, “sell by” date¹, “net wt lb.”, “price per lb”, and net weight);
- (4) Name and address of the farm; and,
- (5) Safe handling statement (if processed under on-farm exemption, then label must say “Exempt P.L. 90-492”).

If poultry farmer makes a nutritional claim, then a nutritional label must also be included. The Department of Weights and Measures will need to certify the scales used to ensure that the digital scales are suitable for commerce accurately measure the weight in pounds. Please note the Sample Product Description from the Cornell Small Farms Program, “On-Farm Poultry Slaughter Guidelines and Regulations” (June 2012).

4. Processing Guidelines

A poultry producer slaughtering birds under this exemption should consider the following processing guidelines:

1. Water used in processing, cleaning and sanitation, in chilling tanks and ice manufacture should be potable and must be tested annual to determine potability;
2. Any approved sanitizing agents for use on food contact surfaces must be used in prescribed concentrations and methods;
3. Any agents (including lubricants) used on equipment maintenance must be food grade;
4. The on-farm processing facility must be managed in a manner that protects the environment (e.g., surface and groundwater, and soils).

5. Insurance

To date, there are no known cases of food borne illness traced back to a small-scale producer slaughtering poultry on-farm in uninspected facilities; nonetheless, many New York poultry producers have trouble obtaining farm insurance coverage (including product liability coverage) for on-farm slaughter facilities. It is paramount that farmers work with their insurance agent to ensure it has proper coverage before undertaking on-farm poultry slaughter.

¹ Not required if poultry meat product is frozen.

E. Article 5-A Licenses

1. *Overview*

The law governing Article 5-A slaughterhouses is found at New York Agriculture & Markets Law (“N.Y. Agric. & Mkts”) § 96-a et seq., 1 New York Code, Rules and Regulations (“NYCRR”) § 245.1 et seq. (slaughterhouses), and 1 NYCRR § 246.1 et seq. (refrigerated warehouses and locker plants). In its exercise of police power, the New York legislature enacted Article 5-A because “unsanitary conditions in the slaughtering of animals and fowl for food . . . endanger the health and welfare of the people. . . .” N.Y. Agric. & Mkts § 96-a. Article 5-A does not exclude the power of local legislative bodies to promulgate additional requirements so long as they are not unreasonable. See Murdock v. Capriulo, 89 N.Y.S.2d 531 (City of Mount Vernon, Ct of Special Sessions 1949); see also 1 Op.State. Compt. at 121 (1945) (stating that a person “duly licensed to operate a slaughterhouse” pursuant to Section 96-b may not violate a municipal ordinance prohibiting the operation of a slaughterhouse within the limits of a city) and Op.Atty.Gen. (Inf.) at 64 (1966) (noting that a municipality may appoint an officer to enforce the state law provisions).

Pursuant to Section 96-b, a “person, firm, partnership or corporation ‘*not granted inspection*’² under the (a) federal Meat Inspection Act, (b) federal Poultry Products Inspection Act, (c) Article 5-B of NY Agric. & Mkts [Sale of Meat], or (d) Article 5-D of NY Agric. & Mkts [Sale of Poultry and Poultry Products] may “operate any place or establishment where animals or fowl are slaughtered or butchered for food unless such person, firm, partnership or corporation be licensed by the commissioner [of agriculture].” N.Y. Agric. & Mkts § 96-b(1) (emphasis added).

Exclusions for an Article 5-A license include the following:

- (1) any bona fide farmer who butchers his own domestic animals or fowl on his farm exclusively for use by him and members of his household[,] non-paying guests and employees”;

² The U.S. Department of Agriculture (“USDA”) issues a “grant of inspection” to approved facilities instead of a “license”. USDA inspected meat processing facilities that have been issued a “grant of inspect” may butcher and/or process amenable livestock or poultry pursuant to the Federal Meat Inspection Act the relevant regulations. See generally Martha Goodsell et. al, “A Resource Guide to Direct Marketing Livestock and Poultry”, Rev. Ed (January 2011) available at http://smallfarms.cornell.edu/welcome-to-our-temporary-website/rg_livestock_poultry_2011/ (last visited March 10, 2013) (hereinafter referred to as the “Direct Marketing Guide”). “Amenable” (i.e., specifically enumerated) livestock in the Food Meat Inspection Act include cattle, sheep, goats, swine, and equine and amenable poultry include chickens, turkey, ducks, geese, guineas, ratics (e.g., ostrich, emus, rhea), and squabs.

- (2) “any custom slaughterer”³;
- (3) “any person who slaughters not more than [250] turkeys⁴ or an equivalent number of birds of all other species raised by him on his own farm during the calendar year for which an exemption is sought . . .”; and,
- (4) “any person who donates, and any person who donates, and any charitable or not-for-profit organization that possesses, prepares or serves game or wild game pursuant to [N.Y. Env. Law § 11-0917 (Possession, transportation and sale of wild game and other wildlife)] (and any person who processes game or wild game on behalf of such donor).”

See N.Y. Agric. & Mkts § 96-d.

2. *Application & License Requirements*

NYSDAM promulgated license requirements and application procedures for an Article 5-A slaughterhouse. See N.Y. Agric. & Mkts § 96-b(1). In order to obtain a two-year Article 5-A license, NYSDAM “must be satisfied that the slaughterhouse complies with construction, equipment and sanitation requirements establish by [Part 245 of the New York Codes, Rules and Regulations].” 1 NYCRR § 245.1(a); see also N.Y. Agric. & Mkts § 96-b(1). In deciding whether a slaughterhouse is in regulatory compliance, NYSDAM *may* request an “examination of the premises, equipment and facilities ” pursuant to 1 NYCRR § 245.1(a). Under 1 NYCRR § 245.1(a), a “[c]omplete drawing and specifications for new construction, new businesses and alterations of existing premises shall be submitted to the commissioner for approval.”⁵

³ A “custom slaughterer” means “a person, firm, corporation, or association who or which operates a place or establishment where animals are delivered by the owner thereof for slaughter exclusively for use, in the household of such owner, by him, and members of his household and his *non-paying guests* and employees [*provided that*] such customer slaughterer does not engage in the business of buying or selling any carcasses, parts of carcasses, meat or meat products of any animal[.]” N.Y. Agric. & Mkts § 96-d (emphasis added).

⁴ “[F]our birds of other species shall be deemed the equivalent of one turkey.” N.Y. Agric. & Mkts § 96-d.

⁵ Notably, even the “[c]onstruction of new facilities, new businesses and alternations of existing faculties shall not commence until the drawings and specifications have been reviewed and approved by [NYSDAM].” 1 NYCRR § 245.1(a).

The application form for the two-year license is made available by the NYS Department of Agric. & Mkts on or before May 1st every other year. See N.Y. Agric. & Mkts § 96-b(1). Along with the \$200 application fee, an applicant must furnish evidence of the following: (i) his/her “good character, experience and competency”; (ii) “that the establishment has adequate facilities and equipment for the business to be conducted”; (iii) “that the establishment is such that the cleanliness of the premises can be maintained”; and, (iv) “that the product produced therein will not become adulterated.” N.Y. Agric. & Mkts § 96-b(3).

Article 5-A licenses are prohibited from cities with a population of over 1 mil. (e.g., New York City) and within 1500 feet of a residential dwelling. See N.Y. Agric. & Mkts § 96-b(2). Licensees must limit its slaughter operations that are listed on the slaughter application. See 1 NYCRR § 245.1(b); see also N.Y. Agric. & Mkts § 18.

No. 7 on the application lists the various exemptions available including “PGOP”, (“Producer/Grower or Other Person Exemption”), “PG” (“Producer/Grower Exemption), “SEE”, (“Small Enterprise Exemption”), “RD” (“Retail Dealer”), and “RS” (“Retail Store”). Page 54 of the Direct Marketing Guide has a helpful chart on these exemptions and the “Custom Exemption,”⁶ where the owner of the animal may not sell or donate for human consumption. These slaughterhouses are exempt from federal inspection with the USDA Food Safety Inspection Service (“FSIS”) pursuant to the Federal Meat Inspection Act (“FMIA”), 21 U.S.C. §§ 601 *et seq.* Typically, a “plant is permitted to operated under only one poultry exemption.” See Direct Marketing Guide at 22 (emphasis omitted).

3. Inspection & Inspection Results

A qualified person for the purpose of inspecting slaughterhouses may be appointed to enforce compliance with the provisions of this Article. See 8 Op.State Compt. 104 (1952). “Each person, firm, partnership, or corporation licensed pursuant to [Article 5-A] shall post a copy of the date and results of its most recent sanitary inspection by the [NYSDAM] in a conspicuous location near each public entrance, as prescribed by the commissioner.” N.Y. Agric. & Mkts § 96-c. “Any room, compartment, equipment or utensil, found by the commissioner to be improper, unclean or unsanitary shall be tagged with a rejection notice. . .” and shall be used until the condition has been corrected. See 1 NYCRR § 245.9. Said inspection results shall “be made available to the public upon request.” N.Y. Agric. & Mkts § 96-c.

4. Sanitation & Cleanliness Requirements

⁶ Dual licenses may be obtained for custom exempt and 5-A slaughtering. See generally Direct Marketing Guide at 20-21 (illustrating separate kill rooms).

“Rooms, compartments, places, equipment and utensils used for preparing, processing, storing or otherwise handling any produce, and all other parts of the establishment shall be kept in a clean and sanitary condition.” 1 NYCRR § 245.2(a). NYSDAM has promulgated several regulations regarding the sanitation and cleanliness of Article 5-A slaughter facilities

a. Maintaining Sanitary Conditions at the 5-A Facility

1. (Reasonably) Free of Rodents, Insects & Vermin.

- i. Outside of Premises. The outside of the premises must be maintained in order to prevent it from becoming an “attractant, breeding place or harborage for rodents, insects and other pests.” 1 NYCRR § 245.2(a). See also 1 NYCRR § 245.2(j) stating that the “[c]onstruction shall render the establishment resistant to the entrance of rodents, insects and other vermin.”
 - ii. Use of Poisons. The use of *poisons for any purpose* in rooms or compartments where any unpacked product is stored or handled is forbidden, except under such restrictions and precautions as the commissioner may prescribe.” 1 NYCRR § 245.2(j) (emphasis added).
 - iii. General maintenance. “The establishment shall be maintained in a condition that prevents the attraction of rodents, insects and other vermin.” 1 NYCRR § 245.2(k).
2. **Garbage/Waste.** “Garbage, refuse, debris and waste materials shall be stored as to minimize the development of odor and to prevent it from becoming an attractant and harborage or breeding place for rodents, insects and other pests.” 1 NYCRR § 245.2(b).
3. **Roadways.** “Roadways on the premises adjacent to the establishment shall have a hard surface.” 1 NYCRR § 245.2(b).

4. **Handling/Storage of Materials.** “There shall be no handling or storing of materials which create an *objectionable condition* in the premises.” 1 NYCRR § 245.2(c) (emphasis added).
5. **Light.** “There shall be abundant light, both natural and artificial, of good quality and well distributed, and sufficient ventilation for all rooms and compartments to ensure sanitary conditions.” 1 NYCRR § 245.2(d).
6. **Drainage.** “There shall be an *efficient drainage* and plumbing system for the establishment and premises. All drains and gutters shall be properly installed *with approved* traps and vents in accordance with any State or local construction or sanitary code, and shall be connected to a sanitary sewer or acceptable disposal system. The discharge of water and waste must conform to all State or local requirements.” 1 NYCRR § 245.2(e) (emphasis added).
7. **Water.**
 - i. “An adequate *potable* water supply, both *hot and cold*, delivered under pressure to sufficient, convenient outlets for washing carcasses and parts, walls, floors and equipment shall be available *at all times* during operation.” 1 NYCRR § 245.2(f)(1) (emphasis added).
 - ii. “An ample supply of water [that is at least 180° F] and/or an *approved sanitizer* shall be furnished and used for the cleaning of equipment, floors, walls and the like which are subject to contamination in the dressing or handling of diseased carcasses, their viscera and parts.” 1 NYCRR § 245.2(f)(2) (emphasis added).
 - iii. “Hot water for cleaning rooms and equipment” other than the water described in 1 NYCRR § 245.2(f)(2) that is subject to contamination in the dressing or handling of diseased carcasses, their viscera and parts

“shall be delivered under pressure to sufficient convenient outlets and shall be not less than 150 degrees F.” 1 NYCRR § 245.2(f)(3).

- iv. “Water shall be delivered at a minimum pressure of 30 pounds per square inch.” 1 NYCRR § 245.2(f)(4).
- v. “All slaughtering and processing rooms shall have sufficient conveniently located *handwashing facilities* of foot-pedal operation or equivalent devices and supplied with hot running water with a temperature of at least [105° F] and cold running water tempered by means of a mixing valve or combination faucet, powdered or liquid soap dispensed from a sanitary container and individual towels or hand drying devices.” 1 NYCRR § 245.2(n) (emphasis added).

8. **Knife Sterilization.** “A knife sterilization or disinfection system shall be provided for the evisceration of animals and fowl.” 1 NYCRR § 245.2(f)(5).

9. **Doors, Walls, Ceilings & Posts.** “The doors, walls, ceiling, partitions, posts and other parts of structures shall be of such materials, construction, repair and finish as will make them susceptible of being readily and thoroughly cleaned.” 1 NYCRR § 245.2(g).

10. **Floors.**

- i. “Floors shall be of watertight and impervious materials sloped to efficient drain.” 1 NYCRR § 245.2(h).
- ii. “The junction of floors and walls shall be covered to a radius of at least two inches.” 1 NYCRR § 245.2(l).

11. **Window Sills.** Must be “sloped to a 45-degree angle.” 1 NYCRR § 245.2(i).

12. **Rails.** “Rails shall be of sufficient height to prevent carcasses from contacting the floor.” 1 NYCRR § 245.2(m).

13. **Cutting & Packing Where Poultry is Processed.** “In establishments where poultry is processed, the eviscerating, cutting and packing operations shall be separated from the killing, scalding and dressing operations by the use of separate rooms or by a thorough and complete cleanup prior to the eviscerating, cutting and packaging operations.” 1 NYCRR § 245.2(o).

14. **Holding Area.** “The live animal and poultry holding areas shall be separated from the killing, processing and storage areas of the establishment by the use of separate rooms.” 1 NYCRR § 245.2(p).

15. **Equipment.**

i. **Generally.** “Equipment must be so constructed as to be easily cleaned, and that used for inedible products must be marked.” 1 NYCRR § 245.4(a); see also N.Y. Agric. & Mkts § 18.

ii. **Transportation Cages**

1. “A separate room shall be provided for the cleaning and sanitizing of transportation cages. Cleaning and/or storing transportation cages outside of the establishment is prohibited.” 1 NYCRR § 245.3(g).

2. “Live animal and poultry holding and transportation cages shall be thoroughly cleaned and sanitized after use, with the exception of transportation cages that have been placed on a vehicle for return immediately after the delivery of the live animals and poultry.” 1 NYCRR § 245.4(b).

3. "Live animals and poultry shall not be housed in transportation cages, but shall be housed in holding cages equipped with waste material catch pans at the bottom of each cage." 1 NYCRR § 245.4(b).
4. The transportation cages "shall provide access to food and water." 1 NYCRR § 245.4(b).

16. Tools, Equipment and Utensils Used for Processing

- i. "Tools, equipment and utensils used for preparing, processing and otherwise handling any product shall be of such material and construction as will make them susceptible of being readily and thoroughly cleaned and such as will ensure *strict cleanliness in the preparation and handling of all products.*" 1 NYCRR § 245.4(c) (emphasis added).
- ii. If "practicable," said tools, equipment and utensils used for preparing, processing and otherwise handling products should be "made of metal or other impervious material." 1 NYCRR § 245.4(c).
- iii. "Trucks and receptacles used for inedible material shall be of similar construction and shall bear some *conspicuous and distinctive mark*, and *shall not* be used for handling edible products." 1 NYCRR § 245.4(c) (emphasis added).
- iv. "Tools, equipment and utensils shall be made of nontoxic material, shall be thoroughly cleaned and sanitized immediately after a change in processing between species, after any interruption of operations during which contamination may

have occurred, and after each day's use." 1 NYCRR § 245.4(d).

- v. "The equipment shall be properly stored and protected when not in use and shall be clean at the time of use." 1 NYCRR § 245.4(d).
- vi. "All shroud cloths shall be acceptably clean at time of use." 1 NYCRR § 245.4(d).

b. Protection of Products from Contamination

1. **Generally.** "Products shall be protected from contamination at all times during production, preparation, storage and transportation." 1 NYCRR § 245.5(a); see also N.Y. Agric. & Mkts § 18.

2. **Refrigeration.**

- i. "Refrigerated storage of adequate capacity shall be provided and maintained at temperatures not to exceed [41°F] for fresh meats and poultry, carcasses and parts thereof, and not to exceed [41°F] for processed meats and poultry, meat and poultry by-products and meat and poultry food products." 1 NYCRR § 245.5(b).
- ii. "Vehicles in which products are transported shall be so constructed as to prevent dust, dirt, flies, insects and other contamination from coming in contact with products and shall be maintained in a clean and sanitary manner." 1 NYCRR § 245.5(c).
- iii. "Refrigeration at a temperature not to exceed [41°F] and satisfactory protective covering for products shall be provided when necessary." 1 NYCRR § 245.5(c).

3. **Containers.**

- i. "All used tubs, barrels, and boxes used as containers of products shall be thoroughly cleaned and sanitized before reuse." 1

NYCRR § 245.5(d); see also N.Y. Agric. & Mkts § 18.

- ii. “[The tubs, barrels, and boxes used as containers] shall be of such construction and material as to protect products adequately from dust, dirt, flies, insects and other contamination, and a satisfactory sanitary liner shall be provided for such used containers where necessary.” 1 NYCRR § 245.5(d).

4. *Chilling Tanks.*

- i. “In establishments where poultry is processed, chilling tanks or vats shall”:
 - 1. be of smooth metal construction,
 - 2. have a continuous water overflow, and
 - 3. be emptied, cleaned and sanitized after each use. See 1 NYCRR § 245.5(e).
- ii. “Ice used in such [chilling] tanks and vats shall be cleaned and wholesome and stored in a clean, sanitary manner.” 1 NYCRR § 245.5(e).

5. *Poultry Handling.*

- i. Rinsing. “All poultry carcasses and parts thereof, shall be thoroughly rinsed following evisceration.” 1 NYCRR § 245.5(f).
- ii. Poultry scalders. “Poultry scalders shall maintain a continuous intake of potable water sufficient to maintain clean water and provide a minimum overflow of one quart of water per bird per minute. They shall be emptied, cleaned and sanitized after each use.” 1 NYCRR § 245.5(g).
- iii. Poultry Singeing. Pursuant to 1 NYCRR § 245.5(n)(1)-(3), “[e]stablishments desiring

to singe poultry must meet the following requirements:"

- iv. "The singeing process may only be used to remove excess feathers and shall not be used to brown or burn the flesh. Singeing shall be conducted after removal of feathers[;]"
- v. "Singed carcasses shall be chilled and eviscerated immediately after singeing[;]" and,
- vi. "Finished product shall be labeled with the following statement: '**Keep refrigerated at 41 degrees F or below. Poultry must be cooked to an internal temperature of 165 degrees F or higher.**'" (emphasis added)

6. *Evisceration & Handing Hides.*

- i. Evisceration. "Eviscerating facilities and equipment at each work station shall be sufficient to ensure that carcass and product preparation can be accomplished without contamination." 1 NYCRR § 245.5(h).
 1. "Evisceration" is the removal of the "viscera" (or internal organs)
- ii. Hides. "Animals dressed with hides on shall be thoroughly washed and cleaned before evisceration. Washing equipment of an approved type to thoroughly and efficiently wash carcasses inside and out shall be provided." 1 NYCRR § 245.5(i).
 1. *No hides on kill floor*. "Hides shall not be stored on the killing floor, nor stored exposed in rooms or compartments used for edible products. 1 NYCRR § 245.5(j).
 2. "Carcasses with hides on shall not be stored in contact with skinned and dressed carcasses or parts thereof or

other edible products.” 1 NYCRR § 245.5(k).

7. *Removing Waste.*

i. Removal of waste/manure.

1. “All waste and offensive refuse shall be removed from the premises at least every 24 hours if the establishment is operated continuously or within 24 hours after use if the establishment is used only occasionally.” 1 NYCRR § 245.5(l).
2. “Manure shall not be allowed to accumulate on the premises.” 1 NYCRR § 245.5(l).

ii. Waste room. “A separate inedible waste room shall be provided for handling and storage of waste containers and covers, waste materials, inedible material, and condemned products.” 1 NYCRR § 245.5(m).

iii. “This room shall be so located as to ensure no contamination to edible products or congestion in the establishment.” 1 NYCRR § 245.5(m).

iv. “Hot and cold running water, proper drainage, and facilities for cleaning the area shall be provided and the area shall be maintained in a clean and sanitary condition.” 1 NYCRR § 245.5(m).

v. “Where necessary it shall be separated from any area in which edible products are handled.” 1 NYCRR § 245.5(m).

8. *Cleanliness Required*

i. Generally. “Operations and procedures involving the preparation, storing or

handling of any product, and all parts of the establishment, shall be kept in a clean and sanitary condition.” 1 NYCRR § 245.6(a).

1. There shall not be any “objectionable condition” in any of the “rooms, compartments or places. . . .” 1 NYCRR § 245.6(a)
- ii. Rooms & compartments. They shall be “kept reasonably free of steam and vapors to enable proper inspections and to ensure clean operations.” 1 NYCRR § 245.6(b).
 1. Walls, ceilings and overhead structures of rooms should be kept “reasonably free of moisture.” 1 NYCRR § 245.6(b).
- iii. Butchers & Product Handlers. “Butchers and others who dress or handle diseased carcasses or parts shall cleanse their hands with soap and hot water, and rinse them in clean water.” 1 NYCRR § 245.6(c).
 1. “Implements used in dressing diseased carcasses shall be thoroughly cleansed in boiling water, or in an approved disinfectant followed by rinsing in clean water.” 1 NYCRR § 245.6(c).
- iv. “Employees who handle any product shall keep their hands clean and in all cases, after visiting the toilet rooms or urinals shall wash their hands before handling any products or the implements used in the preparation of products.” 1 NYCRR § 245.6(c).
 1. It is recommend that the bathroom have a sign reminding employees to wash their hands before returning to work.

- v. Aprons/Garments and Hair/Cosmetics.
“[Clean] [a]prons, frocks, and other outer clothing worn by persons who handle any product shall be of material that is readily cleaned and only clean garments shall be worn.” 1 NYCRR § 245.6(d); see also N.Y. Agric. & Mkts § 18.
 - 1. “Clean garments must be worn at the start of each working day and garments must be changed during the day as often as necessary to prevent adulteration of product and creation of unsanitary conditions.” 1 NYCRR § 245.6(d).
 - 2. “Care shall be taken to prevent the contamination of products with perspiration, hair, cosmetics, medicaments and the like.” 1 NYCRR § 245.6(d).
 - 3. These types of requirements should be memorialized in the employee handbook.

- vi. No Spitting. “Such practices as spitting on whetstones, spitting on the floors, placing skewers, tags or knives in the mouth, inflating lungs or casings or testing with air from the mouth such receptacles as tierces, kegs, casks and the like containing any product or intended as containers of any product, *are prohibited.*” 1 NYCRR § 245.6(e) (emphasis added).
 - 1. “Only mechanical means may be used for testing.” 1 NYCRR § 245.6(e).

- vii. No Smoking/ Post “No Smoking” Signs.
“Smoking shall not be permitted in areas where edible products are handled or processed. Signs prohibiting smoking shall

be *conspicuously posted* in such areas.” 1
NYCRR § 245.6(f) (emphasis added).

c. Unlawful Acts

1. Pursuant to Section 96-e(1)-(4), it shall be unlawful:

- i. “for any person, firm, partnership or corporation to operation any slaughterhouse, abattoir or other place or establishment where animals or fowl are slaughtered or where meat or meat food products are prepared or processed for food unless”
 1. maintained and operated in a “clean and sanitary manner” and,
 2. in compliance with Article 5-A in relevant regulations.
- ii. “to expose any meat, fowl or meat food product in any slaughterhouse, abattoir or other place or establishment to”
- iii. “insects, live animals or injurious contamination;” or
- iv. “slaughter, possess or sell unwholesome meat.”
 1. Meat is “unwholesome” if it is:
 - a. from a “diseased animal or one which shall have died other than by slaughter, or if such meat shall be contaminated with filth” or
 - b. was “slaughtered, processed or handled under insanitary conditions.
 2. “feed hogs uncooked offal from a slaughterhouse.”
 - a. Offal is not defined in the statute but refers to the internal organs, viscera and entrails other than muscle and

bone of an animal that is harvested. Offal may be used in the production of fertilizer, fuel or pet food.

- v. For any slaughterhouse, abattoir or other place of establishment, or any person, to slaughter or butcher any *dog or cat* to create food, meat or meat products for human or animal consumption.
2. **Civil Penalty** pursuant to N.Y. Agric. & Mkts § 96-e (paid to the animal population control fund):
- i. **First violation:** \$1,000 to \$5,000; and,
 - ii. **Subsequent violations:** up to \$25,000

5. *Health of Animals and Employees*

Pursuant to 1 NYCRR § 245.4(b), all live animals and poultry must be obtained from “approved sources” and satisfy “all animal health requirements” promulgated in 1 NYCRR Parts 45 (Avian Influenza), 57 (Pullorum and Typhoid Disease), 62 (Health Requirements Governing Importation of Sheep, Goats, Llamas and Deer), 63 (Health Requirements Governing Importation of Swine), and 67 (Vesicular Stomatitis). A copy of these regulations may be obtained at the NYSDAM’s website.

Please also note that it is unlawful to harvest dogs and cats for human or pet consumption. See N.Y. Agric. & Mkts § 96-b(1); see also 1 NYCRR § 245.2(q). Furthermore, please note that “field slaughter” of “exotic animals”⁷ in compliance with the enumerated provisions in 1 NYCRR § 245.8(b).

“No person affected with *tuberculosis or other communicable disease* in a transmittable stage shall be employed in any department where any product is handled or prepared.” 1 NYCRR § 245.7 (emphasis added); see also 1 NYCRR § 246.12(b) (proscribing an operator or lessee to require/permit “any person to work, nor shall any person work in a refrigerated warehouse or locker plant who is known to be affected with an infectious or contagious disease”). The NYSDAM “may require a medical examination of any person handling edible products and a certificate of a duly licensed physician showing the absence of such disease as a condition precedent to such continued employment.” 1 NYCRR § 245.7.

⁷ The regulations define “exotic animals” as “*captive reindeer, elk, deer, antelope, water buffalo or bison which are raised commercially for food.*” 1 NYCRR § 245.8(a) (emphasis added).

III. LAND USE AND ZONING

A. Zoning Tools to Allow Small-Scale Commercial Agriculture Production Within City Limits

According to Dean Patricia Salkin in American Bar Association's "Counseling the Local Food Movement" (May 2012), the following zoning tools can be used to promote small-scale agriculture production within city limits:

- Comprehensive Plans. This is the over-arching plan upon which land use regulations are adopted. It is important that the comprehensive plan itself emphasize the importance of small-scale commercial agriculture production within the city limits and the promotion of locally grown food.
- Zoning Ordinances. If various types of urban agriculture and agri-tourism (or agri-tainment) are not addressed in the zoning ordinances/code, local governments should amend existing provisions allowing for same. Common restrictions include road setbacks, lot size, dimensions, signage size and placement, site plan requirements, screening, etc.
- Definitions. Local governments should consider adding/clarifying definitions in "rooftop garden," "community garden," "green roof," "small scale urban agriculture," "animal harvesting facility," "food distribution facility" etc. (or whatever the appropriate terms are for that locality) to ensure that the definitions are clear to the community.
- Uses Allowed As of Right. Zoning ordinances typically describe the permitted uses, as of right, within a given district. As such, food production should be prescribed within certain districts as a matter of right.
- Accessory Uses. Accessory uses are incidental to the primary use of the building on which they are located. For example, a rooftop garden on a residential building in Brooklyn would be an accessory use. Local governments can amend zoning laws to allow small-scale production agriculture.
- Special Use or Conditional Use Permits. Some local governments allow for small scale agriculture production through special use or conditional use permits. Such uses are now allowed "as of right." Instead, they are subject to additional review by the local zoning board or legislative body. Said procedures should not be overly burdensome for the agriculture producers and should not allow for unfettered discretion by the reviewing entity. In such cases, the zoning ordinance may allow an opportunity for public input. Unique prohibitions may take place with special use or conditional use permits regulating hours of operation (e.g., on-site farm stand).

- Overlay Districts. Put simply, an overlay district is used as a mechanism to preserve certain areas (e.g., historic area, hazard prevention) or promote certain types urban/suburban agriculture.
- Home-Based Business Regulations. Zoning ordinances should consider an allowance for small-scale home-based food processing (cottage food operations) at residential locations and on-site farmstands.

B. Urban Agriculture Concerns

i. Backyard Chickens

Cities that allow for the use of backyard chickens may place specifications on the following: (1) number of hens, (2) setbacks for coops/pens, (3) number of roosters (if allowed at all), (4) neighbor consent, (5) pest control, and (6) feed storage. See Patricia Salkin in American Bar Association's "Counseling the Local Food Movement" (May 2012).

ii. Beekeeping

Local governments must be cognizant of laws and the state and federal level when drafting zoning ordinances concerning local apiculture. Local zoning ordinances that allow for urban apiaries may post regulations for the lot size and setbacks. Of note, beekeepers may be subject to tort liability in New York. In *People v. McOmber*, 206 Misc. 465, 469-470 (NY Sup. Ct., Lewis Co. 1954) the court held that honey bees may be kept but the owner as the duty to keep the bees so that they do not "annoy, injure or endanger the comfort, repose, health or safety of any considerable number of persons or to render a considerable number of persons insecure in the use of their property." See generally Patricia Salkin in American Bar Association's "Counseling the Local Food Movement" (May 2012).

C. Agriculture Districts

i. Overview

NY Agric. & Mkts § 300 et seq. sets forth agricultural districts in the State of New York. "The socio-economic vitality of agriculture in this state is essential to the economic stability and growth of many local communities and the state as a whole. It is, therefore, the declared policy of the state to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products." See NY Agric. & Mkts § 300.

ii. *Definitions*

1. **“Agricultural assessment value”** under section 301[1] “means the value per acre assigned to land for assessment purposes determined pursuant to the capitalized value of production procedure” pursuant to section 304-a (looking into several factors including but not limited to mineral soil and organic soil groups).
2. **“Crops, livestock and livestock products”** under section 301[2] includes 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, de-signed to hold up to five frames from an existing colony."
- 3. "**Farm woodland**" under section 301[3] "means land used for the production for sale of woodland products, including but not limited to logs, lumber, posts and firewood. Farm woodland shall not include land used to produce Christmas trees or land used for the processing or retail merchandising of woodland products."
 - 4. "**Land used in agricultural production**" under section 301[4] means
 - a. "not less than [7] acres of land used as a single operation in the preceding [2] years for the production for sale of crops, livestock or livestock products of an average gross sales value of [\$10,000] or more; or,
 - b. "not less than [7] acres of land used in the preceding two years to support a commercial horse boarding operation or a commercial equine operation with annual gross receipts of ten thousand dollars or more."
 - c. "Land used in agricultural production shall not include land or portions thereof used for processing or retail merchandising of such crops, livestock or livestock products."
 - d. Land used in agricultural production shall also include enumerated items in section 301[4](a) thru (l).
 - 5. "**Unique and irreplaceable agricultural land**" under section 301[6] "means land which is uniquely suited for the production of high value crops, including, but not limited to fruits, vegetables and horticultural specialties."

6. **“Viable agricultural land”** under section 301[7] “means land highly suitable for a farm operation as defined in this section.”
7. **“Farm operation”** under section 301[11] “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’ ..., a ‘timber operation’ ..., ‘compost, mulch or other biomass crops’ and ‘commercial equine operation’ 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.”
8. **“Agricultural data statement”** under section 301[12] “means an identification of farm operations within an agricultural district located within five hundred feet of the boundary of property upon which an action requiring municipal review and approval by the planning board, zoning board of appeals, town board, or village board of trustees pursuant to article sixteen of the town law or article seven of the village law is proposed, as provided in section [305-a] of this article.”
9. **“Agricultural tourism”** under section 301[15] “means activities, including the production of maple sap and pure maple products made therefrom, conducted by a farmer on-farm for the enjoyment and/or education of the public, which primarily promote the sale, marketing, production, harvesting or use of the products of the farm and enhance the public's understanding and awareness of farming and farm life.”

iii. *Creation*

Pursuant to section 303, a landowner may submit a proposal to the county legislative body for the creation of an agriculture district so long as that person owns at least 500 acres of land or 10% of the land proposed to be included in the district. Upon receipt of the proposal, the county legislative body must comply with the notice and public hearing requirements established in section 303[2]. The county must prepare a report pursuant to section 303-a.

Under section 302, a “county legislative body may establish a county agricultural and farmland protection board which shall consist of eleven members, at least four of whom shall be active farmers. At least one member of such board shall represent agribusiness and one member may represent an organization dedicated to agricultural land preservation.”

iv. *Effects*

Among other advantages, farms located in agricultural districts are typically exempt from many local and state regulations including State Environmental Quality Review (“SEQR”) and some building codes for building construction. Farms located in agriculture districts should be free of overly restrictive land use regulations.

b. Right-To-Farm

The NYS Agricultural District Law has a provision that protects farmers against nuisance lawsuits and protects the right to farm, provided that sound agricultural practices are followed. Under Section 308[1], NYSDAM “issues opinions upon request from any person as to whether particular agricultural practices are sound. Sound agricultural practices refer to those practices necessary for the on-farm production, preparation and marketing of agricultural commodities.”

In making its determination, NYSDAM may consider the following: “operation of farm equipment; proper use of agricultural chemicals and other crop protection methods; direct sale to consumers of agricultural commodities or foods containing agricultural commodities produced on-farm; agricultural tourism . . .” NY Agric. & Mkts § 308[1](b). NYSDAM may consult with Cornell Cooperative Extension and/or the USDA when making its determination. See id. Upon issuance of an opinion, NYSDAM must publish a notice in a newspaper in the surrounding area. See NY Agric. & Mkts § 308[2]. If the farmer is conducting a sound agricultural practice on any land in an agricultural district and subject to an agricultural assessment, then said practice is not considered a private nuisance. See NY Agric. & Mkts § 308[3]. Under section 308-a, the farmer will be awarded attorneys’ fees and court costs in a “private nuisance suit alleged to be due to an agricultural practice” allegedly due to a “sound agricultural practice.” This Right to Farm statute does not bar claims for personal injury or wrongful death. See NY Agric. & Mkts § 308[3].

IV. DIRECT FARM MARKETING

a. Overview

The term “direct marketing” refers to a method of marketing when a farmers sells his/her farm grown food product directly to the consumer instead of a wholesaler or

retailer. In other words, the consumer is buying a food product direct from the agricultural producer. The most typical types of methods include roadside stands, farmers' markets, on farm outlets/stands, community gardens, school gardens, and Community Supported Agriculture ("CSA's"). Other type of direct marketing sales might include farm-to-school, farm-to-restaurant or farm-to-hospitals. Direct marketing has several advantages: (1) it allows farmers to sell the food they raise directly to consumers, (2) it offers consumers a way to buy fresh farm products directly from the producer, (3) it keeps dollars spent on farm products in the local community, (4) it helps facilitate consumer education on local agriculture industries, and (5) it helps a consumer build a relationship directly with the agricultural producer.

b. Contracts & Sales

Traditionally, there are typically no written contracts made in face-to-face marketing sales via direct marketing methods; however the principles of unwritten, oral contracts apply. There is greater need for written contracts with higher volume sales or non-direct methods such as farm-to-school, farm-to-hospital, farm-to-restaurant or farm-to-grocery store. Additionally, farms that participate in Community Supported Agriculture ("CSA") should have a written agreement.

Article 2 of the Uniform Commercial Code ("UCC") applies to the Sale of Goods, which includes food products. Section 2-201 of the Uniform Commercial Code requires that contracts for the sale of goods over \$500.00 must be in writing in order to be enforceable. However, it is always advisable to consider using a written agreement whenever practicable. Remember that the agriculture industry is a "good ol' boys club" and there is an incredible amount of trust within the industry. Some farmers fear that asking for a written agreement conveys mistrust with his/her customer; instead, agriculture producers should view it as a sound business practice. Stress that oral agreements lead to confusion and misunderstanding between parties.

Since farming, by nature, is an unpredictable business, it behooves the farmer to ensure that the contract allows for flexibility in food deliveries due to weather, pests and other influences outside his/her control. Additionally, a written agreement assists in the business planning process of both parties. Clearly written contracts also mitigate the likelihood of payment disputes, especially if the purchaser is a government institution, and can memorialize a penalty for late payments.

c. Community Supported Agriculture

i. *CSA Agreement*

Although most CSA's do not have a written contract, I highly suggest that farms have a simple CSA Agreement signed by the subscribers. Not only does it help secure payment terms, but the CSA Agreement should mitigate potential liability in the case of a

food safety issue arising from the mishandling or misuse of the food product. The CSA Agreement should also specify how long the “growing season” will last (e.g., 20 weeks), the products available (e.g., egg share, vegetable share) and whether the subscribers will receive a guaranteed minimum amount of food for that share (e.g., pounds of meat per week, dozen eggs per week). The following are a few additional issues that should be discussed in the CSA Agreement:

- Price/Payment Methods. Not only does a farm need to decide the price per share, but it needs to determine whether: (1) it will have a sliding scale based on family income, (2) it will accept a payment plan on a monthly or weekly basis, (3) it will accept payment via credit card, PayPal, and/or Google Checkout, (4) offer “half shares”, (5) it will charge a fee to deliver to the home directly, (6) it will charge a penalty for late payments, and/or (7) accept food stamps/ Electronic Benefit Transfer (“EBT”) via the U.S. Department of Agriculture Food & Nutrition Service (“FNS”).⁸
- Delivery/Drop-Off Location. There may be zoning and/or permit issues depending on where a farm wishes to drop-off its food products. Storage and refrigeration of any egg, meat or processed food products may also be a concern at these drop-off locations. If a farm wishes to have its subscribers pick-up the food products from the farm, then its insurance policy should properly cover invitees to the premises. If a farm wishes to deliver the product directly to the subscriber, the specifics as to a time block and address should be memorialized in the CSA Agreement.
- Forfeited Products/Surplus. To prevent a dispute, the CSA Agreement should note that the food products will be forfeited if they are not picked-up during the allotted time without alternative arrangements being made. Some CSA Agreements note that forfeited/surplus products may be sold or donated (e.g. homeless shelters, food pantries, after-school programs, elder care facilities).
- Communication. There should be method to communicate to the subscribers in case of an emergency or inclement weather. This mode of communication should be noted in the CSA Agreement (e.g., email). Furthermore, many CSA’s have newsletters for its subscribers noting farm news/events helping the consumers feel more connected to the farm. Subscription to this newsletter can take place directly in the CSA Agreement and/or the farm’s website.
- Fresh/Frozen Meat. If applicable, the CSA Agreement should note whether the meat product will be fresh or frozen.

ii. Terminology

⁸ If a farm wishes to accept food stamps/EBT, then it must obtain certification for its CSA.

In hopes of building a sense of community, some CSA Agreements improperly use the word “partner”. It is paramount that farms avoid using the words “partner” or “partnership” in its CSA Agreement and conversations with the subscribers (the CSA Agreement should clearly note that it is *not* a partnership). A farm does not want to indirectly form a partnership with any of its subscribers. Along these lines, I also recommend avoiding the words “member” and “shareholder” when possible to avoid implying that the consumer has some type of ownership in the farm. The word “subscriber” most accurately describes the relationship.

iii. *Record Keeping*

There has been virtually no litigation thus far with CSA’s; however, due to its exponential growth, I anticipate legal disputes will arise in the future. It’s always prudent to build a written record of a farm’s compliance with the CSA Agreement. Records should be kept regarding production, delivery of products, the quality of the delivery, food safety controls (including storage, transportation and refrigeration), etc.

d. Farmers’ Markets

i. *Overview*

Farmers markets are a growing trend in New York. For the most current list of farmers markets available in your community, please visit NYSDAM’s website at <http://www.agriculture.ny.gov/AP/CommunityFarmersMarkets.asp>. According to Neil Hamilton in his publication titled “Farmers’ Markets Rules, Regulations and Opportunities” (June 2002), the word “farmers’ market” has a very specific definition:

- (1) Farmers selling produce and food they raise or create,
- (2) To individual customers,
- (3) At a temporary location, often on public property (e.g., street or parking lot),
- (4) On a periodic basis, typically once or twice a week,
- (5) For a set period of time (typically 3 to 4 hours),
- (6) During the local growing season (usually 5 or 6 months), and
- (7) Operated by a government or non-profit organization.

This definition distinguishes farmers markets from other types of direct market methods including roadside stands, on-farm outlets/stands or CSA’s.

Farmers markets in New York vary greatly: some markets are held once a week with only a few vendors to markets held multiple times per week with several vendors. Furthermore, there is also great deviation in the type of market, the nature of the farmers’ market management (i.e., the Market Manager), its history/purpose, and the organizer’s experience.

ii. Market Rules

It's very important for the farmer to clearly understand the Market Rules for each farmers' market that he/she participates in. The Market Rules (or "Statement of the Rules") vary greatly among farmers' markets. It is important to understand that these Market Rules provide for the contractual terms between the farmer/vendor and the farmers' market sponsoring organization.

A farmer should pay special attention to the definitions section, which will explain key phrases and terms such as Vendor, Allowable Goods, and Categories of Products. The following area a list of common provisions/terms that a farmer may find in the Market Rules:

Provision or Term	Standard Description (Market Rules may specifically define)
Application Process, Fees, and/or Rent	Provides for the timing of the application, process for vendor selection, and notification of approval. This clause likely identifies any fees associated with the application itself and/or fees associated with security of vendor space including payment method and timing. There may be a limitation to the number of stalls that a particular vendor can reserve. Depending on the market, flat fees and/or commissions may be utilized (percentages may vary depending on type of vendor and/or product sold). The market may also require rent on a weekly, monthly or seasonal basis.
Approval of Vendors and Products	Defines who can sell products at the farmers' markets (e.g., farmer, non-farmer, peddlers) and what type of products may be sold at the market (e.g., produce, crafts, processed foods).
Carrying Crafts	Non-food items made by vendors; if allowed, said crafts may have to be selected and approved.
Carrying Rules	This clause may allow vendors to sell products raised by other farmers.
Categories of Products	Rules for items such as raw produce, baked goods, nursery plans, eggs, cheeses, meat, and processed foods including but not limited to rules relating to inspections, sanitary conditions and handling.
Changes in Ownership and	This clause will address issues pertaining to the

Vendors' Rights	transfer/change of business and seniority for market spaces.
Enforcement Process	These provisions establish procedures for rule enforcement (usually from the Market Manager), including reporting violations/grievances, notice, penalties, suspension/removal, and appeals.
Farm Visit (or "Farm Inspection")	Where the Market Manager visits the vendor's farm to make a determination whether the food product was "farm-raised." This requirement is more typical in farmers' markets that have producer-only standards. The farmer typically must agree to comply with specific inspection procedures which are likely provided for under a separate document than the Market Rules. There may also be a small inspection fee that is required.
Food Safety, Sanitation and Sampling	These provisions will set forth specific rules from the farmers' market pertaining to handling and storing difference types of food products.
Hold Harmless and Indemnification Clause	Typically, the vendor agrees to financially protect the farmers' market and its organizers from any liability.
Length of Market	Usually, the Market Rules will specify the start and end date for the farmers' market (usually a 5-6 month span).
Location	The same Sponsor may be running several farmers' markets in different locations in a particular community; thus, it may choose to use the same Market Rules for all of its markets. In these cases, the Market Rules may enumerate specific rules according to different locations.
Market Manager	Person designated to run the market on a day-to-day basis. This person enforces the Market Rules.
Market Operation	This will memorialized detailed guidelines/procedures for set-up, clean-up, selling times, notification for non-attendance/tardiness, pets, parking, vehicles, samples, sanitation, signage, hawking, smoking/alcohol/drugs, pets (including seeing eye dogs), display guidelines, shelter requirements from rain/sun, food safety, food handling and food labeling requirements. These operational provisions are likely very detailed.

Membership and Market Organization	In these cases, an operational structure is created for the farmers' market and a separate payment may be required for membership in the sponsoring organization in order to participate as a vendor.
Necessary Documents/Permits	This clause will list the various documents and licenses from the NYS Department of Agriculture & Markets. This may include, but is not limited to, Proof of Insurance, tax permits, health certificates, NYSDAM licenses (e.g., Article 28D, Article 5A), farm plan, farm information sheet (describing the size, type and scope of the operation), load lists for products raised, USDA National Organic Program certification, business organizational documents (e.g., Articles of Organization or Incorporation, Certificate of Assumed Name), and federal tax identification number.
Peddlers	Vendors who buy products at wholesale for reselling at the market.
Producers-Only	A farmers' market that only sells items raised by the farmers who sell them (i.e., no peddlers or reselling of other farm produce).
Proof of Insurance	A form of vendor obtains from the insurance carrier (1) as proof of insurance, (2) as a summary of type of coverage obtained, and (3) proof that the farmers' market is a covered party under the insurance policy. Some farmers' markets will require that the vendor has a certain amount of coverage (e.g., \$1 million).
Product List	List of food (and non-food) products that the farmer plans to sell at the farmers' market which is typically used by the market to help allocate ample space and limit vendors from unapproved products.
Prepared Food	Ready-to-eat food (e.g., take-away meals and snacks)
Processed Food	Value-added food that has been processed (e.g., jams, jellies, wine, salsa, canned goods, cider, vinegar, maple syrup, and baked goods). In some cases, categories for processed foods are established. The market may have specific labeling requirements for home-processed food products.

Sponsor or Organizer (and its Logo Use)	The group or organization legally responsible for creating and operating the farmers' market. This clause generally sets out the philosophy and purpose of the farmers' market. Furthermore, some Market Rules lay out procedures for using the sponsor or farmers' markets logo on advertising materials.
Vendor (and Criteria for Selecting Vendors)	A vendor is a farmer or other person designated by the management as having the right to participate in the market. Most Market Rules also state criteria for selecting vendors such as any priorities or preferences (e.g., geographic distance) (and the basis for any priority or preference). In some cases, "Categories of Vendors" are described for both seasonal and daily vendors.

In addition to clauses above, there may be other provisions pertaining to product labeling requirements, posting farm name, using legal scales, accepting nutrition checks such as SNAP and WIC, pricing guidelines (e.g., prohibition of price cutting top quality produce), display guidelines, gleaning excess food, tax collection, income reporting, other various prohibitions (e.g., firearms), and miscellaneous legal terms (e.g., Alternative Dispute Resolution clause, award for attorneys' fees and court costs to prevailing party, limitation in damages, forum section clause for the local courthouse). Furthermore, the Market Rules will typically state that the "Choice of Law" is New York and require all vendors to comply with any federal, state or local laws pertaining to the production and sale of food. Finally, there is usually a signature line where each party agrees to the terms in the Market Rules. If the Market Rules are silent on a particular issue, the Market Manager will typically determine how to best handle the situation.

According to Neil Hamilton in his publication titled "Farmers' Markets Rules, Regulations and Opportunities" (June 2002), there are many questions that a farmer should consider before participating in a farmers' market. A farmer may wish to consider some of the following issues before agreeing to participate in a farmers' market:

- (1) Who sponsors the farmers' market?
- (2) How long has the farmers' market been established?
- (3) What is the expected crowd for the farmers' market?
- (4) What is the application fee and/or procedures?
- (5) Do vendors pay season, monthly or weekly flat fees or do they pay a percentage of gross sales?

- (6) Who owns the land where the market is located?
- (7) Who is responsible in case of accidents or injuries to shoppers?
- (8) Who will have the authority to decide which farm sets up in which location?
- (9) Is the market a “producer only” market or does the market allow for wholesale peddlers or sale of food raised by other farmers?
- (10) Can vendors provide samples to customers?
- (11) What are the penalties for violating a market rule?
- (12) What are the penalties for missing a market day?
- (13) If a vendor is forced to leave the market or is unable to continue to participate, is any portion of the fee/rent refundable?
- (14) What procedure is followed if there is a dispute over a rule violation? (e.g., committee of vendors and customers who decide)?
- (15) Does the market have all the necessary local business permits or licenses?
- (16) Is the farmers’ market approved to participate in the WIC Farmers’ Market Nutrition Program?
- (17) What food products may be sold at the farmers’ market (e.g., meat, poultry, eggs, processed foods)?
- (18) How will the Market Manager make sure the vendors do not try to sell the same things at lower prices?
- (19) Does the farmers’ market itself carry its own insurance in case of accidents?
- (20) What type of insurance does the farmers’ market expect vendors to have and what proof of insurance must be provided?
- (21) Do the market rules require the farmer to actually attend the market or can vendors send employees/independent contractors to do the selling?
- (22) Does the farmers’ market require the farmer/vendor to submit a plan before the market season begins listing what produce will be sold and approximate volume?
- (23) Can the market officials visit a vendor’s farm to inspect the operation and/or its records?

(24) What are the food labeling requirements, if any?

iii. *Regulatory Programs*

1. **Federal Nutrition Programs**

The Women Infants and Children's ("WIC") Farmers' Market Nutrition Program ("FMNP") and Senior's FMNP are been valuable federal programs helping low income citizens obtaining fresh locally-grown food. Under these programs, eligible participants can apply and receive special coupons that can be used at farmers' markets to buy locally-grown fruits and vegetables.

2. **Farmers Market Promotion Program**

In the new 2002 Farm Bill, Congress established the Farmers' Market Promotion Program for USDA to award grants to organizations operating and supporting farmers markets. Put simply, the goal of the program was to "increase domestic consumption of agricultural commodities by improving and expanding, or assisting in the improvement and expansion of, domestic farmers' markets, roadside stands, Community Supported Agriculture programs, and other direct producer-to-consumer market opportunities." Under the program, the USDA is directed to work with the states to develop farmers' markets and cooperative extension service employees in the development of direct marketing techniques.

e. New York Sanitation Requirements for Direct Marketing of Food Products

Pursuant to Article 17 of the NY Agric. & Mkts Law, NYSDAM regulates food sanitary conditions of retail food establishments including direct marketing businesses like roadside farm markets, on-farm outlets and farmers markets. "*Retail Food Stores*" do not include roadside stands, on-farm outlets and farmers markets; thus, they are not required to meet the strict sanitary guidelines required by regular retail food stores

Generally speaking, roadside stands, on-farm outlets and farmers markets are permitted to sell the following farm produced foods:

1. Fresh whole fruits and vegetables (uncut);
2. Eggs (only if clean and properly refrigerated at 45 degrees F or less);
3. Grains and legumes; and,
4. Honey and maple syrup.

Even though farmers selling direct to consumers are subject to a food safety inspection from NYSDAM, if the producer is only selling the above items then NYSDAM typically only inspects if it receives a consumer complaint. Farmers may sell

other types of foods directly to consumers including certain highly perishable products like meat and dairy products (e.g., hard and soft cheeses) so long as the products are:

1. Processed at an approved food processing facility;
2. Prepackaged and properly labeled; and,
3. Kept at required cold temperatures to prevent spoilage or contamination.

Importantly, certain food products cannot be sold at roadside stands, on-farm outlets and farmers markets:

1. Home-canned or jarred fruits and vegetables, pickled products, sauces, relishes and other low-acid foods (unless manufactured "under a Department-approved processing method at an inspected facility);
2. Cream, custard, pumpkin, meat or other single-crust pies or cream or cheese-filled baked goods (unless prepared in an approved, inspected baking facility, packaged and properly refrigerated); and,
3. Any other prepared foods made with highly perishable ingredients for immediate consumption or reheating (unless manufactured and vended under proper food processing and vending licenses).

Any packaged food sold at a roadside stand, on farm outlet, or farmers market must be properly labeled. For example, one may not represent that a store-bought baked good is "homemade" or "home baked" or a market-bought produce as "home grown." Roadside stands, on-farm outlets and farmers markets may not use packaging, cutting, slicing or portioning of fruits and vegetables, meat, dairy products or ready-to-eat food unless the proper sanitary conditions are met for "retail food stores" under Circular 962 "Rules and Regulations Relating to Retail Food Stores.

f. Food Labeling Requirements

All packaged food products sold at roadside stands, on-farm outlets and farmers markets must be properly labeled in accordance with NYS food labeling requirements. Misrepresenting store bought baked goods as "homemade" or "home baked" and market bought fresh produce as "home grown" is prohibited.

NYSDAM permits direct marketing businesses to sell other foods including certain highly perishable products like meat and dairy products (including hard and soft cheeses) if the products are:

1. Processed at an approved food processing facility;
2. Prepackaged and properly labeled;
3. Kept at required cold temperatures to prevent spoilage or contamination

No packaging, cutting, slicing or portioning of fruits and vegetables, meat, dairy products or ready-to-eat food is permitted by NYSDAM at roadside stands, on-farm

outlets and farmers markets unless the proper "retail food store" sanitary facilities are provided under Circular 962 "Rules and Regulations Relating to Retail Food Stores.

Certain food products cannot be sold at roadside stands, on-farm outlets and farmers markets:

1. Home-canned or jarred fruits and vegetables, pickled products, sauces, relishes and other low-acid foods (unless manufactured "under a Department-approved processing method at an inspected facility).
2. Cream, custard, pumpkin, meat or other single-crust pies or cream or cheese-filled baked goods (unless prepared in an approved, inspected baking facility, packaged and properly refrigerated).
3. Any other prepared foods made with highly perishable ingredients for immediate consumption or reheating (unless manufactured and vended under proper food processing and vending licenses).

NYSDAM has a helpful pamphlet summarizing its food labeling regulations (FSI-514) available at <http://www.agriculture.ny.gov/FS/pdfs/FSI514.pdf>. It recommends that labels be submitted to NYSDAM for review prior to printing. Please review this pamphlet and current regulations for the most accurate information on the food labeling requirements. There are five basic label requirements: (1) identity of food in package form, (2) name of manufacturer, packer or distributor, (3) place of business, (4) ingredient declaration, and (5) net quantity of contents. The label must also bear general information.

On a final note, it is recommended that farmers consult an attorney and label designer to help ensure that the label meets the statutory requirements. Food labeling requirements are highly technical. Please also note that the above requirements are for food products sold within the State of New York; food sold via interstate commerce must comply with federal food labeling requirements.

V. PREFERENCE AND PROCUREMENT LAWS

A. Overview

There are many segments involved in the local food movement including, but not limited to, farms selling direct to consumers, farmers' markets, community supported agriculture, and community gardens. In addition to these more traditional actors, hospitals, prisons, and schools have growing involvement in the local food movement.

Farm-to-school projects are becoming more popular as educational system look for ways to implement locally grown food into its school meal plans. Since public

schools receive funding at the state and federal level, schools have to comply with certain state and federal laws when deciding how to spend its food budget.

B. Overview Federal Procurement Laws

a. *National School Lunch Act*

The Richard B Russell National School Lunch Act (“School Lunch Act”), 42 U.S.C. 1751 *et seq.* gave schools a consistent framework for school lunch expenditures and nutritional requirements.

b. *Child Nutrition Act*

The Child Nutrition Act of 1966, 42 U.S.C. 1771 *et seq.* created programs that expanded the National School Lunch Act and allowed for new programs promulgated under Title 7 of the Code of Federal Regulations including but not limited to: (1) Special Milk Program, 7 CFR Part 215, (2) School Breakfast Program, 7 CFR Part 220, (3) funding for states to offer additional training and purchase new equipment, 7 CFR Parts 227 and 235.

c. *Uniform Regulations*

i. *Uniform Federal Assistance Regulations*

7 CFR Part 3015 set forth general requirements for entities receiving federal funds to help provide for free competition including record-keeping, financial reporting, bonding and insurance, cost-sharing, and obtaining sealed bids.

ii. *Uniform Administrative Requirements for Grants and Cooperative Agreements with (1) State and Local Governments and (2) Institutions of Higher Education, Hospitals and Other Non-Profit Organizations*

7 CFR Part 3016 establishes uniform administrative requirements for federal grants and cooperative agreements to state, local and Indian tribal governments. It requires states to follow the same policies and procedures that it uses for non-federal funds. Due to this regulation, most state procurement laws are similar to federal laws and regulations. Please note that 7 CFR 3016.36(c)(2), prohibit state or local geographic preferences except where federal statutes *encourage* a geographic preference. 7 CFR Part 3019 parallels Part 3016 except it applies to federal funds utilized by public schools and universities, hospitals, and non-profit organizations.

d. *Office of Federal Procurement Policy Act*

The Office of Federal Procurement Policy Act of 1974, 41 U.S.C. 403 *et seq.* established the Office of Federal Procurement Policy and set forth the framework relating

to the procurement of goods. The act sets forth requirements of purchases made with federal funding, including food for school lunches, are made ensuring competition (and reducing favoritism by government employees) among suppliers of goods and services including: sending out public notices, requiring submission of bids, and criteria for selecting a supplier. There is a simplified acquisition threshold, however, of \$100,000, where government employees may use simplified procedures for making purchases.

C. Roadblocks to Schools & Hospitals Using Local Foods

In summary, federal law requires an open and competitive bidding in most circumstances requiring decisions to be made based on cost, assuming that the same goods or services are being provided by the other suppliers. Since locally grown food products may cost more than competitors, it is difficult for schools and hospitals to implement locally grown food products into its food program. Furthermore, pursuant to 7 CFR 3016.36(c)(2), schools and hospitals are unable to give deference to locally grown food products unless a geographic preference is encouraged by federal law. Under the Dormant Commerce Clause under the U.S. Constitution, a state law creating a geographic preference for local foods will almost certainly be found unconstitutional absent an express grant of authority from U.S. Congress.

D. Federal Encouragement of Local Food Purchases

Under 42 U.S.C. Section 1758(j), the Secretary is required to (1) “encourage institutions receiving funds under this chapter and the Child Nutrition Act . . . to purchase unprocessed agricultural products, both locally grown and locally raised, to the maximum extent practicable and appropriate;” (2) “advise institutions participating in a program [encouraging locally grown/raised food to] post information concerning the policy on the website maintained by the Secretary; and (3) allow institutions receiving funds under this chapter and the Child Nutrition Act . . . to use a geographic preference for the procurement of unprocessed agricultural products, both locally grown and locally raised.”

Survey of Local Food Law

Pace University, School of Law
March 13, 2013

By Cari B. Rincker, Esq.



Overview of Discussion

- Cottage Food Operation Laws
- Poultry Slaughter Regulations
- Land Use & Zoning
- Volunteer Farm Labor
- Miscellaneous Topics
- Starting an Agriculture Law Practice



NY Cottage Food Operation Law



Article 20-C Licenses

- Food processing establishments in New York are subject to biennial license requirements under Article 20-C of NYS Agric. & Mkts § 251-z-1 et sec.
 - Record keeping
 - Inspections
 - Education



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Exemption to Article 20-C Licensing

"Home Processed Food" may be exempt from Article 20-C licensing if certain conditions are met ; however, they still must be registered with NYSDAM's Division of Food Safety and Inspection (FSI-989c)



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Definition of "Home Processed Food"

Under NYS Agric. & Mkts Regulations Section 276.3(a)[3], a "[h]ome processed food" includes "any food processed in a **private home or residence** using only the **ordinary kitchen facilities** of that home or residence which are also used to **prepare food for the owner** thereof, his family, nonpaying guests and household and farm employees who reside therein, but shall **exclude potentially hazardous foods. . . .**" (Emphasis added).

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Article 20-C License Exemption

- 4 conditions must be met:
 - All finished product containers are clean, sanitary and properly labeled.
 - All home processed foods produced under this exemption are neither adulterated nor misbranded.
 - Glass containers for jams, jellies, marmalades and similar products are provided with suitable rigid metal covers.
 - All home processed foods are sold only within New York State.

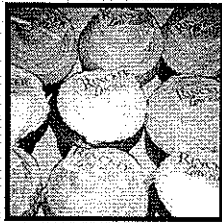
See WFS 8984, "Home Processing" Fact Sheet



Article 20-C License Exemption

Restricted to the following non-potentially hazardous home processed foods:

- Bakery products for wholesale marketing or retail agricultural venues such as farms, farm stands, farmers markets, green markets, craft fairs and flea markets;
- Traditional jams, jellies, and marmalades made with high acid/low pH fruits;
- Repacking/blending dried spices or herbs;
- Snack items such as popcorn, caramel corn and peanut brittle; and
- Candy (excluding chocolate)



Article 20-C License Exemption

• If the product requires refrigeration then it is **not** allowed to be produced as a Home Processor.

- Fruit/Vegetable Breads
- Pickled or Fermented Foods
- Cheesecake, Cream Filled Pastries
- Meat, Fish, or Poultry Products
- Vegetable Oils, Blended Oils
- Garlic and/or Herb in Oil Mixtures
- Wine Jellies, Chutneys, Fruit Butters
- Cooked or Canned Fruits or Vegetables
- Cheese, Yogurt, Fluid Dairy Products
- Sauces, Salsas, Marinades



Inspections for Home Processors

Even though Home Processors are exempt under the Article 20-C license requirement, they are still subject to inspection by NYSDAM



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Food Labeling

Exemption to Article 20-C Licensing does not exempt the cottage food operation from food labeling requirements



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Land Use & Zoning Considerations

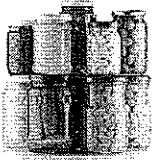
- Commercial operations in a residence may conflict with the local zoning code that prohibit certain commercial activities in residential zones.
- Variances or special use permits may be required to operate a cottage food operation out of a home.



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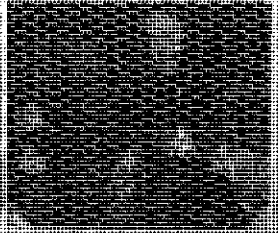
Insurance

- Standard homeowner's insurance policies typically do not provide coverage for commercial operations such as cottage food operations.
- Advise clients participating in cottage food operations to look into a commercial policy and/or food recall insurance.



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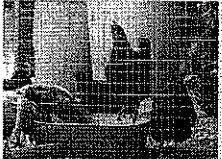
City Farm Poultry Slaughter Regulations



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Producer/Grower 1000 Bird Limit Exemption

A New York poultry producer who processes and sells less than 1000 chickens or 250 turkeys (i.e., 1 turkey = 4 chickens) may be subject to the **1000 Bird Limit Exemption** under the Poultry Product Inspection Act ("PPIA")



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**Producer/Grower
1000 Bird Limit Exemption**

- 5 Criteria under Poultry Product Inspection Act
 - The poultry producer slaughters no more than 1,000 healthy birds of his/her own farm in a calendar year for distribution as human food;
 - The poultry producer does not engage in buying or selling poultry products other than those produced from poultry raised on his/her farm;
 - The slaughter and processing are conducted under sanitary standards, practices, and procedures that produce poultry products that are sound, clean, not adulterated or misbranded, and fit for human food;
 - The poultry producer keeps the required records; and,
 - The poultry product does not move in interstate commerce (i.e., exchange or transportation of the poultry product stays within the state of New York).

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**Producer/Grower
1000 Bird Limit Exemption**

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**Producer/Grower
1000 Bird Limit Exemption**

- Food Packaging
 - Packaging materials must be safe for its intended use pursuant to the Food Drug & Cosmetic Act ("FDCA")
 - Labels must be approved by the FDA



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**Producer/Grower
1000 Bird Limit Exemption**

- **Food Labeling**
 - New York has adopted the USDA FSIS Mandatory Labeling Requirements.
 - Following items are required to be on the principal display panel for all sales of meat or poultry sold in New York:
 - Product name and description;
 - Inspection Legend and Establishment Number (for farms processing under this exemption, it should say "Exempted - P.L. 90-492");
 - Net weight statement (includes "packed on" date, "sell by" date, "net wt lb.", "price per lb", and net weight);
 - Name and address of the farm; and,
 - Safe handling statement (if processed under on-farm exemption, then label must say "Exempt P. L. 90-492").



**Producer/Grower
1000 Bird Limit Exemption**

- **Processing Guidelines**
 - Water used in processing, cleaning and sanitation, in chilling tanks and ice manufacture should be potable and must be tested annual to determine potability;
 - Any approved sanitizing agents for use on food contact surfaces must be used in prescribed concentrations and methods;
 - Any agents (including lubricants) used on equipment maintenance must be food grade;
 - The on-farm processing facility must be managed in a manner that protects the environment (e.g., surface and groundwater, and soils).



**Good Manufacturing Practices
("GMP's")**

- Provide Training for Processing Personnel
- Establish Health & Hygiene Policies
- Maintain a Clean Processing Environment
- Control Pests
- Control Access to the Processing Facility
- Provide Potable Water
- Securely Store Processing Equipment, Utensils, Supplies & Materials
- Manage Processing Wastes



(Sanitation) Standard Operating Procedures ("SOP's" "SSOP's")

- Site Management & Pest Control
- Personnel Health & Hygiene
- Pre-Operational Inspection & Sanitation Schedule
- Daily Operational Sanitation Maintenance
- Chill Tank, Giblet Chill Containers & Refrigeration Temperature Monitoring
- Post-Operational Sanitation Schedule



Hazard Analysis Critical Control Point ("HACCP") Plan

Even though a HACCP Plan is not required for birds slaughtered and processed under the Producer/Grower 1000 Bird Limit Exemption it is highly recommended.

- 7 Steps of HACCP
 - Access food safety hazards associated with all areas of your product
 - Determine Critical Control Points ("CCP's")
 - Establish the Critical Limits for each CCP
 - Establish Monitoring Procedures for CCP's
 - Establish Corrective Actions to be taken when CCP's are not in control
 - Establish Record-Keeping Procedures
 - Establish Verification Procedures to determine that the system is working




Article 5-A Licenses

- Poultry sold intrastate not subject to the Producer/Grower 1000 Bird Limit Exemption
- Exclusions include the following:
 - Bona fide farmer who harvests birds for household use
 - Custom slaughter
 - Under 1000 bird-equivalent
 - Person or not-for-profit who donates wild game
- Prohibited from cities with a population over 1 million & within 1500 feet of a residential dwelling



Article 5-A License

- Application for 2 year Article 5-A License
 - NYSDAM may request an examination of the premises equipment and facilities
 - Complete drawing and specifications for new construction, new business and alterations of existing premises must be submitted to NYSDAM



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Article 5-A Licenses

- Subject to NYSDAM Inspections
 - Results may be made available to the public upon request
- Sanitation and Cleanliness Requirements
- Animal Health Requirements
- Human Health Requirements
- Animal Handling Techniques

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INSURANCE

- Commercial Insurance
- Products Liability Insurance



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Land Use & Zoning



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Zoning Tools Utilized to Promote Small-Scale Agriculture Production

- Comprehensive Plans
- Zoning Ordinances
- Definitions
- Uses allowed As of Right
- Accessory Uses
- Special Use or Conditional Use Permits
- Overlay Districts
- Home-Based Business Regulations



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Backyard Chickens

- Cities that allow for the use of backyard chickens may place specifications on the following:
 - number of hens,
 - setbacks for coops/pens,
 - number of roosters (if allowed at all),
 - neighbor consent,
 - pest control, and
 - feed storage.



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Beekeeping

- Local zoning ordinances that allow for urban apiaries may post regulations for the lot size and setbacks
- Beekeepers may still be subject to tort liability

– People v. McOmber



Agriculture Districts

Article XIV, Section 4 of the NYS Constitution provides for the policy of New York to encourage the development and improvement of its agriculture lands for the production of food and other agricultural products



Agriculture Districts

- Article 25-AA of NY Agric. & Mkts Law
 - “Local governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in this article, and shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article unless it can be shown that the public health or safety is threatened.” Section 305-a.



Agriculture Districts

- "Farm operation" under section 305-a, sub. 1:
 - "...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' ..., 'timber processing' ... and 'compost, mulch and other biomass crops' ..."
 - production, management and harvesting of 'farm woodland'
 - "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."

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Right to Farm

- Under section 308[1], NYSDAM issues opinions upon request on "sound agricultural practices"
- NYSDAM may consider:
 - operation of farm equipment
 - proper use of agricultural chemicals and other crop protection methods
 - direct sale to consumers of on-farm products
 - agricultural tourism
- NYSDAM may consult with USDA and/or Cornell

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Right to Farm

- Upon issuance of an opinion, NYSDAM must publish a notice in a newspaper in the surrounding area. See NY Agric. & Mkts § 308 [2].
- If the farmer is conducting a *sound* agricultural practice on any land in an agricultural district and subject to an agricultural assessment, then said practice is not considered a private nuisance. See NY Agric. & Mkts § 308[3].

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NYSAM Determination of Unreasonably Restrictive Laws

- Whether the requirements will:
 - adversely affect the farm operator’s ability to manage the farm operation effectively and efficiently;
 - restrict production options which could affect the economic viability of the farm; and
 - cause a lengthy delay in the construction of a farm building or implementation of a practice; the cost of compliance for the farm operation affected
- Affect the availability of less onerous means to achieve the locality’s objective.
- Relevant standards established under State law and regulations.

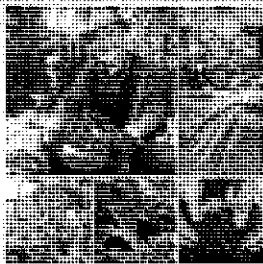


Right to Farm at the Local Level

- NYSAM encourages localities to provide for a Right to Farm exemption in its local land use law
 - “[n]othing contained herein shall be deemed to limit the right to farm as set forth in Article 25-AA of the NYS Agriculture & Markets Law....”
- Local laws oftentimes provide that no “sound agricultural practice” as defined in Article 25-AA shall be deemed prohibited under the ordinance or subject to its permit requirements.



Volunteer Farm Labor



Volunteer Labor on Farms/ CSA's

- Types
 - "Work Share" or "Half Work Share"
 - Travel-Based Volunteers
 - Informal Worker Shares
 - Casual Volunteers



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"Compensated" Farm Volunteers

- Minimum Wage?
 - Fair Labor Standards Act ("FLSA")
 - definitions of "employee" and "volunteer"



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"Compensated" Farm Volunteers

- Analysis:
 - Is the volunteer working in expectation of compensation?
 - Is the volunteer displacing employees?
 - Does the volunteer give the food business a competitive advantage?
 - Is the farm offering educational benefits?



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Is the Farm Exempt from Federal Minimum Wage?

- If a farm utilizes fewer than 500 man-days of labor in any calendar quarter of the previous year then they are exempt from federal minimum wage requirements
 - 29 U.S.C. § 213(a)(6), 29 C.F.R. Part 780 Subpart D.
 - If volunteers are considered employees, then they contribute to the man-day calculation.

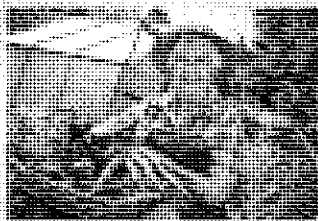


Insurance

- Workers Compensation
- Farm liability and commercial insurance policies typically exclude coverage for "employees"
- Commercial insurance will likely cover unpaid volunteers but not "compensated" farm volunteers



Miscellaneous Legal Issues



Need for Farm Succession Planning

- GrowNYC's Report: "Farmers on the Edge: An Assessment of Greenmarket Farmers' Needs, and the Growing Challenges of Keeping Their Farms Viable."
 - 43% of Greenmarket farmers say they will retire in the next twenty (20) years and 58% of Greenmarket farmers say that succession planning is a priority area of assistance.
 - According to the survey, nearly 2/3rd of Greenmarket farmers have been running their farm for over a decade.
 - 42% of the farmers intended to keep their property in agriculture production in the future but did not have a specific plan to do so.



Miscellaneous Concerns

- "Guide to Farming in New York State"
 - Leases - #1
 - Long-term contracts
 - Farm Vehicle Regulations - #7
 - Business Plans - #12
 - Business formations/ organizations/ DBA's
 - Labor Laws - #18
 - Payroll and Worker Documentation - #19
 - Agricultural Assessments - #21
 - Food Marketing Regulations - #27
 - Sales Tax - #29
 - Grant Opportunities - #31



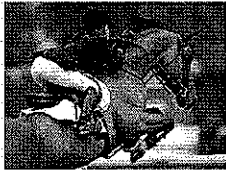
Miscellaneous Concerns

- Food Procurement and Preference Laws
- Environmental Regulations
 - CAFO's/ AFO's
- Agri-Tourism
- Contract drafting
- Food safety



Building an Agriculture Law Practice


- Agriculture law is really every kind of law, focused towards a specific industry
- Short/long term goals with practice
 - Begin with the end in mind
 - Think about personal brand
 - What segments of the industry do you want to work with



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Building an Agriculture Law Practice


- Get involved in industry trade associations
- Legal associations
 - ABA, General Practice, Solo & Small Firm Division's Agriculture Law Committee
 - American Agriculture Law Association
- Community organizations



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Think Outside the Box

- What will be your "special sauce?"
 - New York Agriculture Mediation Program
 - Virtual Law Practice
 - Social Media
 - Unbundled Legal Services
 - Crossover between ag/ non-ag clients



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Business Networking

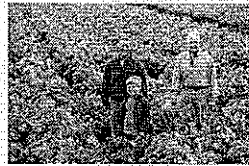
- Find mentors
- Remember that the professional relationships should always be *mutual*
- Social capital



Upcoming Events

ABA Section on the Environment, Energy and Resources ("SEER") Quick Teleconference on Starting an Ag/Environmental Law Practice on April 9, 2013 2pm ET

www.facebook.com/rinckerlaw



Upcoming Events

CLE Webinar on Counseling Farmers, Food Entrepreneurs on Food Labeling Laws on May 30, 2013 (\$25 Student Rate)
- ABA GP Solo Agriculture Law Committee



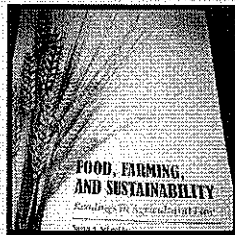
CLE Webinar Recordings

- American Bar Association
 - "Overview of Employment and Labor Law for Farms and Ranches"
 - "Counseling the Local Food Movement"
 - "Crop and Livestock Insurance from the Ground Up"



Course: Survey to Food & Agriculture Law Practice

- July 1-5, 2013
- 1 Credit Class
- Open to Non-Pace Students
- SUSAN A. SCHNEIDER, FOOD, FARMING & SUSTAINABILITY (2010)



More Questions?

- Fridays with Carl Skypes Cases
 - First Friday of the month from 2-3pm ET
 - Email me to RSVP at carl@rinckerlaw.com
 - Carl Skypes (800)941-1111



Please Stay in Touch

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- Read My Food & Ag Law Blog: www.rinckerlaw.com/blog
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ARTICLE 20-C
LICENSING OF FOOD PROCESSING ESTABLISHMENTS

Section

- 251-z-1. Declaration of policy and purpose.**
- 251-z-2. Definitions.**
- 251-z-3. Licenses; fees.**
- 251-z-4. Exemptions.**
- 251-a-5. Granting, suspending or revoking licenses.**
- 251-z-6. Review.**
- 251-z-7. Records to be kept by licensee.**
- 251-z-8. Power of commissioner to investigate.**
- 251-z-9. Rules and regulations.**
- 251-z-10. Penalties.**
- 251-z-11. Remedies.**
- 251-z-12. Severability.**

Section 251-z-1. Declaration of policy and purpose

The general purposes of this article are to assure that foods processed in New York state and offered for sale for human consumption are pure and wholesome and that the food processing establishments, in which such foods are manufactured or processed, conform to proper operating and sanitary standards.

Section 251-z-2. Definitions

1. The terms "food" and "food products" shall include all articles of food, drink, confectionery or condiment, whether simple, mixed or compound, used or intended for use by man and shall also include all substances or ingredients to be added to food for any purpose.

2. "Person" shall mean any individual, corporation, partnership, association or other organized group of persons, or any business entity by whatever name designated and whether or not incorporated.

3. The term "food processing establishment" means any place which receives food or food products for the purpose of processing or otherwise adding to the value of the product for commercial sale. It includes, but is not limited to, bakeries, processing plants, beverage plants and food manufactories. However, the term does not include: those establishments that process and manufacture food or food products that are sold exclusively at retail for consumption on the premises; those operations which cut meat and sell such meat at retail on the premises; bottled and bulk water facilities; those food processing establishments which are covered by articles four, four-a, five-a, five-b, five-c, five-d, seventeen-b, nineteen, twenty-b, and twenty-one of this chapter; service food establishments, including vending machine commissaries, under permit and inspection by the state department of health or by a local health agency which maintains a program certified and approved by the state commissioner of health; establishments under federal meat, poultry or egg product inspection; or establishments engaged solely in the harvesting, storage, or distribution of one or more raw agricultural commodities which are ordinarily cleaned, prepared, treated or otherwise processed before being marketed to the consuming public.

4. The term "processing" means processing foods in any manner, such as by manufacturing, canning, preserving, freezing, drying, dehydrating, juicing, pickling, baking, brining, bottling, packing, repacking, pressing, waxing, heating or cooking, or otherwise treating food in such a way as to create a risk that it may become adulterated if improperly handled.

Section 251-z-3. Licenses; fees

No person shall maintain or operate a food processing establishment unless licensed biennially by the commissioner. Application for a license to operate a food processing establishment shall be made, upon a form prescribed by the commissioner, on or before the fifteenth of the month preceding the applicable license period as herein prescribed. The license period shall begin February fifteenth for applicants who apply for a license between February fifteenth and May fourteenth, May fifteenth for applicants who apply for a license between May fifteenth and August fourteenth, August fifteenth for applicants who apply for a license between August fifteenth and November fourteenth, and November fifteenth for applicants who apply for a license between November fifteenth and February fourteenth.

The applicant shall furnish evidence of his or her good character, experience and competency, that the establishment has adequate facilities and equipment for the business to be conducted, that the establishment is such that the cleanliness of the premises can be maintained and that the product produced therein will not become adulterated. The commissioner, if so satisfied, shall issue to the applicant, upon payment of the license fee of four hundred dollars, a license to operate the food processing establishment described in the application.

Notwithstanding any other provision of law to the contrary, the commissioner is hereby authorized and directed to deposit all money received pursuant to this section in an account within the miscellaneous special revenue fund.

Section 251-z-4. Exemptions

In addition to the exemptions specified in subdivision three of section two hundred fifty-one-z-two, the commissioner may, if he determines that the protection of the consumers of the state as a whole will not be impaired by such action, provide by regulation for exemption from licensing of small food processing establishments when he finds that such exemptions would avoid unnecessary regulation and assist in the administration of this article without impairing its purposes. Regulations defining such exemptions may classify exempted establishments with respect to the volume and types of food handled, the types of processing involved, or with respect to any other factor or combination thereof which bear a reasonable relation to the purposes of this article. Such exemptions may be conditioned upon requirements relating to sanitation, record keeping and reporting as the commissioner may require.

Section 251-z-5. Granting, suspending or revoking licenses

The commissioner may decline to grant a new license, may decline to renew a license, may suspend or revoke a license already granted after due notice and opportunity for hearing whenever he finds that:

- (1) Any statement contained in an application for license is or was false or misleading;
- (2) The establishment does not have facilities or equipment sufficient to maintain adequate sanitation for the activities conducted;
- (3) The establishment is not maintained in a clean and sanitary condition or is not operated in a sanitary or proper manner;
- (4) The maintenance and operation of the establishment is such that the product produced therein is or may be adulterated;
- (5) The establishment has failed or refused to produce any records or provide any information demanded by the commissioner reasonably related to the administration and enforcement of this article;
- (6) The applicant or licensee, or an officer, director, partner, holder of ten per cent of the voting stock, or any other person exercising any position of management or control has failed to comply with any of the provisions of this chapter or rules and regulations promulgated pursuant thereto; or
- (7) Any person including the applicant or licensee, or an officer, director, partner or any stockholder, exercising any position of management or control has been convicted of a felony in any court of the United States or any state or territory.

Section 251-z-6. Review

The action of the commissioner in refusing to grant or reissue a license, or in suspending or revoking a license, shall be subject to review in the manner provided by article seventy-eight of the civil practice law and rules. The decision of the commissioner shall be final unless within thirty days from the date of service thereof on the applicant or licensee, a proceeding is instituted to review such action.

Section 251-z-7. Records to be kept by licensee

Every operator of a food processing establishment shall keep, in such form as the commissioner shall approve, such records as may be required by the commissioner pursuant to rules and regulations promulgated pursuant to this article.

Section 251-z-8. Power of commissioner to investigate

The commissioner and his duly authorized representatives in the performance of his licensing and inspection duties under this article shall have access to and may enter at all reasonable hours all places where food or food products are being manufactured, packaged, processed or stored, or where food or food products are being bought, sold or handled.

Section 251-z-9. Rules and regulations

The commissioner is hereby authorized, after public hearing, to adopt, amend, promulgate and issue rules and regulations, including, but not limited to regulations prescribing good manufacturing practices and requiring records relating to processing data and food distribution patterns, and such other regulations as he may deem necessary to supplement and give full force and effect to the provisions of this article. A proposal to adopt applicable federal regulations pursuant to the federal food, drug and cosmetic act, relating to commercially processed foods for human consumption may be adopted without public hearing.

Section 251-z-10. Penalties

No operator of a food processing establishment shall fail to conform to any requirement of or violate any provision of this article or of the rules and regulations promulgated thereunder. Each day's operation of a food processing establishment without a license shall constitute a separate violation of this article, punishable by the penalties described in article three of this chapter, in addition to the remedies provided in this article.

Section 251-z-11. Remedies

The commissioner may institute such action at law or in equity as may be necessary to enforce compliance with any provision of this article or of any rule or regulation applicable thereto or promulgated thereunder. In addition to any other remedy prescribed in article three of this chapter, or otherwise, he may apply for relief by injunction without alleging or proving that an adequate remedy at law does not exist. Such application may be made to the supreme court in any district or county, as provided by the civil practice law and rules, or to the supreme court in the third judicial district.

Section 251-z-12. Severability

If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.



NEW YORK STATE
DEPARTMENT OF AGRICULTURE AND MARKETS
DIVISION OF FOOD SAFETY AND INSPECTION
10B AIRLINE DRIVE
ALBANY, NY 12235

CIRCULAR 951

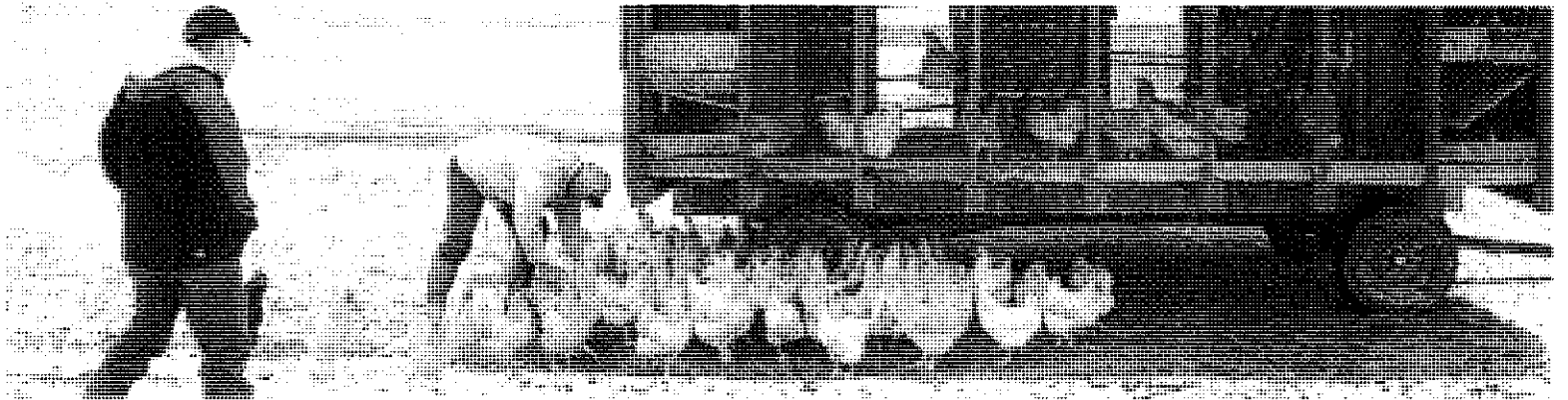
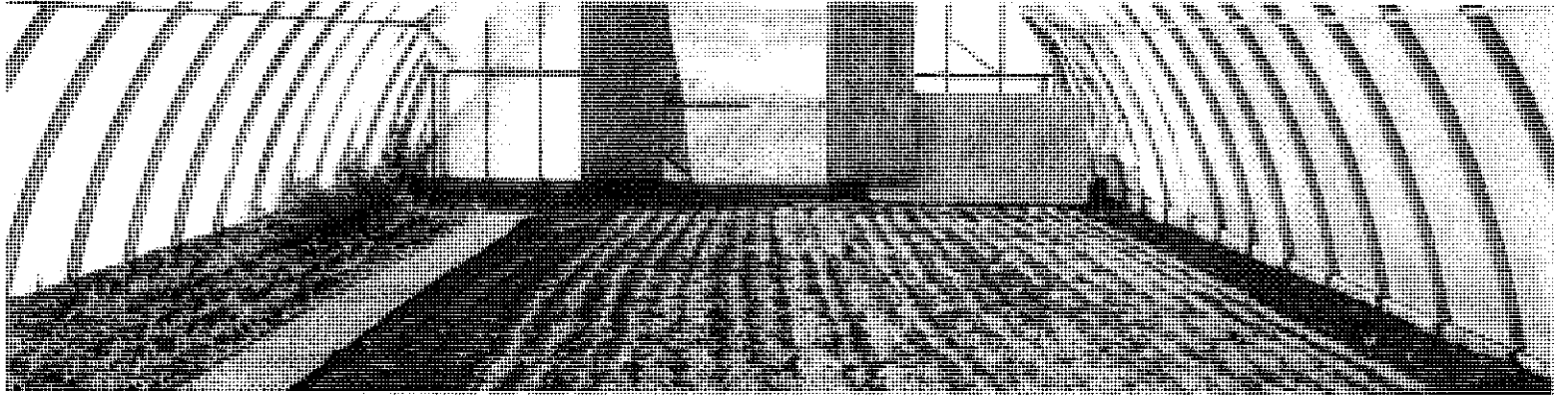
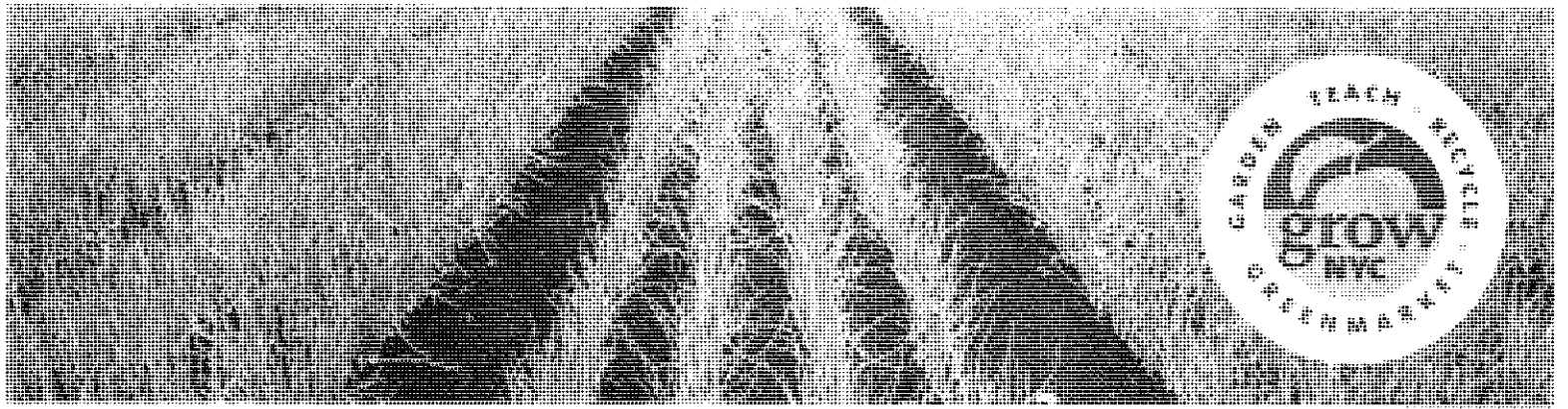
Pursuant to the

LICENSING OF

FOOD PROCESSING ESTABLISHMENTS

Article 20-C of the Agriculture and Markets Law
Section 251-z-1 to 251-z-12

Revised as of September, 2009



FARMERS ON THE EDGE

An Assessment of Greenmarket Farmers' Needs,
and the Growing Challenges of Keeping Their Farms Viable



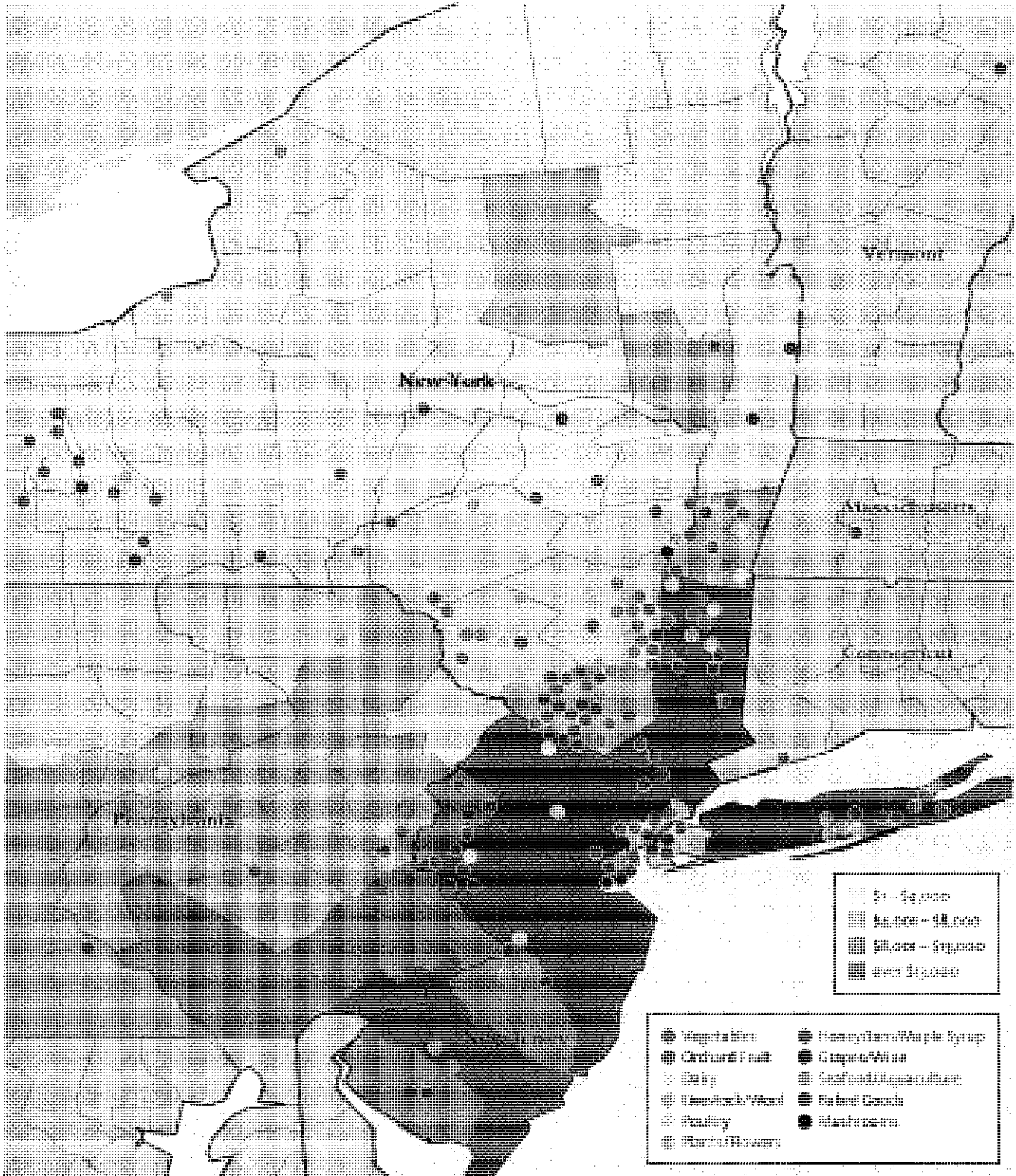
FARMERS ON THE EDGE

An Assessment of Greenmarket Farmers' Needs,
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Farmland Prices in the Region Supplying Greenmarket

Farmland prices within a reasonable travel distance of New York are unaffordable for many Greenmarket farmers. The locations and types of farms supplying Greenmarket are shown below.



Source: USDA-NASS, The 2007 Census of Agriculture

Editor's Note

We are profoundly grateful to the many Greenmarket farmers who diligently completed the survey that forms the basis of this report, and who volunteered their time and effort to tell us about their experiences. Dozens of farmers also met individually with us. They spoke with such candor and thoughtfulness that we felt privileged as we listened and learned.

Our deepest gratitude goes to the Greenmarket farmers who have been our advisers throughout this project: John Gorzynyk, Hubert McCabe, Morse Pitts, Tim Stark, Hector Perez, Carl Swartzentruber, Jeff Bialas and Lynn Fleming. Their feedback and willingness to attend meeting after meeting, particularly during their busiest season, has been extraordinarily valuable. This report would not exist without them.

The Doris Duke Charitable Foundation provided the funding that made the report possible.

Heidi Dolnick, coordinator of the Greenmarket Farm Retention Project, wrote the report, with invaluable assistance from Project Associate Annie Moss and Graphic Designer Katerina Barry. Kathryn Ruhf, co-director of the New England-based conservation group Land For Good, served as chief consultant on the design of the Greenmarket Farm Retention Project survey.

This report is the product of hard work from several people. Essential support came from GrowNYC Executive Director Marcel Van Ooyen, Assistant Director Julie Walsh, and Development and Communications Director Amanda Gentile. Greenmarket Director Michael Hurwitz, Assistant Director Cheryl Huber, Project Consultant Jerry Cosgrove, and Project Associate Annie Moss were instrumental. We relied heavily on the contributions of additional GrowNYC staff members, chief among them Michelle Hughes—who leads the New Farmer Development Project—Susanne Stover, Chris Wayne, Brian Goldblatt and Laurel Halter.

This report was undertaken as part of a joint project with the Open Space Institute, with immeasurable support from its staff: Senior Vice President Tally Blumberg, President Kim Elliman, Executive Vice President Peter Howell, Farm Viability Project Analyst Jake Beineke, and External Affairs Associate Alix Goelet.

Here are a few notes to consider while you read the report:

- All data, unless otherwise noted, comes from the Greenmarket Farmland Retention Project survey, a comprehensive, 18-page questionnaire on issues related to land and infrastructure that was mailed to 203 Greenmarket farmers in December, 2010.
- All names are pseudonyms to protect the business interests of Greenmarket farmers.
- The lists appearing in each career-stage chapter—titled “Main Goals,” “Financial Assistance Needs,” and “Technical Assistance Needs”—are not exhaustive. Conversely, not every item pertains to every farmer.
- When we refer to “farmers,” we are always referring to Greenmarket farmers unless otherwise stated.

Methodology

The project team surveyed growers in the Greenmarket network—203 small to mid-size farmers from New York, New Jersey, Pennsylvania, Connecticut, Vermont and Massachusetts. Due to the purpose of the survey, we focused on farmers with land-based operations, thereby excluding producers of honey, baked goods, and seafood. We also focused on producers of edible products, since they represent the largest portion of Greenmarket farmers and contribute most directly to supplying New Yorkers with fresh, regional produce. While producers of non-edibles like flowers and plants are included in the general survey data, we paid special attention to food producers when we analyzed survey results by farm type, and only food producers are represented in our focus groups and case studies.

The survey, administered online and through the mail, comprised 18 pages of multiple choice and short answer questions about farmers' experiences, challenges and goals related to farmland and infrastructure. We included the survey with farmers' annual Greenmarket applications, and we offered a credit on their market fees in exchange for their completing it.

We were pleased to get a 78 percent response rate from our Producers (158 responses out of 203 potential), which we believe reflected their enthusiasm for the project, their hunger to share their challenges and experiences, and their desire for help.

Next, we held two focus groups of six farmers each, to gain more specific insight into the issues raised in the survey. One group was for farmers from New York, and the other for farmers from New Jersey and Pennsylvania. Finally, we conducted one-on-one interviews with an additional 12 producers who represented the range of hurdles farmers face in various career stages and farming sectors.

This report categorizes farmers' needs by career stage: start-up, early-career, mid-career, and late-career. We realized as we digested the data that more than any other factor, it was the maturity of their farm business that differentiated farmers. While a start-up farmer is learning hard lessons about accounting, landlord relationships, and where to apply for loans,

early and mid-career farmers are thinking about expansion, and late-career farmers are focused on retirement and succession. Each stage brings with it a different set of technical and financial needs.

Our 7-member advisory committee has been integral in the preparation of this report. Made up of a diverse array of Greenmarket farmers, including new and established growers, owners and renters, vegetable producers and livestock farmers, the committee vetted the survey before distribution and gathered for a spirited round of feedback after reviewing the data from the completed surveys. Next they helped us design focus groups, and finally, they consulted on the drafting of this report.

Executive Summary

Introduction

Greenmarket is a program of GrowNYC, a hands-on non-profit that improves New York City's quality of life through environmental programs. Since Greenmarket farmers markets began 35 years ago, the two-fold mission has been to promote regional agriculture by providing small family farms the opportunity to sell their products directly to consumers, and to ensure that all New Yorkers have access to fresh, nutritious, locally grown food.

The producer-only farmers markets operated by Greenmarket allow New Yorkers the unique opportunity to speak directly to the person who grew, caught, raised, foraged or baked their food. The result is a traceable, transparent marketplace. New markets open each year to meet rising demand. Greenmarket's farmer community comprises 230 producers who sell at 53 markets in the height of the season, double the number of markets in 1997.

But demand doesn't only come from shoppers wanting to buy from Greenmarket's producers. It also comes from farmers who want to sell. In a previous internal Greenmarket survey, 80 percent of farmers said that without Greenmarket they wouldn't be in business. During a focus group for this project, one livestock farmer said, "If we didn't have Greenmarket, we wouldn't be here. I know I wouldn't be here." So powerful is Greenmarket's access to consumer demand that each year, the number of farmers vying for a spot at the markets outpaces available slots. Each year, approximately 3 to 7 farmers leave the program while 10 to 15 join. And once they're in, they stay. Current Greenmarket farmers have been in the program an average of 12 years; 30 percent of them have been in the program for over 20 years. Farmers who sell through Greenmarket rely on the ability to sell directly to the New York City customer, allowing them to access a higher price point than the wholesale market or retail sales outside of the city. An orchard farmer told us that 25 years ago he couldn't borrow

any more money from the bank because he was already over-leveraged. He took a chance and began selling at a few Brooklyn Greenmarkets. Once he joined Greenmarket, he not only climbed out of debt, but he also has bought additional property, built a bakery, and made significant improvements to the family farm. Most importantly, three of his children are now employed on the farm and view agriculture as a viable career choice.

But a bustling farm stand does not alone guarantee business success. For farmers, access to financing, as well as to secure, suitable land, are just as critical.

In 2010, thanks to funding from the Doris Duke Charitable Foundation, GrowNYC and the Open Space Institute began a year-long project to address a major concern that threatens Greenmarket's mission: the lack of affordable farmland in the region surrounding New York City. While we knew farmers faced major challenges in their quest for financing and secure land, our research revealed two critical needs in addition to long-term land tenure: technical assistance to help navigate the wide menu of existing resources for farmers; and loans for annual operating expenses and one-time capital purchases. Annual operating expenses, which falls under the rubric of "working capital," refers to liquid assets to buy things like seed, fertilizer, and tractors, and to pay for things like staff, market fees and repairs. One-time capital purchases mean long-term investments like cattle, machinery and permanent infrastructure.

The data we collected for this report comes from an 18-page survey mailed to 203 farmers in December, 2010, which focused on land and infrastructure needs. We supplemented the data with two focus groups and over a dozen one-on-one interviews. Finally, we regularly sought feedback from our advisory committee of farmers. The vivid and personal stories we heard, coupled with the data we collected, have convinced us that more help is needed.

VOICES FROM THE SURVEY

On the need for a mentorship program: "You can get a lot of ideas from other farmers.... You can get ahead more easily, because if you are having a problem, odds are someone else has had it worse."

Greenmarket Farmer Snap Shot

83% own farmland

60% want to expand their farm business

53% want to buy land but say there are barriers in the way

76% say financial planning to acquire land is a priority for assistance

43% say they will retire in the next 20 years

50% want to preserve their farmland but don't know how

58% say succession planning is a priority area of assistance for farmers

56% of farmers with renting experience identified finding suitable rental land as a significant challenge

*Percentages are based on number of responses, which vary according to question. See notes under individual data charts throughout report for number of responses.

Overview of Greenmarket Producers

Greenmarket works with nearly 230 Producers from a region stretching 250 miles to the north, 120 miles to the south, and 170 miles east and west. Nearly 70% of participants are based in New York State, though a total of 7 states are represented at market. While over half of the farmers in the program are raising fruits and vegetables, Greenmarket Producers bring to market the most diverse array of products in the world: thousands of varieties of produce, dairy, livestock, foraged goods, local seafood, and the list goes on. The continued supply of regionally grown food depends on how tightly this agricultural belt can remain cinched around New York City, despite the development pressure fueling rising land prices at increasingly greater distances.

Barriers to Business Success and Expansion

The barriers facing farmers fall into two general types: land tenure and access to financing. In addition, the barriers evolve as farmers advance through their careers.

In the case of land access, barriers for beginning farmers tend to revolve around renting land as purchasing requires additional financing that is simply out of reach for most in this category. As farmers gain experience and assets, the challenges shift to those involved with purchasing land. And as they prepare to retire, farmers' difficulties become centered around plans for succession and farmland preservation.

In the area of financing, frustrations first set in when farmers can't meet their basic need for operating expenses. The shortfall most often happens in the winter and spring months when farmers lack cash flow but still need to purchase seeds, plant

their fields, and warm their greenhouses. Many farmers are using high-interest credit cards and other costly borrowing tools as they face challenges with traditional lenders. (Shortfalls from commodity price fluctuations are addressed by government subsidies, and are not discussed in this report.)

The needs of both experienced and newer farmers are especially acute, given the anticipated demographic shift in the coming years. Forty three percent of our farmers say they will retire in the next 20 years – a conservative estimate, as at least some of the 57 percent who said they don't plan to retire will have no choice but to stop working as they age. There is no shortage of farmers ready to fill the supply gap these retiring farmers will leave behind. A look within the existing Greenmarket network reveals that 60 percent of farmers say they'd like to expand their operations, while new producers join the Greenmarket community every year. Accordingly, Greenmarket must think seriously about whether its future suppliers will have the resources they need to thrive, and what steps it can take to ensure their success. (For a partial list of existing resources for farmers, see Appendix B.)

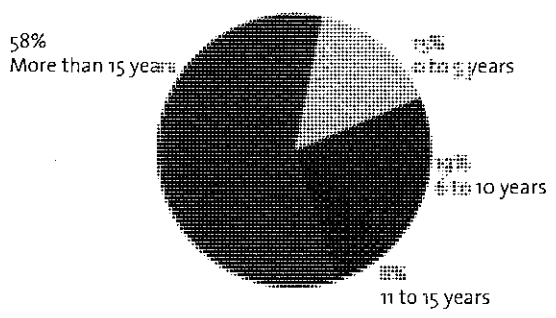
i. Land Tenure

The long-term planning required in sustainable agriculture means that farmers' businesses thrive when they can invest in the soil and farm the same piece of land over many years—whether that means renting it on a secure, long-term basis, or owning it. Our data revealed varying needs between Greenmarket's more experienced, landowning farmers, and its newer farmers, many of whom farm on rented land with unwritten, or at best, one-year leases. While the former group told us they want help with succession and farm preservation, the latter group said they want help with various aspects of financing and land access.

Who Are Greenmarket's Farmers?

They Are Experienced

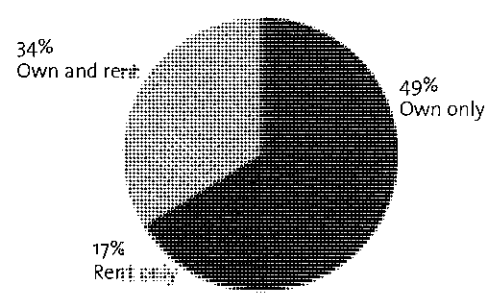
Nearly 2/3 of Greenmarket farmers have been running their farm for more than a decade.



Survey Question: How many years have you been running your own farm?
*Based on 155 responses.

They Rent Some Land

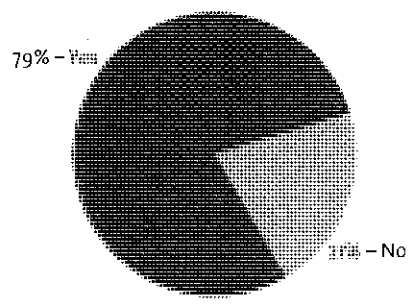
About half of Greenmarket farmers rent at least some land.



Survey Question: Do you own land? Do you rent land?
*Based on 155 responses.

They Own Their Base Farmland

More than 3/4 of Greenmarket farmers own their base farmland.



Survey Question: Do you own your "base" farmland (meaning the primary land that you farm)?
*Based on 155 responses.

For renters, the main challenge is finding a landlord willing to rent to them on a long-term basis. Nearly one-third of farmers looking to rent land stated that they'd like a lease term of six or more years. However, only half of those farmers reported ever signing a lease with a term longer than five years, and two-thirds said they were unable to locate a landlord willing to rent to them for that length of time.

When we began this study, we had expected the percentage of renters interested in long-term leases to be higher, considering the affordability, security and freedom long-term leases could bring if carefully written. Conversations with farmers provided interesting perspective on the percentage: signing a long-term lease would mean giving up or at the very least, postponing, the dream of owning. Another reason for the lower-than-expected percentage is that many farmers have stopped considering it an option, since it is the rare landlord willing to rent for that length of time.

The powerful desire to own land was one of the most universal themes among farmers—whether new or established, orchard or dairy, renters or owners. However, over half of the Greenmarket producers that want to buy land, whether first-time buyers or those wishing to expand, reported facing significant barriers: 86 percent cited land affordability while one-third thought they would not qualify for a mortgage.

In our conversations with farmers, we heard repeated frustrations related to their search for affordable land. Land prices are often beyond their reach, even for "preserved" farms that can't be developed but still fetch high prices from country-estate buyers with no intention of farming. One livestock farmer said his landlord was "double-dipping," because he had sold the development rights on his 550-acre farm and recently put it on the market for \$2.9 million.

Numerous land conservation experts in the Hudson Valley confirmed farmers' claims that selling the development rights on a piece of land does not necessarily make it affordable. In areas with high demand for rural estates, prices of preserved land are still far higher than what a full-time farmer can afford. The trend also exists in New Jersey, the state with the second-highest average farmland market value in the country, at \$13,100 an acre, according to the USDA. And in Pennsylvania, in an affluent county near Philadelphia, the average price of 48 transfers of eased farmland between 1994 and 2009 was \$10,000 an acre, according to the Montgomery County Farmland Preservation Program as referenced in a 2010 study released by the Pennsylvania Association for Sustainable Agriculture. That's compared to the Pennsylvania state average of \$4,775 an acre.

With regards to those farmers who don't believe they can qualify for a mortgage, one particular case study demonstrates that the reasons are not always financial. Often they stem from lenders' lack of understanding of farming practices and conflicting definitions of a solid business model. One dairy

VOICES FROM THE SURVEY

On the difficulties of renting farmland: "Landowners have aesthetic and other concerns that sometimes conflict with farm practicalities."

farmer described the arduous year he spent convincing a private agricultural bank to give him a mortgage on a 185-acre farm in New Jersey. The lender was suspicious of his unconventional business model and doubted his reported profit margin. One drastic difference was the farmer's practice of rotational grazing, which requires a much higher acreage-to-cow ratio than industrial agriculture because pastures sit idle for a prescribed rest period so the soil can rejuvenate itself. Lenders base decisions on balance-sheet comparisons to existing business models, so "dairy" automatically means a grain-fed dairy selling milk to processors. "If you're innovating, there aren't similar models for comparison," explained the farmer. Moreover, since the farmer had partially financed the purchase of the farm by selling its development rights, the bank didn't have the comfort of knowing it could sell the land to a developer in case of default.

While the majority of Greenmarket farmers who own land told us they want to their land to remain a working farm, half of the landowners said they do not have a plan to ensure that happens. In a write-in portion of the survey, farmers without designated successors repeatedly told us they were looking for young people to take over.

About 12 percent of Greenmarket's landowning farmers have sold the development rights to their land, representing approximately 2,600 combined acres. The motivations for doing so vary from needing revenue for farm expenses, using the funds to offset a farm purchase price, or simply wanting to ensure the farm is never developed. A similar number of landowning farmers said they investigated the option but chose not to follow through with the process. The most commonly cited reasons were that they weren't offered enough money or that their application was denied—either because their parcel was too small or the particular conservation program had exhausted its funds.

There is little doubt that many landowners in the Greenmarket network of farmers would take steps to ensure their farm remained in perpetual production, if they knew what steps to take. In fact, over half say that they would be willing to not simply sell their development rights, but also sell the land for less than market value so a farmer could afford it, as stripping development rights often fails to bring the land's price down to a level of affordability for a full-time farmer. The challenge, or rather opportunity for Greenmarket, is that over half of our landowners said they do not understand enough about the option of selling development rights to know whether they would be interested in pursuing it.

One vegetable farmer, who has sold the development rights on about half of his 400 acres, said he was able to buy two of his parcels only because the sellers in both cases accepted his bid over much higher competing bids. "Karma," was the reason one seller gave when the farmer asked why. Should this farmer ever sell those parcels, he is much more likely to sell at a lower-than-market value for two reasons: There would be no financial loss on the property, and he would be giving another farmer the same chance he was given. So by trying to spread good karma, that landowner may have unwittingly broken the vicious cycle of rising land prices, at least on one Hudson Valley farm.

A promising resource in the effort to help farmers access land is the 83 percent of Greenmarket farmers who own their land. Of that group, 42 percent said they would like to keep their property in farming after they retire but don't have a plan for how. By focusing on this group, we can directly work to preserve the working farmland already supplying the Greenmarket network.

ii. Financing for Operating Costs and Capital Purchases

Greenmarket farmers repeatedly spoke of being squeezed between two simultaneous, rising trends. First, farms are becoming increasingly more expensive to operate year after year while the ability of farmers to secure bank loans is also becoming significantly more difficult.

Nearly all of a farmer's income—94 percent, up from 85 percent in 2007—goes straight back into production expenses, according to the USDA's 2007 Census of Agriculture. Most of this increase can be attributed to the soaring prices of fuel, labor, and fertilizer over the past decade. As these costs are rising, the lenders who might have once helped to offset those costs, are disappearing. Many local, agriculture-friendly commercial banks have been acquired by larger banks drawn to high-profit margin businesses, and unversed in agricultural lending and the economic potential of small farms.

"Agriculture is not valued in a fashion at which it ought to be," said James Makerer, senior vice president of Kinderhook Bank in Columbia County. Banks know that all too well. With the economy struggling, they have been reluctant to invest in businesses that depend on variables as uncertain as rainfall and temperatures, and on projections as subjective as crop yields.

This funding gap threatens farmers at every level. Beginning farmers have trouble securing operating loans because many of them lack the experience and collateral that traditional lenders require. Even programs such as Farm Credit, one of

the few lenders that is flexible on collateral, has interest rates comparable to those of commercial banks, making it tough for small to mid-size farmers with low profit margins to demonstrate they have the cash flow to meet payments. As farmers look to grow their businesses by investing in sophisticated machinery, processing equipment, multiple trucks or tractors, and permanent infrastructure, the nature of the funding gap shifts.

Early-career farmers are often looking for loans of between \$15,000 and \$50,000. Those amounts are too small to attract the interest of most commercial banks, who profit more from loans of least \$75,000. Moreover, the cost of certain improvements, like fruit trees, will only drain income until they begin bearing fruit after three to five years, fueling a bank's skepticism that a farmer can find other revenue to compensate for the new debt. Furthermore, farmers lacking assets such as land or a home are at a greater disadvantage. Not only do they lack collateral, but they also have to convince lenders they will remain on the same land long enough to see a return from their investment. (That same land insecurity also discourages farmers from repairing or improving their land and facilities.)

Ironically, tools to ensure that land remains in agriculture, such as a conservation easement or deed restriction prohibiting development, only sour banks further. "Everyone knows ag buildings never pay for themselves," said a dairy farmer. When he borrowed money from Farm Credit East to build a barn on eased land, he said the bank valued the barn at half the construction cost because it could never be leased out at commercial prices.

As farmers gain experience, the challenges shift once again. Some said they could not get loans because they were already over-leveraged, due to unexpected circumstances or losses such as crop failure, divorce, and the sudden need to relocate the farm. One orchard farmer who had been hoping to retire in the next few years has instead faced major set-backs due to weather and the recession, and has had to borrow from his life insurance policy just to make ends meet. Additional hurdles present themselves when farmers try for larger loans to pay for capital improvements and other substantial, one-time purchases. Finally, a fresh set of challenges emerges as farmers set their sights on the ultimate financial goal: buying their own farm.

Farmer Requests for Assistance

Technical Assistance

We heard requests for specific kinds of technical assistance repeatedly, both in survey answers and personal conversations with farmers. The primary technical assistance needs voiced by Greenmarket farmers were an internal mentorship and linking program, land-related assistance, and help with financial and business planning.

Underlying the need for technical assistance of any type is the extraordinary time pressure that comes with a career in direct-sales farming. Farmers universally spoke of their lack of time—to apply for loans, to look for land, to draw up succession plans. One farmer explained that, during the growing season,

Top Needs of Greenmarket Farmers

- Loans for working capital
- Access to suitable land, whether for rental or purchase
- Technical skills in business plans, leases, loan applications
- Counseling on loan readiness
- Guidance on succession planning
- Loans for land acquisition
- Assistance with selling development rights and/or preserving land for agriculture

Top Services Requested by Greenmarket Farmers

- Information clearinghouse for networking and learning of existing resources
- Farmer-friendly loan fund for operating and capital costs
- Help filling out loan applications
- Pro-bono legal assistance for real estate transactions and succession planning
- Technical assistance with accounting and business planning
- Help developing strategies to keep land in agricultural production
- Funds—public or private—for the purchase of development rights

Tropical Storms Irene and Lee

The aftermath of Tropical Storms Irene and Lee this year served as a strong example of the absence of basic services for farmers. Greenmarket producers called and visited the GrowNYC office looking for information about grants, unemployment insurance, and other programs. There was an immediate, urgent need for a one-stop shop so farmers could access the help they required as quickly as possible.

Farmers' budgets are based on projected yields, which typically peak in the fall months. The month of August, when the hurricane hit, "was the worst possible time for this to happen," said one vegetable farmer. "September is when we start making money. You do everything you can to get to September." When the hurricane whipped through much of upstate New York, entire crops were lost. Many farmers were frantically recalculating their books, unsure how they would meet debt payments, buy supplies for next year's crops, and pay labor—including themselves. Some saw their winter income vanish too, as their storage crops rotted in standing water that had flooded the facility. "How do you keep people from going to credit cards at this point?" asked the vegetable farmer.

Greenmarket farmers discovered the hard way that their options to recover losses were scant. Those who grow and sell fresh produce typically cultivate a diverse array of vegetables, fruits, and herbs. But diversified farming is not well suited for the crop insurance programs available through the USDA and other private agencies. Traditional crop insurance is designed and priced for farmers who grow only a few types of crops. The alternative, NAP, charges a fee per crop, which does not make financial sense for a farmer who is operating at tight margins and growing 100 different vegetables at relatively small volumes. In addition, USDA insurance programs pay out at wholesale prices—far below the retail value that a farmer depends on at Greenmarket.

One farmer said he had only just started picking his heirloom tomatoes when the hurricane flooded his fields, destroying the entire crop and costing him tens of thousands of dollars. But his insurance coverage was based on wholesale prices for beefsteak tomatoes, a tiny fraction of his true losses.

she works seven days a week harvesting, driving to market, and selling her produce, and sleeps only four hours each night. The intense work schedule leaves farmers scrambling in the off-season to catch up on business planning and bookkeeping. As small-scale producers, Greenmarket farmers are intimately involved in every phase of the business, from daily operations like farm management and driving to market, to longer-term tasks like staffing, marketing, strategic planning, securing land, and complying with myriad regulations, inspections and permits. Often farmers join the program with some gaps in skills and have to learn certain aspects on the fly. What's more, it is common for beginning farmers to work an off-farm job while they establish their business.

We were told numerous times that in light of this scheduling strain, a service that would help streamline paperwork, help farmers find land to buy or rent, and link them with the right experts and resources would be of immense value.

A Greenmarket mentoring and linking program was one way farmers recommended we help them build their businesses. Farmers with experiences and insights shared plenty of lessons they would have rather learned from another farmer, as opposed to having to learn themselves through costly and time-consuming trial and error. A young farming couple who recently closed on a land purchase could teach aspiring landowners how to keep accounting records that would meet the requirements of a federal loan program, for instance. Or a multi-generational farming family with a succession plan in place could share their approach with other families still struggling to formulate a plan. A vegetable farmer who has installed a new irrigation system with funding from a government conservation program could point his fellow farmers to the same grant programs. A farmer who is buying land at below-market price from his landlord could explain to his peers how his good fortune is the result of his careful cultivation of their relationship over the years.

Additionally, whether looking to own or rent, farmers had various needs related to land. Some renters told us they wanted help drafting farmer-friendly leases. Others said they wanted to get on the path to ownership by learning what it would take to be financially ready for a mortgage. Some farmers reported that their landlords have never been to a Greenmarket, and lack an appreciation for just how popular and profitable a farm stand at one of the markets can be. Without the confidence that their tenant farmer can make their projected sales, landlords can be hesitant to commit to a longer term relationship. Greenmarket could work with landowners, educating them about the nature of agriculture, providing tours of markets and introducing them to successful Greenmarket Producers who would be excellent ambassadors for their community.

Prospective buyers, meanwhile, told us they would benefit from more help in their search for land, whether that meant directing them to up-to-date farm-linking programs or farmland preservation organizations, or directly sharing specific opportunities with them as they arise. One farmer who is trying to buy land told of two instances when a desirable parcel came on the market but was snatched up by non-farmers before he had a chance to see it.

Assistance with financial and business planning was another common request we heard from farmers. This ranged from assistance filling out loan applications to advice on how to formulate a sound business plan to help convincing lenders they are strong loan candidates.

Financial Assistance

Farmers at every stage expressed a need for financial assistance, although dollar amounts tended to increase as careers matured and farmers were ready to take on more risk by investing in additional land and increasingly advanced equipment.

Nearly all farmers we spoke to supported the idea of a Greenmarket-focused loan fund for operating and capital expenses. There was profound enthusiasm around the idea that interest income would go back into a fund to help farmers, rather than increasing a bank's profit. They agreed that only applicants who have demonstrated a commitment to farming, rather than those who have yet to learn what the occupation truly requires, should be eligible for loans. There was further consensus that a fund should be a last resort for farmers who have been unsuccessful after trying multiple existing resources.

Farmers said more funds were needed for the purchase of easements, for the benefit of both landowners hoping to preserve their farm but still be able to realize its value for retirement, and farmers in search of affordable land to buy. Nine landowning farmers said they tried were unsuccessful in selling the development rights on their land because the potential buyer had exhausted its funding. In addition, 40 percent of farmers said grants to land trusts for the purchase of easements was of the highest priority.

Farmers routinely mentioned a lack of equity for mortgage down payments, and lack of cash flow for monthly payments, indicating their desire for farmer-friendly mortgages with low, fixed interest rates that required little to no down payments. In addition, they yearned for a fund—or a willing landowner—to deflate the asking price of a farm to an amount a full-time farmer could realistically afford.

Greenmarket's Opportunity

As Greenmarket began to assess the role we could play in filling gaps in farmers' services, we zeroed in on a few specific solutions that won broad support from the Greenmarket farmers we spoke to. We organized the solutions into two categories: technical assistance and financial assistance. Both categories include ways to overcome the two types of barriers mentioned above, access to land and access to financing.

Technical Assistance

The one area where we can provide crucial assistance is helping our producers access the multitude of existing services whose mission is to help farmers meet their financial and land-related needs. Through technical assistance we can also link farmers within the Greenmarket network, so that they can share experiences and information, and possibly form relationships that lead to farm transfers from retiring to emerging farmers.

Microfinancing

Greenmarket can create an alternative, micro-credit loan fund, making loans of up to \$50,000 to farmers who are not eligible for financing from traditional lenders, perhaps because they lack the experience, equity or collateral required by commercial banks. Approval would be based on a set of eligibility requirements, chiefly that they are in good standing with Greenmarket, that they can demonstrate strong business plans, and that they have exhausted all other existing lending options.

Farm Retention Capital Acquisition Fund

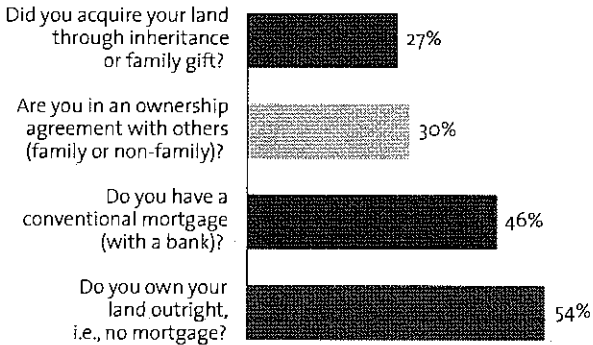
Finally, we can partner with land preservation groups and foundations to increase the amount of affordable farmland in the region surrounding New York City using various tactics. That could mean raising money to purchase easements that limit a property's resale amount to its agricultural value, or to purchase the land itself in order to resell it at an affordable cost to working farmers. It could also mean finding landowners—institutional, public, or private—willing to sign farmer-friendly leases that allow farmers to stay long-term and build equity in the farm.

Who Are Greenmarket's Landowning Farmers?

Many Owners Have No Mortgage

Over half of Greenmarket farmers own their land outright, meaning they have no mortgage.

PERCENTAGE OF OWNERS IN VARIOUS STATES OF OWNERSHIP FINANCING



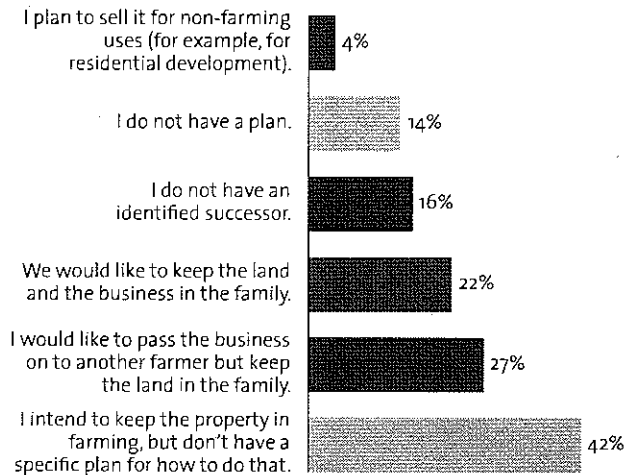
Survey Question: These questions refer to land that you own. (Check all that apply.)

*Based on 115 responses

Owners Want to Preserve Their Farms

Nearly half of landowning farmers want their land to stay in farming but don't have a plan for how to ensure that happens.

LANDOWNERS' PLANS FOR THEIR PROPERTY



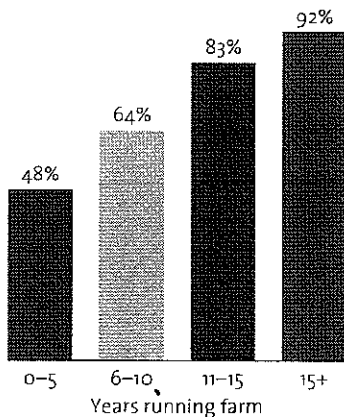
Survey Question: If you own farm property, what best describes your plans for its future? (Check all that apply.)

*Based on 125 responses

Owners Outnumber Renters in All Career Stages Except Start-Up

Only start-up farmers are more likely to rent than own.

PERCENTAGE OF FARMERS WHO OWN THEIR BASE FARMLAND, BY CAREER STAGE

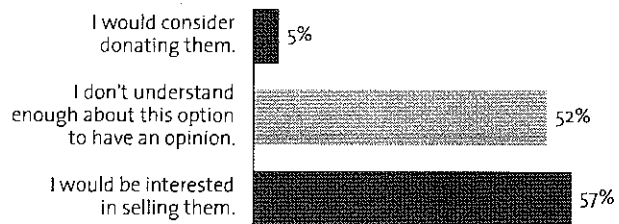


Survey Question: Do you own your base farmland?

*Based on 152 responses.

Some Owners Would Like to Sell Development Rights, But Don't Know How

Only about 10% of landowners have sold their development rights. Of those who have not, more than half are interested in doing so, and the same portion don't understand the option.



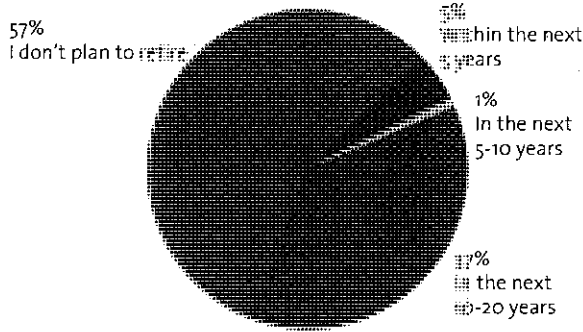
Survey Question: If the development rights on your land have not been removed (choose all that apply):

*Based on 44 responses.

Many Farmers Are Looking Toward Retirement... While Others Are Looking Toward Expansion

Retirement Plans

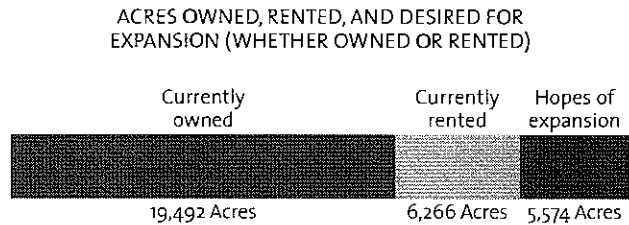
Nearly half of today's Greenmarket farmers will be retired by 2030.



Survey Question: Do you plan to retire (meaning to cease management control of the business)?
*Based on 142 responses.

Greenmarket Farmland: Status and Potential

The 60% of Greenmarket farmers with plans to expand would like a combined additional 5,574 acres—22% more than the current acreage now occupied by Greenmarket farmers who responded to the survey.



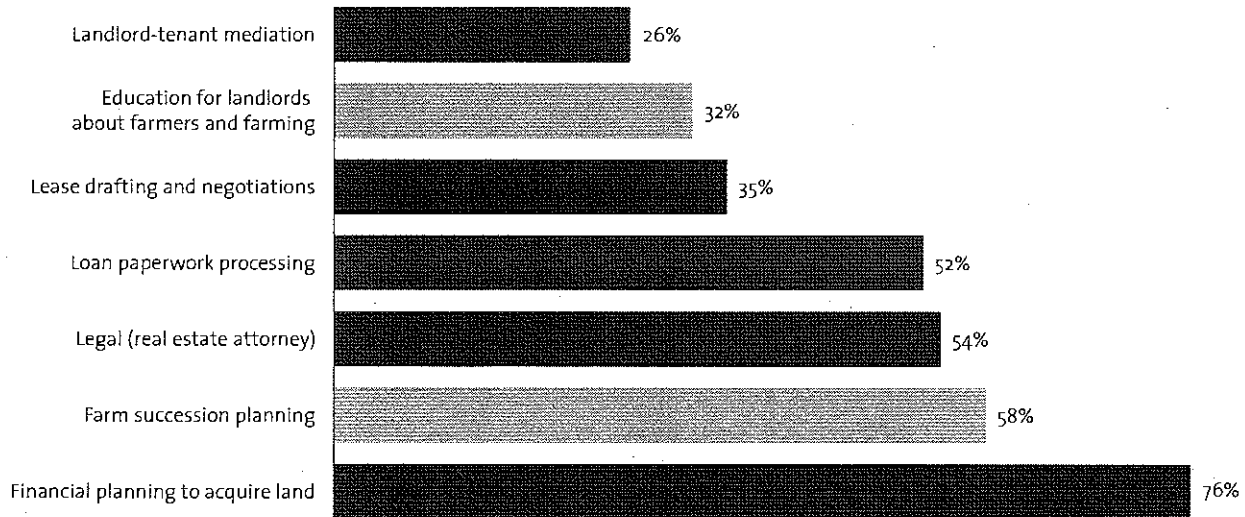
Survey Question: If your expansion plans require more land, approximately how many more acres will you need? (Check all that apply.)
*Based on 151 responses.

What Do They Need to Meet Their Goals?

Desire for Help

Three quarters of farmers cited financial planning to acquire land as a priority for assistance.

PERCENTAGE OF FARMERS CITING VARIOUS FORMS OF ASSISTANCE AS A PRIORITY



Survey Question: What do you think are priority areas for farmer assistance in the area of land acquisition? (Check all that apply.)
*Based on 127 responses.

The Start-Up Farmer: 0 to 5 Years

Summary

Starting a farm can be the most challenging stage of a farmer's career. Lack of experience, skills, knowledge and resources exacerbate the two main obstacles facing farmers: 1) the elusiveness of long-term, secure land tenure allowing farmers to plan and make farm investments without fear of having to abandon those investments, and 2) scarce financing options.

The probability that a farm will go out of business is "substantially higher for recent entries than for older, more established farms," according to a study by the USDA's Economic Research Service. Exit rates also decline as the farm size increases. So small, start-up farmers have the lowest odds for survival as compared to other categories of farm size and years in business. The new farms that do survive, however, grow at a faster rate than well-established farms, according to the same study. So the trick is making it through the first five years.

Insecure Land Tenure and Investment Loss

New farmers have very little negotiating power when hashing out rental terms with a landlord, and often settle for short-term leases or no lease at all. Over half of Greenmarket farmers who rent their "base" farmland have informal leases or handshake agreements. And only 8 farmers—three of whom are orchardists and one a Christmas tree farmer—reported ever signing a lease longer than 5 years. (In New York, a non-farming landowner must sign a minimum 5-year lease with a farmer-renter in order to have their land tax-assessed at agricultural value. But stipulations in leases—such as 120 days' notice if the landlord decides to sell—can effectively whittle the term down to mere months, albeit with financial penalties incurred by the landowner if the land stops being farmed. No such 5-year minimum exists for New Jersey and Pennsylvania.)

While a short term, informal arrangement might at first make sense for the start-up farmer who isn't ready to commit to a piece of property long-term, it often backfires when the farmer is forced to leave. This is because many neglect to safeguard their permanent investments such as barns, greenhouses, drainage, storage structures, irrigation, and fencing. They are eager to launch their businesses, happy to be farming on high-quality farmland regardless of the terms, and lucky enough to have access to interest-free loans from friends and family. But

beginning farmers often lack the foresight and lease-drafting skills to craft an instrument that requires the landowner to buy out those investments when the lease is terminated. Even if they do possess this know-how, it's difficult to convince many landlords to agree to a buyout, particularly if the landlord is not committed to renting to farmers. So all too often, renters are forced to absorb the cost and start over. Having a landlord who is also a farmer can help significantly—both in lease drafting and in every day activities—according to several farmers. But 84 percent of farmers who rent their base farm have non-farmer landlords, who, according to several renters we spoke to, have little understanding of what it takes to run a farm.

Financing

Start-up farmers have to acquire all of their equipment, yet they lack the experience, collateral and income history needed to get bank loans for such purchases. Farmers at this stage risk going into deep debt, particularly during the months leading up to market season, when all expenses to get the farm in full swing hit simultaneously, but income has not started to flow in. Young farmers often have not mastered the advance planning skills to buffer themselves financially during this time of year, and most people, let alone farmers, lack the accounting and business-management skills necessary for obtaining loans. A handful of loan and grant programs exist specifically for beginning farmers, but finding them and then filling out the required paperwork can itself be a full-time job.

Mainstream commercial bank loans continue to be scarce. One reason is small local banks that have historically made agriculture loans are gradually disappearing as they are acquired by large banks. The few that are left are loath to loan money for improvements and structures—like irrigation and barns—on land the borrower does not own, leaving it to the renter to arrange for those investments with the landowner instead. Commercial banks also require income and equity beyond what most beginning farmers have.

VOICES FROM THE SURVEY

On securing housing: "Finding a place to live was the hardest part."

The USDA's Farm Service Agency is a resource for farmers without access to traditional capital, with a specific focus on farmers with fewer than 10 years of experience. Their interest rates are fixed, and far lower than those of private lenders.

But delays in getting loans can come from all angles, explained one FSA loan officer. The high volume of paperwork characteristic of federal government loans is a major barrier to Greenmarket farmers who told us that there simply aren't enough hours in the day for them to assemble their application since they often work 70 hours a week. Although the maximum loan size is \$300,000, the process for large loans and small loans is the same, meaning a farmer has to fill out just as much paperwork for a \$5,000 loan as he does for a \$300,000 loan. (FSA is planning to release a small-loan product to address this concern, said the

loan officer.) FSA also requires rigorous justification of pricing in farmers' business models. But many farmers have a hard time proving how much they charge for their product at Greenmarket because of insufficient accounting records or a lack of sales receipts. "They have to go back and rebuild their entire record keeping system," said the loan officer. Still another step in the process is satisfying the eligibility criteria that applicants have two rejection letters from other lenders.

The risk of delay does not disappear once the paperwork is complete. Government bureaucracy—understaffing, complicated legal oversight, and backlogged federal funding—come into play and result in farmers waiting for months if not longer. During the credit crisis in 2009, for instance, the agency had a backlog of 2,636 operating loans totaling \$173 million.

Main Goals of Start-Up Farmers

- Gain footing as a new business owner
- Establish a performance history
- Buy enough equipment to gain momentum without going into too much debt
- Sign rental lease with landowner who is preferably a farmer, and who is amenable to terms that protect the farmer-tenant

Technical Assistance Needs

- Help with accounting, getting records in shape for lender scrutiny
- Legal assistance in starting a new business
- Lease drafting
- Landlord negotiation, mediation, education
- Finding land to rent

Financial Assistance Needs

- Start-up capital: \$30,000 to \$300,000 for equipment like tractors, coolers, trucks, greenhouses, housing for livestock, feed storage, fencing
 - Equipment costs can vary greatly depending on the prior experience and skill set of a farmer. Used equipment can reduce costs, but also requires knowledge of maintenance and repairs, whereas newer equipment might serve a less experienced farmer better.
 - Farm type also influences equipment costs. Vegetable farmers can get by with less start-up infrastructure, while livestock, dairy, orchard and poultry farmers require a higher initial investment.
- Operating funds: \$70,000-\$100,000 annually for ongoing expenses like labor, rent, fees, seeds, fertilizers and fuel. This also includes small start-up expenses such as flats, market tents, scales, greenhouse ventilation fans, packaging material.
 - This number will likely be higher for livestock farmers, who face high year-round feed costs. It will also be higher for livestock and orchard farmers because both groups must wait a few years before their products are marketable.

VOICES FROM THE SURVEY

On negotiating leases:

"It was horrible: we signed the lease with the father, who was supportive to an extent. But when he took ill, his adult children proceeded to violate the agreement in numerous ways."

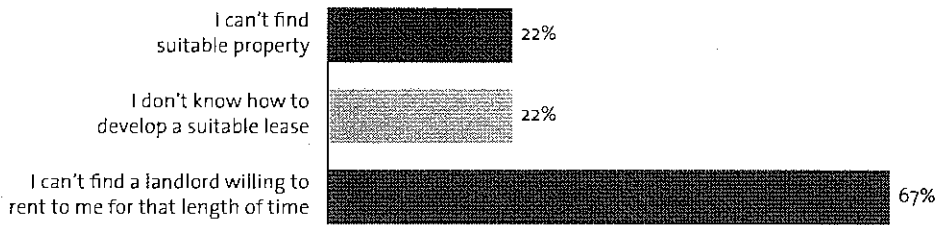
"...with the rental all capital improvements were at my expense, even on structures [the landlords] owned and would keep and them wanting to partner on things or just thinking I was available to do things for them."

A Feeling of Land Insecurity

Long-Term Leases Are Scarce

More than a third of farmers who want to rent land (or rent more land) are interested in a lease agreement for longer than 5 years, but few landlords are willing to rent for that length of time.

PERCENTAGE OF FARMERS FACING VARIOUS BARRIERS TO RENTING FARMLAND FOR A TERM OF AT LEAST SIX YEARS



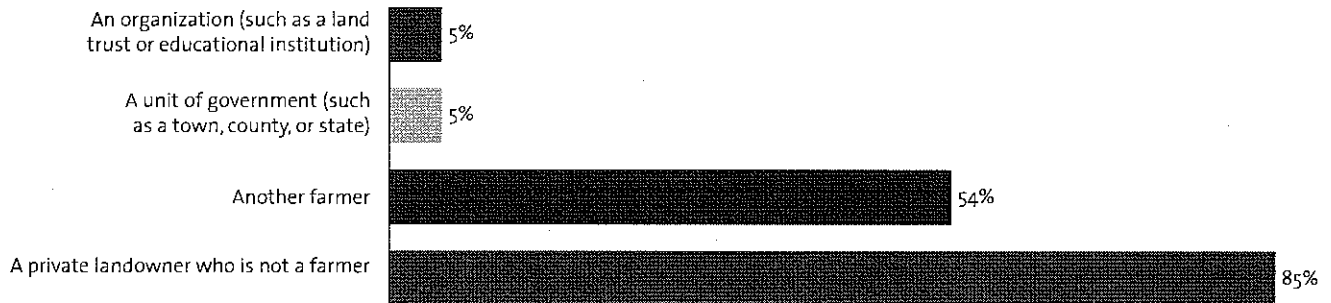
Survey Question: If you would like to lease property for 6 years or longer, what barriers prevent you from achieving this goal? (Check all that apply)

*Based on 36 responses.

Non-Farmer Landlords Are Common

Most renters rent at least some land from non-farmer private landowners.

PERCENTAGE OF FARMERS WITH VARIOUS TYPES OF LANDLORDS



Survey Question: Who do you rent land from? (Check all that apply)

*Based on 77 responses.

Case Studies

These case studies of Greenmarket farmers give a close-up look at how various challenges impact farmers' lives and careers. Check marks above each portrait indicate the area of additional support that would have benefitted the farmers had they been able to access it.

Brian and Alice Mason Vegetable Farmers, New York

- Technical Assistance
- Microfinancing
- Farm Retention Capital Fund

The obstacles facing the Masons—an unexpected need to move, a skeptical landowner, a thin credit history, a cash-flow shortage—are common to many beginning farmers. The Masons are among the few who managed to solve a slew of financial and legal riddles and successfully navigate a highly complex process.

After many years running his parents' farm in the "black dirt" region of Orange County, Brian and his wife Alice had a sudden change in their domestic situation and needed to find a new piece of land quickly so they could start their own farm. During the year and a half it took them to close on the seven-acre farm they now own, the Masons had to simultaneously teach themselves how to run a business while cobbling together enough funds to finance it. What little income they earned went back into the farm. So for stretches of time, they borrowed from Alice's mother to buy clothes for their children, and used food stamps to buy groceries.

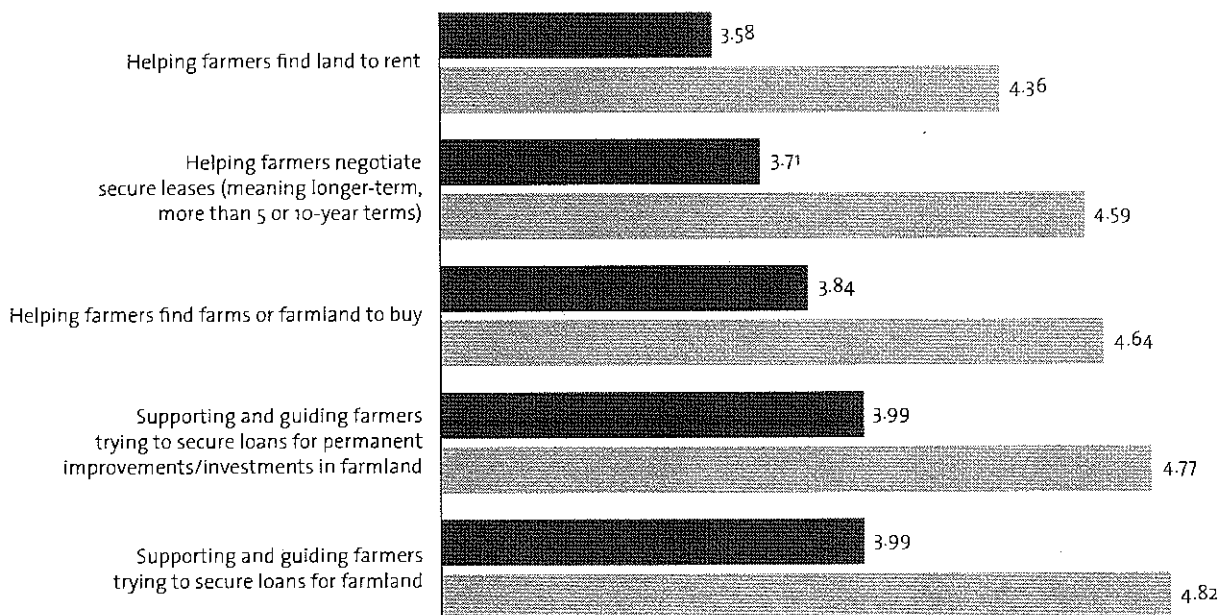
Looking back on the process, Alice said finding the right piece of land was one of the biggest challenges. "It's not easy," she said. "You need to understand that you have to court the people you're buying from."

Their search began on a promising note. They had been determined to stay in the black dirt region—a 26,000-acre swath of highly fertile, swampy land that once was a glacial lake, and where development is restricted due to the soil structure. In early 2010 they found a 7-acre property: It had two crumbling

Desire For Help

Assistance with loans for farmland and improvements were given the highest average rating among start-up farmers and all Greenmarket farmers.

PERCENTAGE OF FARMERS RANKING THE IMPORTANCE OF VARIOUS FORMS OF ASSISTANCE



Average rating among all Greenmarket farmers
 Average rating among start-up Greenmarket farmers

Survey Question: Regarding assistance for farmers, how important do you think the following are: [Rate 1 (low) to 5 (high)]?
 *Based on 139 unfiltered responses and 22 responses filtered for start-up farmers.

barns, and the \$140,000 asking price was significantly higher than the going rate of about \$5,000 per acre. Still, its location and small size were perfect for their start-up needs.

But there was a problem. The non-farmer landowner had no interest in renting it, having had a negative experience with a previous renter. His business was faltering and he needed money from a sale. The Masons, meanwhile, had little chance of financing a land purchase without income, a credit history, or equity.

A Farm Service Agency official told Brian the agency had reached its budget limit for 2010, and was therefore not an option. The couple planned to apply in 2011, but needed to find an alternative solution in the meantime.

Farm Credit wasn't an option either, said Brian, because the Masons didn't have three years worth of business income tax statements. Alice added that the Farm Credit official told them to look into its Farm Start program for beginning farmers. But the Masons never did, because of frustrations they felt during that meeting. "He was very paperwork-oriented," said Alice of the Farm Credit employee. "We didn't look good on paper and he didn't see beyond that."

So the Masons asked the landowner if he would agree to a lease with an option to buy. He said no. While he had wanted the land to stay in farming, his realtor, who had no agriculture experience and was unsympathetic to the Masons' situation, warned him the arrangement was too risky, said Alice.

The Masons' realtor, however, was a major source of help, she said. He had local farming knowledge and could vouch for them. He explained to the landowner that they were local, trustworthy farmers with good reputations.

It worked. In April, 2010, the couple signed a two-year lease with an option to buy. Their rent was \$1,300 a month—mainly for the barn and property taxes.

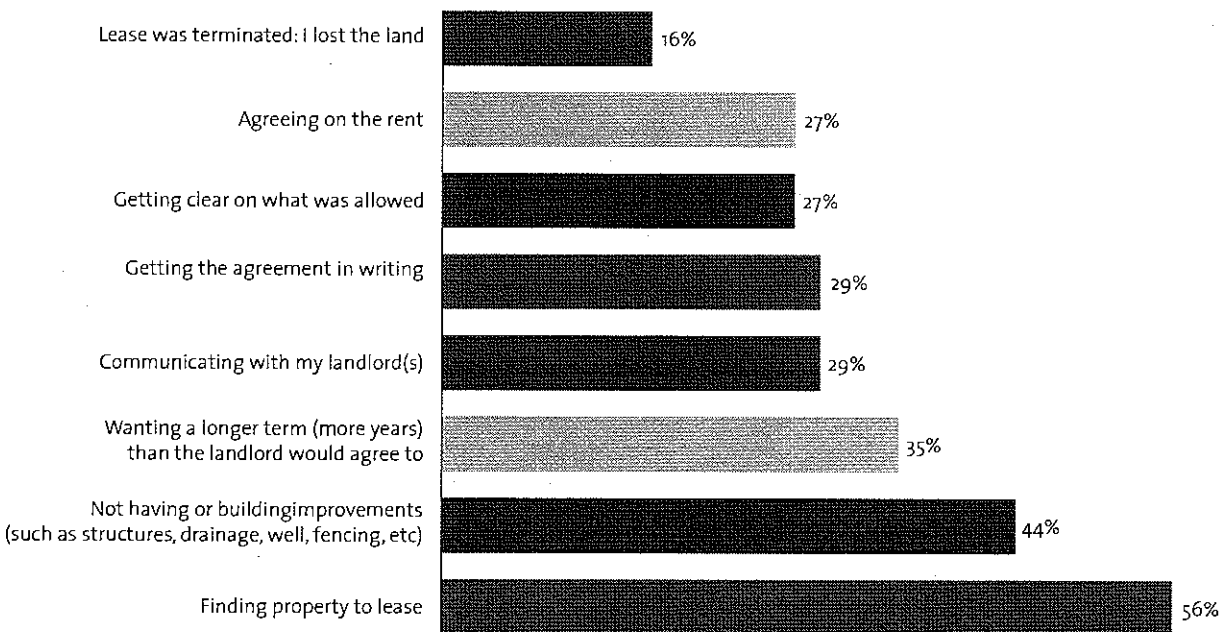
With plans to apply for the FSA farm ownership loan the following year, Brian and Alice made sure they crafted a lease that would meet the agency's requirements. They already took care of a major one: that applicants be the owner/operator of the farm once they purchase it. Next they had to secure a purchase offer from the owner. The final lease—meticulously written with various experts' advice—included that offer.

FSA approved their loan in May, 2011.

Challenges to Renting Farmland

Finding land is the top reported barrier for renters, followed by the constraints over having or building permanent improvements.

PERCENTAGE OF FARMERS CITING VARIOUS CHALLENGES TO RENTING FARMLAND



Survey Question: If you have leased a farm or farmland in the past, what were the challenges you faced? (Check all that apply.)

*Based on 55 responses.

VOICES FROM THE SURVEY
On threats to land tenure:

"Most (of our 12 landlords) have an attachment to the land and are very happy to have someone farming it. However ... their children mostly do not have that attachment. ...I expect the next generation to be more interested in maximizing their return in any way they can—including selling for development."

"In 2008 (my) grandfather passed away, family situation got ugly. I bought whatever I could but lost quite a bit of my grandfather's property."

"[My] first landlord might be having problems with the mortgage....The second landlord has been trying to sell for two years but hasn't been able to sell."

Still, as they wait for a closing date, they continue to hit snags unique to the federal government's complex requirements and copious paperwork. The latest is that FSA must wait for an available bonded lawyer, which will take extra time. "It's a very confusing, complicated, makes-no-sense kind of thing," said Alice.

As for their daily living expenses, they've been approved for an FSA operating loan. But while waiting for the loan to come through they have had to cobble together resources for basic household expenses, even relying on food stamps for groceries.

New questions also constantly arise as the couple navigates the legal steps of starting a business. "There is nobody I can ask for free, and I can't afford to hire a lawyer," said Alice. "I have to figure it out on my own because that's the only choice I have."

Alice said she'd be happy to share her hard-earned knowledge with other farmers facing the same hurdles, so her valuable lessons can be put to good use.

Ron Sussman Cattle Farmer, Pennsylvania

- Technical Assistance
- Microfinancing
- Farm Retention Capital Fund

Ron Sussman financed his cattle farm with credit cards and equity from successful non-farming businesses he previously started. He is fighting the tide of conventional cattle farmers in his area who are selling to developers, thereby raising land prices beyond his reach. He has no written leases on the land he rents, and has no choice but to pay for high-cost fencing that he will have to abandon when the relationship ends.

Ron Sussman has been running his cattle farm for three years. "I could not be doing what I'm doing if I didn't already have other successful businesses to lean on," he told Greenmarket. In his first year, Ron leveraged equity in his other properties to buy 28 acres,

using a commercial bank loan. He has since found an additional 40 acres of pasture that he rents from three different landlords.

But soon, Ron will need to find more pastureland. While vegetable farmers can accumulate land gradually, livestock farmers—particularly those who raise large animals like cattle—need large parcels from the start, for hay as well as pasture. The three main criteria for good pasture are quality grass, a water source, and high-cost fencing—the combination of which can be difficult to find. Ron managed to outbid other farmers for a desirable 20-acre parcel that already had a fence—but now his annual rent there is \$80 an acre. On another parcel, Ron installed the fencing and negotiated five years of free rent in exchange. After that his rent will be \$40 an acre. Ron said he hasn't even considered asking the landowner to agree to buy the fence back if their arrangement comes to an end. "The fence becomes moot if the land is not farmed," he said.

Ron is surrounded by conventional livestock farmers in his area, who are suffering financially and increasingly selling their land to developers. The trend has put him at a disadvantage. "There was no possible way I could afford to buy the amount of acres I needed," he said. That's partly because of the incentive for landowners to sell rather than rent their land out. Ron cited an "enormous dichotomy" between market value and the return a landowner could make by renting to a farmer. For instance, a typical owner would rather sell a 50-acre parcel for \$6,000 per acre, or a total of \$300,000, as opposed to renting it out for \$40 per acre, or a mere \$2,000 a year—even when the savings from an agricultural tax assessment are taken into account, he said.

Ron enjoys strong relationships with his landlords—two of whom are actively farming. But without any written leases, he acknowledges he's vulnerable. One of the properties, for instance, is owned by an older man who recently had a heart attack. What would happen to the farm if he passed away? "That's certainly an unknown," he said.

But many landowners would balk at a 10-year lease, he said, recalling one "old-timer" who objected to the mere idea of a written lease. "He felt his handshake was as good as anything."

Still, Ron recently started pushing the idea with a new possible landlord. "I'm getting more uncomfortable with the money I'm putting into these properties," he said.

Meanwhile, Ron has had to use credit cards to finance his start-up capital of \$60,000. That has lowered his credit score because his credit report doesn't specify the low interest rates he was able to get. "It looks like my credit is maxed out," he said.

The other downside is the risk that he might not pay off the balances before the low rates expire. If that happens, he'll need to find other financing quickly. He's worried that in this economic climate, his local commercial bank might not help him as much as it has in the past.

"For lenders, I'm extended to the max," he said, noting how conservative the commercial lending environment is today. "And being a start-up, I don't have significant income. This is the first year I can show decent income." Echoing the complaints of many farmers, Ron said commercial banks don't use farmer-friendly lending criteria. They require larger profit margins and frown on the high risk inherent in farming. So he plans to try Farm Credit if he needs more financing. "Farm Credit is a new thing for me," he said. Since he has other businesses to fall back on, Ron said he's probably more comfortable than other start-up farmers at the idea of approaching a lender like Farm Credit for the first time. "If I didn't have that it'd be a lot scarier," he said. "It's intimidating to walk into a place and face the risk of someone saying hey, you don't have what it takes."

Susan Crosby Vegetable Farmer, New Jersey

- Technical Assistance
- Microfinancing
- Farm Retention Capital Fund

Susan Crosby represents the start-up farmer who has learned first hand the importance of a written, farmer-friendly lease. She's also one of countless farmers in the Northeastern U.S. to have suffered major losses from Hurricane Irene.

Vegetable farmer Susan Crosby has been running her own farm on 75 rented acres since 2008. In that short time, she has built

one of Greenmarket's most popular farm stands, a favorite with chefs and home-cooks alike. Sales at her four weekly Greenmarket locations are reliable and steadily growing.

A big part of her success comes from the \$250,000 worth of permanent improvements she has put into the land she farms: mainly a well, electricity and seven greenhouses. She paid for them with interest-free loans from her mother and a loyal customer, knowing that her accounting records would have failed to convince a bank she had the cash flow to cover loan payments. A lending officer from Farm Credit explained she also lacked the three years' of business income records needed to even qualify for bank loans. Although she had many years of experience working on a farm, she had been running her own business for less than a year. (The Farm Credit official she spoke to on the phone did not refer her to its Farm Start program for beginning farmers, she said.)

But the personal loans were a mixed blessing. Susan doubts her landlord will renew her 3-year lease when it expires at the end of 2012. Since her lease says nothing about her landlord buying the permanent improvements upon lease termination, she's convinced she'll have to forfeit much of her investment.

Her outstanding debt is about \$100,000, which includes the personal loans, credit card debt, and financing from John Deere for tractors and other small equipment.

Not wanting to increase her debt burden, she chose not to apply for an emergency loan when Hurricane Irene hit in August and wiped out about \$70,000 worth of her crops—mostly vine crops like squash and melons, and underground vegetables like sweet potatoes that are rotting in the soil. Susan had no crop insurance, and has instead found ways absorb the financial hit. In September she laid off three workers. In October she ran out of vegetables and was forced to shut her market stall down until next season, shaving six months off her year-round sales schedule.

At this point, she'd like to buy land and has the money for a down payment. But she is struggling to find affordable, suitable property. And even if she did, she suspects her record-keeping will once again prevent her from getting a loan.

Susan vowed that if she can't find land to buy, or a rental property with at least a six-year lease, she will move to Mexico. The reason is simple, she said: "I can't afford to live here."

VOICES FROM THE SURVEY

On securing financing:

"As a new farmer, lenders (are) unable to consider income generated from business for first two years. Therefore, all I show is outgoing money, not incoming."

"Finance seems to be the most difficult issue. Once you mention...agriculture (banks) do not want to get involved. They say ag business is too risky."

The Early-Career Farmer: 5 to 10 Years

Summary

After running their own farm business for at least five years, Greenmarket farmers typically graduate to the next stage of growth. They have learned how to make money selling their products, and many have even managed to accumulate savings and avoid debt. Their thoughts turn to expansion. They desire more than ever to stay put so they can invest in their farm without fear of losing those investments. They've farmed the same soil for a few years, and are seeing higher and more flavorful yields thanks to the soil's increased nutrient-content. They are eager to continue enriching the soil for years to come.

By this time, many have also experienced first hand the challenges of communicating with non-farmer landlords. We heard the same sentiment repeatedly from Greenmarket farmers: in the words of one livestock farmer, "Landlords don't have a clue of what it takes to farm." In worst-case scenarios in which the relationship ended, farmers have had to move fully functioning farm operations. This has multiple implications: It means walking away from permanent land and building improvements; re-establishing a reputation among new neighbors; building a new customer base for those farmers who sell locally as well as at Greenmarket; relearning local zoning laws and regulations; and finding new local resources like agricultural extension agents. Finally, there is the daunting task of moving expensive, high-tech equipment like greenhouses and milking machines.

Thirty two percent of renters said as far as they know, the land they occupy—a combined 3,135 acres—is at risk of being taken away. Two thirds of those farmers rent their base farmland, making them more vulnerable than the respondents who own their base and rent only supplemental land. The leading perceived threat was that it might be sold for development (64 percent), followed by transferred due to death, illness or foreclosure (32 percent), and finally that it might be rented to another farmer (24 percent).

Still, few renters expressed confidence in pursuing rental leases with farmer-friendly terms. Many farmers told us their landlord would scoff at a lease requiring them to buy permanent improvements from the farmer if and when the lease terminates because those improvements would have no value to future occupants if the land does not remain a farm.

Still, about one fifth of farmers said they'd like to install permanent improvements on rented land, even though getting loans for them could be a challenge. FSA, for instance, requires an applicant to produce a lease agreement compatible with the life of whatever the investment is, to ensure the farmer could stay long enough to earn a return and repay the loan.

Of the 19 farmers who said they'd need a loan to install permanent improvements on rented land in the future, 11 said they don't feel prepared to apply for the loan. Eight farmers said they didn't think they could get a loan because the improvements would be on rented land.

The wish among early-career farmers to live on the farm also grows stronger. One third of Greenmarket farmers do not live on their base farm. But many young farmers described the toll taken by late night drives from home to farm to—for instance—reposition irrigation pipes or check the incubator to see if eggs are hatching. Their concern with security at the farm also intensifies, as they amass more expensive equipment.

A significant portion of farmers at this stage still don't feel prepared to apply for loans to purchase land. Nearly three quarters of the 53 growers with 10 years or less experience said they'd like to finance a farm purchase in the future. But only half of those aspiring farm buyers said they feel prepared to apply for a loan. The most commonly mentioned obstacles—among the 27 respondents who answered a short-answer question to describe them—were:

- Lack of credit
- Lack of equity
- Lack of collateral
- Lack of income
- Lack of funds for a down payment

Other obstacles mentioned included:

- High land prices
- Difficulty finding land
- The need for thorough accounting records/complications with income verification
- Too much debt
- Not knowing where to go or whom to ask
- Overwhelming paperwork

The USDA's Farm Service Agency has two farm-ownership programs targeted specifically to beginning farmers, whom they define as running a farm for 10 years or less. The direct farm ownership loan has a loan cap of \$300,000, with a 40-year fixed rate of 5 percent, and no down payment. Since it's rare to find farms for less than \$300,000 in the region surrounding New York City, FSA also says that if a borrower gets a second mortgage, FSA will subordinate its loan to that of the other lender. Even with the \$300,000 cap, demand almost always exceeds supply, according to research by the American Farmland Trust.

The second is a farm down payment program, in which the applicant puts down 5 percent of the purchase price, and FSA finances 45 percent for a 20-year term at a fixed rate, which now hovers at around 1.5 percent. The other 50 percent must then be obtained from a commercial lender or a private party. The program is particularly useful for landowners who want to transfer the land but still hold part of mortgage. The purchase price, however, can't exceed \$500,000, which limits the usefulness of this program for Greenmarket farmers due to land prices in our region.

Once again, the many moving parts that must be in place for a federal government loan to be processed, approved, and funded is a major barrier to Greenmarket farmers. The period it takes for some loans to come through can be several months—time farmers can ill-afford when they're competing against other hopeful buyers.

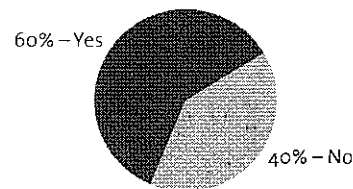
Expansion

Nearly 80% of early-career Greenmarket farmers want to expand.

PERCENTAGE OF EARLY-CAREER FARMERS WITH PLANS TO EXPAND, COMPARED TO THAT OF ALL GREENMARKET FARMERS



Early-Career Farmers



All Greenmarket Farmers

Survey Question: Do you have plans to expand your farming operation?

*Based on 29 responses for early-career farmers, and 151 for all Greenmarket farmers.

Main Goals of Early-Career Farmers

- Expand the business
- Invest in land and building improvements
- Buy land or secure a long-term rental arrangement
- Live on the farm
- Avoid credit card debt

Technical Assistance Needs

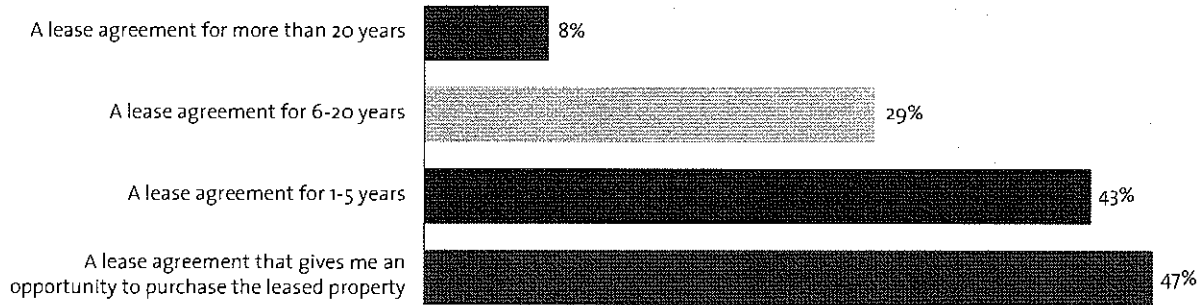
- Drafting leases with farmer-friendly terms
- Navigating and completing loan paperwork
- Finding lenders
- Finding agricultural grant programs
- Finding land to buy or rent long-term

Financial Assistance Needs

- Operating line-of-credit: \$25,000-\$50,000; particularly during pre-season months. (More revenue is coming in which accounts for the slight drop from the previous career stage.)
 - The need for an operating line of credit can often be alleviated through careful budgeting or a business model that takes into account the high costs faced by farmers in early spring. Technical assistance in this area could help some farmers reduce the need for pre-season credit.
 - Farmland mortgage: upwards of \$1,200,000, depending on acreage, existing structures, location
- Farmland mortgage down-payment: upwards of \$300,000, depending on acreage, existing structures, location
- Loans for one-time expenses like larger and more advanced machinery, buildings and structures, or permanent improvements like irrigation and fencing: \$5,000 to \$100,000

Lease Preferences

Nearly half of farmers looking to rent prefer a lease agreement that gives them the option to purchase the property.

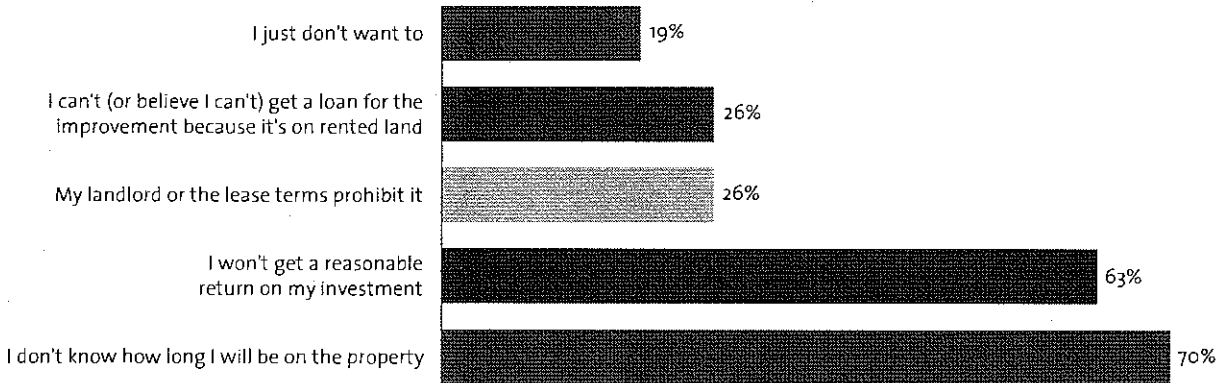


Survey Question: If you would like to rent land or rent more land, which of the following best describes your goals? (Check all that apply.)

*Based on 51 responses.

Barriers to Installing Improvements

Fifty two percent of renters have not installed improvements on the property they lease. Lack of a return-on-investment and uncertainty about length of stay were the most commonly cited reasons.

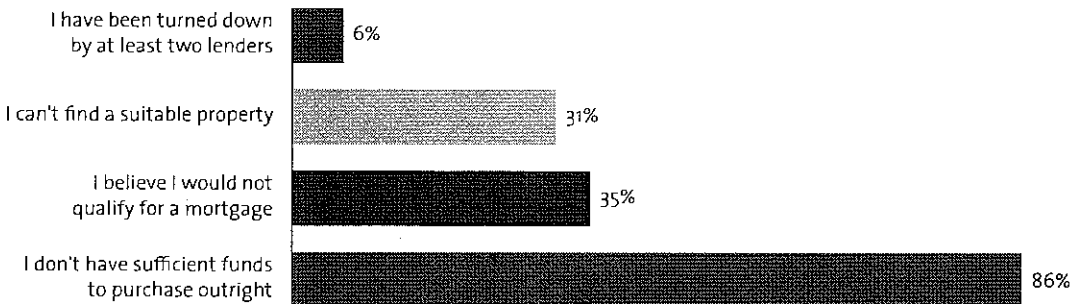


Survey Question: If no, what are the barriers that prevent you from doing so? (Check all that apply.)
(This follows a yes-or-no question on whether the renter has installed any improvements on the leased land.)

*Based on 27 responses.

Barriers to Owning

Farmers cited financing as the primary barrier to ownership.



Survey Question: If you would like to own land or own more land, what are the barriers preventing you from achieving this goal? (Check all that apply.)

*Based on 83 responses.

Case Studies

Miguel Gonzalez Vegetable Farmer, New Jersey

- Technical Assistance
- Microfinancing
- Farm Retention Capital Fund

The land Miguel Gonzalez is now renting will likely be sold for development if Miguel can't come up with a down payment to purchase it. But his debt, including \$41,000 in credit card bills, is keeping him from thinking about anything beyond meeting his monthly minimum payments.

Miguel is a successful participant of the New Farmer Development Project, a Greenmarket program that helps new immigrants with farming experience in their home countries start farm businesses here. Since joining the program in 2002, he has expanded his business and now sells at six Greenmarket locations.

In 2008 Miguel began renting 40 acres on a 65-acre property in New Jersey from retired farmers Al Singer and his wife Lisa. He has a one-year lease that gets renewed each year, and his relationship with his landlords is strong. That's largely because the Singers are fellow farmers who appreciate the work Miguel puts into the farm and even lend an occasional hand when there's unexpected trouble like a broken down tractor. Miguel, in turn, often shares his harvest with them.

But like many life-long farmers, Al and Lisa are ready to retire, and they need to sell the farm to do it. When Miguel found the property in 2008, a deal Al Singer had made with a real estate developer planning a subdivision had just fallen through because of the housing crash. It was a lucky break for Miguel, and the highly fertile farmland was temporarily saved.

Today, the Singers say they would love for their property to stay in farming production, and they would be delighted to sell the land to Miguel, as long as they can make enough from the sale to retire comfortably and buy a small farm in the region.

Al Singer told Miguel he'd even take less than full market value, which could be as high as \$1.5 million. But he'd need substantially more than Miguel could afford on his full-time farmer's income.

But the clock is ticking. The cut-flower retail shop Al ran on farm property is now closed for good, and Ron has told Miguel that a farm sale is imminent. The farm represents the bulk of his equity, and he has no choice but to cash in on the land.

Miguel, meanwhile, is too preoccupied with his operating debt to think about how he could raise the funds to buy the Singers' farm—a virtual impossibility considering the land's high development value and the Singers' short time frame.

He has increased inventory by boosting crop yields. In order to do that he has used credit cards for equipment and operating expenses. His credit card debt, as of the spring of 2011, totaled \$41,000, on which he has been making only minimum monthly payments.

In early 2011 he was struggling to find funds to pay for operating costs and some small equipment, as he geared up for the start of the season. Although he had repaid the three loans he had gotten from NFDLP totaling nearly \$10,000, he was unable to secure another loan. The Farm Service Agency also rejected him, explaining that although he's in the U.S. legally, he falls short of its requirement that he be an American citizen or "qualified alien." His local commercial bank turned him down as well, on grounds that he didn't have enough experience.

The commercial bank, however, forwarded his application to two non-profit institutions that administer micro-loans funded by the U.S. Small Business Administration. After visiting his farm, both lenders gave him working capital loans—one for \$25,000 and the other for \$15,000—using his equipment for collateral.

Throughout this process Miguel knows that if he doesn't come up with a down payment for the Singers' farm in the next few years, he will likely lose the land. That means walking away from 65 tillable acres and 13 greenhouses. He'll also forfeit \$8,000 worth of irrigation he has installed, since his lease has no buyout stipulation.

VOICES FROM THE SURVEY

On the desire to own:

"I can't express the uneasy feeling I have every day trying to come up with a reasonable way to make a permanent place there. Losing our [previous] 200 acres... really hurt because the purchasers have no intention to farm. We... are having an extremely hard time recovering from that loss."

"I would not make major improvements on land I do not own."

"We really need help to acquire the 40+ acres we are on, to secure our future in farming."

VOICES FROM THE SURVEY

On relationships with landlords: *"[The landowner] thought that mixed organic crops (with weeds) didn't look as nice as a conventionally grown cornfield, so I lost the field."*

Miguel told us his biggest need now is professional advice, as much for his landlord as for him. When he talks to Al about alternative ownership transfer arrangements, such as Al financing the sale himself, or a third party purchasing development rights, or a combination of the two, Al suggests they get guidance from farm preservation experts. "But who is that person?" asked Miguel.

Aaron and Lucy Shaw Dairy Farmers, New Jersey

- Technical Assistance
- Microfinancing
- Farm Retention Capital Fund

In 2010 the Shaws fulfilled their dream of owning their own farm, which has since blossomed into one of Greenmarket's strongest examples of sustainable agriculture. But they had to overcome significant obstacles to do it. They prevailed in a nasty dispute with their former landlord. Then they had to convince the bank to loan them a mortgage despite their unconventional dairy-farming model. A Greenmarket mentoring program would seek to tap the unusually high level of expertise the Shaws brought to their dilemma, so they could share their knowledge with other farmers and help make successes like theirs the norm rather than the exception.

After renting in Sussex County for eight years, Aaron and Lucy Shaw bought 185 acres in Milford, New Jersey for their dairy and cheese-making operation in 2010. Graduating to owning from renting has transformed their approach to their land and their farm, said Aaron.

"Once settled on owned land, you can construct the infrastructure that best suits the well-being of the livestock," he explained. "As renters, we were constrained by the landowners' opinions about how the property should be kept." Their landlords, like many non-farmers, had gross misconceptions about farm life, he added. "A pasture will never look as tidy as a hayfield; those darn cows just don't care to keep it neat and tidy."

The Shaws wisely required their former landowners to agree to buy all their immovable improvements when the lease ended. They were able to bring with them other equipment, like a cheese vat, boiler, and portable fencing. Moving their customer

base was not as easy, but their efforts in publicizing the move are paying off.

The business is stable for now. They're heavily leveraged by their mortgage, which they got after a painstaking process of convincing Farm Credit they could afford it, with a 4-percent floating interest rate. They also helped finance their purchase by selling the development rights to the county—which used funds from the Open Space Institute. While that brought the price of the farm down by half, it nearly cost them their mortgage, said Aaron. That's because Farm Credit valued the barn the Shaws planned to build at half the cost of construction—since it could only be used for agriculture. But with a loan guarantee from FSA and the persuasive skills of the Shaws, Farm Credit ultimately granted the loan.

"We managed to convince them on the strength of our business plan," said Aaron. He added that banks are often uncomfortable with unconventional business models like theirs, which requires rotational grazing that leaves tracts of land untouched for multiple seasons so the soil can rebuild itself. "They don't value the long-term ecological benefits of what we're doing."

The Shaws are focused on steadily increasing their herd so they can keep paying off the mortgage and be in a position to invest in the farm once again. Next on their list? Upgrades to the barnyard, water trough system, and peripheral fencing.

Rob and Dana Marion Vegetable Farmers, New York

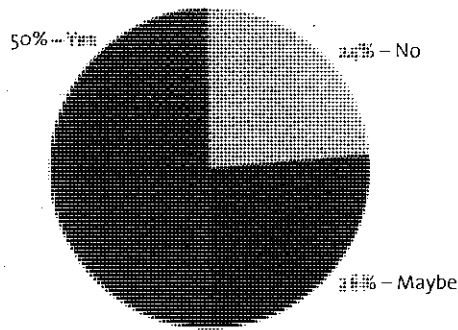
- Technical Assistance
- Microfinancing
- Farm Retention Capital Fund

Rob and Dana Marion didn't think they could afford the 82-acre farm they had been renting for eight years. In the spring of 2011 they bought the land after several well-timed factors fell into place. Most importantly, a land conservancy brought the price down by buying an easement on the land, and a neighbor gave them a mortgage at a fixed, low interest rate. With Greenmarket's help matching farmer-friendly landowners with successful farmers, providing financing for working capital or mortgages, and contributing capital toward the purchase of easements, farmers could boast success stories like these more often.

Farm-Loan Readiness

Only half of farmers with 0 to 10 years experience running their own farm feel prepared to apply for a farm loan.

PERCENTAGE OF FARMERS WITH 0 TO 10 YEARS EXPERIENCE RUNNING THEIR OWN FARM WHO FEEL PREPARED TO APPLY FOR A FARM LOAN



Survey Question: If you want to finance a purchase of a farm or farmland in the future, do you feel prepared to apply for a loan?

*Based on 38 responses.

Rob and Dana Marion considered themselves lucky when they found an 82-acre farm for rent in Dana's hometown. They had been eager to launch a full-size farm business after getting their start as a small nursery on Dana's mother's property. The landowner was not a farmer himself, but liked the Marions and often gave them extra support in the eight years they rented from him. He let them build a cabin to live in on the farm. And he split the cost of an underground irrigation system with them.

But the couple yearned for security. Although their lease was for a five-year term—that was the minimum required by the state for the owner to get the land tax assessed at agricultural value—it also stipulated that the landowner could terminate with 120 days notice if the Marions broke certain rules, or if the owner decided to sell, or if his children inherited the farm. "It said five years, but really it was 120 days," said Dana. What's more, it lacked a buyout stipulation that would have required the landowner to buy any immovable improvements the Marions installed or built on the farm.

As renters, they also lacked the equity and collateral to get many loans. They tried FSA, but found the staff they dealt with "very unapproachable," said Rob. "We were very intimidated by the whole thing," he added.

So the couple found creative ways to fund their annual operating and working-capital costs. They borrowed from Dana's mother, and took out a personal loan for their van, thanks to their good credit history. A neighbor gave them a hoop house

he wasn't using. They maxed out their credit cards, playing the all-too-common game of moving their balance from card to card just before the low interest rate expired.

Eventually they had enough experience to qualify for a revolving line of credit from Farm Credit East, using their equipment as collateral. Like many Greenmarket farmers, the Marions still depend on that line of credit, drawing on it usually in the early spring and gradually paying it down monthly.

But access to larger loans for one-time capital purchases was still severely limited.

When the owner decided to sell his land, he gave the Marions the first right of purchase. They couldn't afford his asking price of \$495,000—the appraised market value. Over the next year they searched for a solution, while the owner—who had come to know and respect the Marions' organic farming methods—turned down a competing offer to give them time to come up with the funds.

That gesture proved to be the first in an unusual string of good fortunes that ultimately propelled the Marions to farm ownership.

The Marions found out from their local land conservancy that the farm fell into a region targeted by a regional land conservancy for farm preservation. That group funded the purchase of an easement on the property, bringing the price down by 45 percent.

The deal hinged on the good will of a neighbor, who donated his easement to sweeten the pot for the preservation group. That same neighbor then gave the Marions the mortgage that allowed them to buy the farm they had been renting: a 30-year term, with a fixed interest rate of 4.5 percent. No down payment. No future balloon payments. The reason he did it? So the Marions would stay put and farm his land too. They happily obliged.

"We've fallen into an incredibly unique, very lucky situation, where the existing landowner was incredibly encouraging to new, young farmers," said Rob. "We have a new neighbor with the means to provide a mortgage and lease us their farm also, with the understanding that we are not so new and young anymore, and we have the experience and tools to work this soil." He added: "This is all coming from people with a resource base, encouraging people with less of resource base, and willing to work."

The Marions were equally grateful for their land conservation allies. Both groups helped the Marions at no charge, although the couple still had to hire an outside lawyer to help draft the easement. That lawyer "charged us a fortune," said Dana.

The Mid-Career Farmer: 10 to 20 Years

Summary

Greenmarket farmers with this level of experience tend to think once again about scaling up, only this time, the scale can be significantly larger with such investments as more livestock, additional land, and large-scale processing, refrigeration and storage equipment. To raise capital for this expansion, landowning farmers might look to sell their development rights, or turn to family and friends if they don't want to take on more debt. Renters, meanwhile, need to find other sources of funding, like friends, family or private investors.

The stakes are higher at this career stage because most farmers have mortgages as well. Over 90 percent of farmers with more than 10 years experience own their base farm. Roughly one third of those farmers have a conventional mortgage. For them, calamities like punishing weather or crop disease can mean losing the farm. One farmer said on some nights he wakes up in a cold sweat worrying about whether he can meet his payments.

Expansion continues to be a goal for farmers at this stage. Typically this means acquiring more land. Many experienced farmers explained that owning their base farm while expanding

onto rented land over the course of their career has afforded them the ability to grow their business. But the arrangement works only because they have secure possession of the heart of their farm, where they can concentrate their permanent investments. Twenty two percent of farmers with more than 10 years experience said that in order to expand they would need to acquire more land—a combined 2,890 acres. To buy that land would mean overcoming several barriers; the difficulty finding suitable land and the perceived inability to get a mortgage were commonly cited by farmers in the survey and in personal conversations.

As farmers become more business savvy, they're thinking more creatively about how to move their business to the next level. That could mean more aggressive marketing, launching value-added products or diversifying their product offerings. While some of these steps can be accomplished with little funding, others demand significant sums of capital, as well as a network of potential business partners.

The lessons many farmers have learned by this time in their career would make many of them excellent mentors for their less experienced colleagues.

Main Goals of Mid-Career Farmers

- Consolidate operation to one location
- Continue expanding, perhaps diversify product offerings
- Buy or rent more land
- Buy a home
- Increase workforce

Technical Assistance Needs

- Assistance with labor regulations in terms of housing and immigration status
- Help finding more land to rent or buy near the home farm
- Landlord-tenant mediation/negotiation
- Help coordinating multiple entities willing to finance a land purchase, including non-profits, preservation groups, municipalities, the landowner, etc.

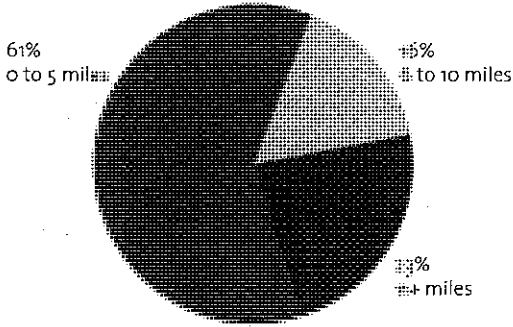
Financial Assistance Needs

- Farmland mortgage: upwards of \$1,200,000, depending on acreage, existing structures, location
- Farmland mortgage down-payment: upwards of \$300,000, depending on acreage, existing structures, location
- Start-up capital for farmers diversifying or introducing value added products: between \$10,000 - \$100,000
 - Farmers who look to diversify are often able to add crops or products which make use of equipment they already own. This can allow for diversification at a relatively low cost. Other crops or value-added products require specialized equipment, resulting in a higher investment.
- Operating loans for labor housing: \$5,000 – \$20,000
 - Farmers may install a trailer or two on their property, where labor can live throughout the season.

Travel Between Farm Sites

Nearly half of Greenmarket farmers farm more than one parcel. Of those, nearly a quarter travel more than 10 miles between them.

DISTANCES FARMERS TRAVEL BETWEEN PROPERTIES



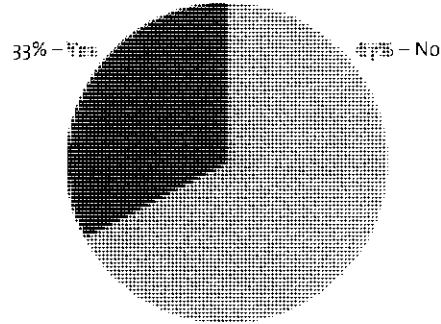
Survey Question: If you farm more than one property, what is the maximum distance between parcels that you farm?

*Based on 74 responses.

Living Away from the Farm

Most Greenmarket farmers who rent their base farmland live away from the farm.

PERCENTAGE OF RENTERS WHO LIVE ON THEIR BASE FARM



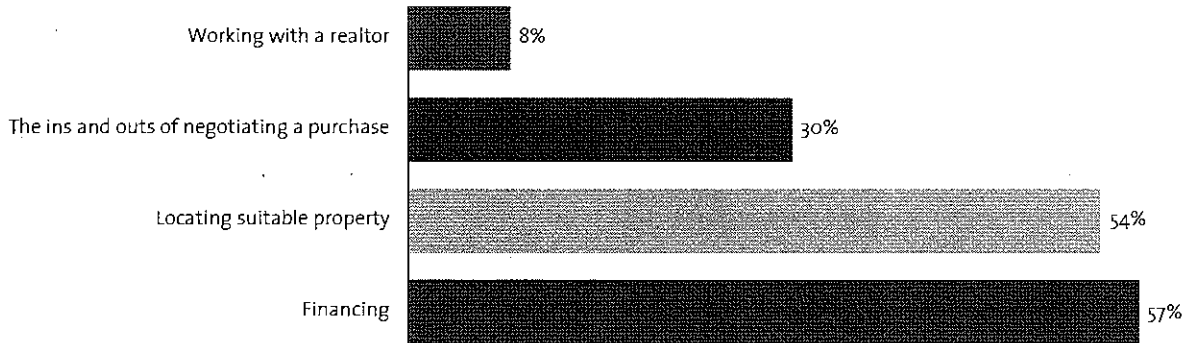
Survey Question: Does your "base" farmland (meaning the primary land that you farm) include the house you live in?

*Based on 30 responses.

Obstacles to Purchasing Farmland

Financing and finding suitable land were the most commonly cited challenges to buying a farm or farmland among farmers who have purchased land.

PERCENTAGE OF FARMERS WHO CITED VARIOUS CHALLENGES TO PURCHASING FARMLAND



Survey Question: What were the biggest challenges/obstacles you faced in purchasing property in the past? (Check all that apply.)

*Based on 91 responses.

VOICES FROM THE SURVEY

On challenges to acquiring land:

"There is land available right here, but it is extremely overpriced for what it is, and what its capacity is."

"We rent my father's land, and home, and we live with him. It is a satisfactory arrangement, although we would like to buy. He does not want to sell to us because we have siblings to whom the property will need to be divided in some way when he passes."

Case Studies

Greg Dumont Orchard Farmer, New York

- Technical Assistance
- Microfinancing
- Farm Retention Capital Fund

Greg Dumont is focused on two main transitions at this point in his career: consolidating operations to his home farm, and formulating a succession plan to pass the farm to his children. He also suffered major losses from Hurricane Irene.

The family farm Greg Dumont grew up on was nearly bankrupt before he joined Greenmarket in 1984. Today he sells at 10 markets a week and employs 10 full-time and 20 seasonal workers. Over the years he has scaled up production and increased profitability by acquiring more land and continuously modernizing the farm. In 2010 he reached a pinnacle in his career with the completion of a state-of-the-art cooling and packing facility.

Greg had long dreamt of building the cooling facility on his 200-acre home farm so he could consolidate his operations there. His story underscores the value farmers place on being able to concentrate investments in a single main location. Greg took on nearly \$1 million in new debt to make it happen: the packing facility, plus two new parcels of nearby land. He took all three loans from Farm Credit, thanks to his long credit history and thriving business.

Greg ticked off a string of lessons he would impart to young farmers if he had the chance. "People look at me and say 'You're the big guy,'" he said. "We didn't used to be. You just need to work at it. It may take years."

One skill he's honed over the years is negotiating. In his recent push to consolidate, he spent three years searching for an orchard near the home farm. When he found 20 acres of prime orchard land three miles from his home, he knew not to be deterred by the \$850,000 asking price. He'd simply have to convince the non-farmer landowner to lower it, or be ready to walk away. "I can't grow enough peaches to pay for it," Greg told the owner. Thanks to a sagging real estate market and Greg's powers of persuasion, the owner lowered the price to \$440,000.

Greg takes a cautious business approach, knowing all too well the high-risk nature of farming. He has not sold the development rights on his home farm in case one or more of his children want to buy out their siblings and need to raise cash to do it. He also doesn't think he would have gotten the loan from Farm Credit for the cooling facility if the farm didn't have its development rights. The bank knows that if Greg defaults, the facility could be rented out as a commercial warehouse. (In Greenmarket's vision for a farmland capital fund, such agricultural improvements would be appraised at or near cost, regardless of their commercial or development value.)

Greg could have looked into selling the development rights on the 20 acres of orchard land to offset its purchase price. But part of the reason he liked the property was its 2,000 feet of road frontage, which makes it highly valuable to a developer should the business falter.

"When we buy land, we have always thought, 'How can we get out of it if we have a bad year?'" Greg said. "We've had a lot of bad years, and it can happen again."

In fact, it happened shortly after Greg uttered those words. When Hurricane Irene struck in August, it decimated his entire heirloom tomato crop, costing him tens of thousands of dollars in lost sales. Although he had crop insurance, it was designed for large-scale, single-crop farmers. Payouts were therefore based on wholesale prices for beefsteak tomatoes, covering a tiny fraction of his losses.

When business returns to normal, Greg will have to face the one concern that looms constantly in his mind: the transfer of his farm and farmland to his children. Greg is not ready to retire, and the children, all in their 20s, are not ready to take over. So the transfer must happen gradually, with each child working their way into the business over time, he said. After several years of trying to come up with the best solution, he's still not sure what the answer is. Two years ago he sought the advice of a consultant at Farm Credit. "I got frustrated with the whole thing and walked away and didn't do anything," he said. "I've learned a lot more than I care to know about this stuff, and I still don't think I've made a decision." What's missing, he said, is an objective voice to help him understand his options. "I still haven't found the advice that I think fits our situation," he said. "The temptation is to just say next year."

But farm-estate planners say the process takes a minimum of 10 years. Each year Greg delays, the pool of feasible options narrows while the successor's costs rise.

The Late-Career Farmer: 21 Years or More

Summary

Most Greenmarket farmers at this stage own their land and are beginning to think about what will happen to it once they retire. Nearly half of today's Greenmarket farmers will be retired by 2030, and they own a combined total of nearly 10,000 acres. Some have children who would like to take it over and have already formulated a succession plan. But our focus group and individual interviews revealed that many farmers who hope their children will take over have not yet decided how that will happen. The reasons vary between not having the time to research the options, to not finding a solution that feels right. One tricky question is how to realize the maximum equity from their land, while keeping the farm affordable for the next generation.

Many landowners without children to take over the farm told Greenmarket they'd like to see their land stay in farming, but they weren't prepared to commit to the idea of selling for less than market value if that's what it would take. Still, 52 percent told us they'd consider it. This was an encouraging sign for farmland preservation, especially when compared to the mere 5 percent who said they intended to sell their land for residential development.

Only 11 percent of Greenmarket farmers have sold the development rights on their land. Some farmers said they haven't because they want to retain its development value, either as collateral or as land they may choose to put up for sale if they or their children give up farming or retire. Others said

they tried but weren't eligible, and still others said the funding for the preservation program had run out. The process of selling the rights can take over a year—creating another disincentive for farmers who otherwise would want to preserve their farm. That's because once a landowner-farmer decides it's time to retire, uproot, and start the next chapter, he is often eager to get started and won't tolerate unnecessary delays.

Farmers at this stage are often ready for major life changes, such as downsizing or buying out siblings. But if those moves are not timed well, or unforeseen obstacles arise in the high-risk business of farming, there can be dire consequences since the farmer's largest assets—land and the structures on that land—are not liquid.

Case Study

Dale Wright
Dairy Farmer, New Jersey

- Technical Assistance
- Microfinancing
- Farm Retention Capital Fund

Dale Wright wants to pass his farm to his children, but doesn't want to repeat the same costly mistakes he made when he took over the farm from his father 27 years ago.

Main Goals of Late-Career Farmers

- Pay off debt
- Financial planning for a secure retirement
- Ensure their farm continues to be farmed – whether by their own children or not
- Sell their land to maximize profit

Technical Assistance Needs

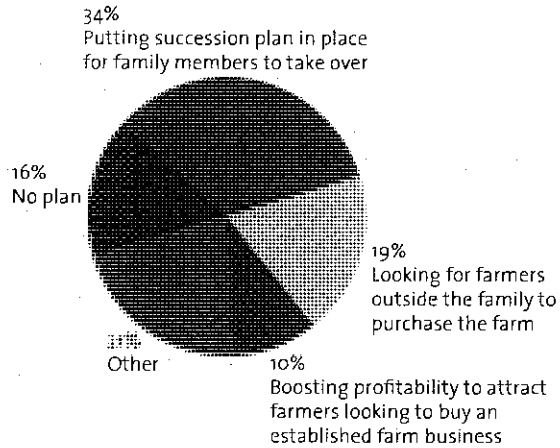
- Retirement planning
- Estate planning
- Succession planning
- Preserving the farm for continued production
- Finding a farmer to pass the business and/or land to

Financial Assistance Needs

- Enough cash to service debt, move and retire
- Funds to subsidize identified successors

Landowner Plans at a Glance

Landowners' efforts to ensure their land remains a working farm, compiled from short-answer descriptions by 58 farmers.

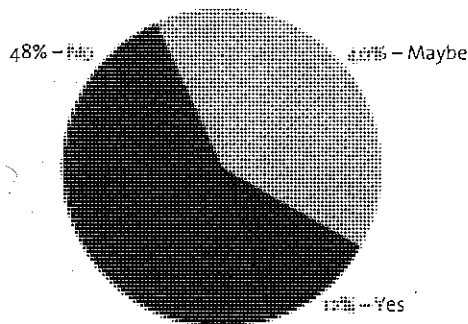


Survey Question: Please describe any measures you have taken to ensure your farm business continues operating after you retire.

*Based on 58 responses.

How Important is Market Value?

More than half of Greenmarket landowners would consider accepting less than market value so their land can be preserved as a working farm.



Survey Question: Would you consider accepting less than market value for your land in order to ensure it continues to be farmed?

*Based on 95 responses.

As Dale Wright approaches retirement, the need to find an economically feasible way to pass the farm to his children grows more pressing. His son works on the farm now, and he holds out hope that his daughter might one day join him.

But Dale hasn't started formulating a succession plan yet. "I haven't given it much thought, but we should," he said, recalling the exorbitant estate taxes he paid when he took over the land from his father due to poor estate planning.

Part of the problem is that Dale has been consumed by more immediate issues. Over the past few years all of his time and resources have gone into transitioning out of the money-losing milk business. Prices are too low, and in order for the business to support his own family and that of his son and daughter-in-law, he would have needed to double his herd. So five years ago he started selling produce. He got a \$50,000 loan from Farm Credit for a fresh round of start-up costs: equipment like a sprayer, a transplanter and a mower, and a truck for market transportation. Today the only dairy he sells is in the form of value-added products.

But the succession question won't go away, and Dale knows the cost of avoiding it. He bought the farm from his mother, who inherited it after his father passed away, in 1990. The only way he could afford it was by selling the development rights. "It was very stressful at the time," he said, explaining that he had to ask for less money in order to maximize his chances of qualifying for the highly competitive state conservation program. (This "bid-down" practice has since ended, although the program remains competitive.) Still, "it was basically free money, without which we probably would have had to sell the farm," he said.

Today the value of his land is once again on the rise after a period of decline, he said. And although he could probably sell it to a wealthy estate buyer, he feels strongly that it be maintained as a farm. He said he'd hold the mortgage for a farmer-buyer, since the interest he'd earn could prove to be as wise an investment as any he could make with a lump sum. He said he'd sacrifice some equity for his children—who like most farmers would be hard pressed to match an estate buyer's price.

Hammering out those details, however, will take time that he simply doesn't have at the moment.

VOICES FROM THE SURVEY

On securing equity from the land:

"If I sell my development rights on my property now, then how will I be able to retire?"

"I am concerned that future generations may have to sell/develop. 'Forever' is a long time."

"I would like to sell it as a farm, but as this area becomes more suburban, farming here becomes more and more difficult, even for me."

VOICES FROM THE SURVEY

On succession planning:

"I hope to be able to pass the business on to employees. We are working on a plan for succession."

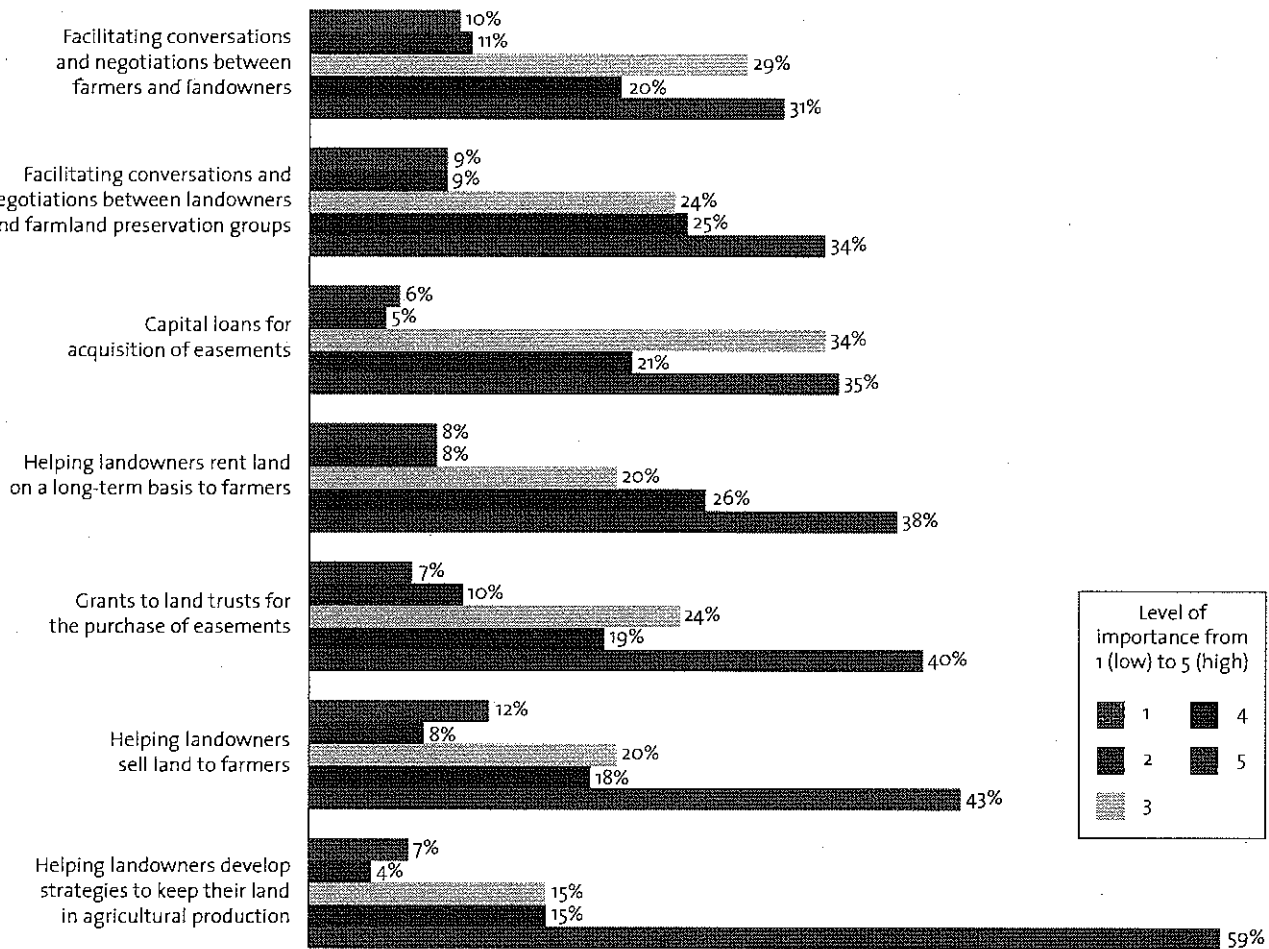
"It is not yet clear if our children will be interested in sustaining the farm after we retire... If our kids are not interested, we'd try to find a young couple who would want to buy it."

"We are always trying to bring in new, younger staff that can help to carry the farm into the future. It is not always easy to find the right match. Many people come and go, but when the time is right, presumably the right combination of personnel will gel..."

"I continue to plant my land with trees, so that the land remains an attractive business to a young hard working dreamer—whether family, friend or worker."

Desired Help for Landowners

Helping landowners keep their farms in production was one of many areas farmers said landowners need assistance.



Survey Question: Regarding assistance to landowners, how important do you think the following are: [Rate 1 (low) to 5 (high)]?

*Based on 125 responses.

Variations By Farm Type

The challenges outlined so far in this report apply to Greenmarket farmers of all types. Still, some needs vary according to what they produce. Below are some variations Greenmarket farmers told us about.

Costs

Vegetable Farms

- Vegetable farmers can largely begin their operations in year one with little built infrastructure, compensating with physical labor for what they lack in equipment. At its most basic, a vegetable farm can function with a simple washing and packing station, and few other built structures. Over time, however, these farms tend to become more sophisticated, adding greenhouses and larger, temperature-controlled storage facilities which allow for winter storage and sales.

Orchards

- Orchards rely on a special form of infrastructure—perennial trees and shrubs—which require a larger up-front investment, but may not see the literal fruits of this investment for several years.
- The biggest operating expense for orchards is their bills for fertilizers, pesticides, and insecticides. This can cost as much as \$1,000/acre annually, though this number can vary greatly from season to season, depending on the disease and insect pressure in a given year. In addition to the yearly cost of the chemicals, most orchards must also own their own ground equipment for spraying. One farmer recently put up \$12,000 for a used sprayer. He estimated that a new one would cost \$30,000.
- Orchards rely more heavily on storage than many vegetable farmers, since proper storage allows farmers to prolong the life of their harvest.

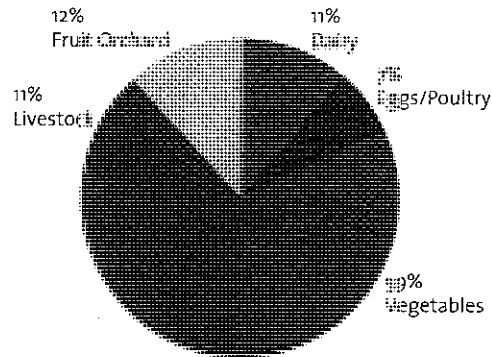
Poultry, Dairy, and Livestock

- Those farms that raise animals as their primary crop—be it livestock, dairy, or poultry—also require a greater level of initial infrastructure to support their business. This includes specialized facilities to house animals, extract and store products like milk or eggs, as well as processing equipment and facilities. Fencing was repeatedly cited as a high-cost

Greenmarket's Edible-Products Farmers

The vast majority of Greenmarket's producers are vegetable farmers.

PERCENTAGE OF GREENMARKET FARMS BY TYPE



Survey Question: What type of farm do you run?

*Based on 123 responses.

item that is important to vegetable farmers, but essential for livestock producers.

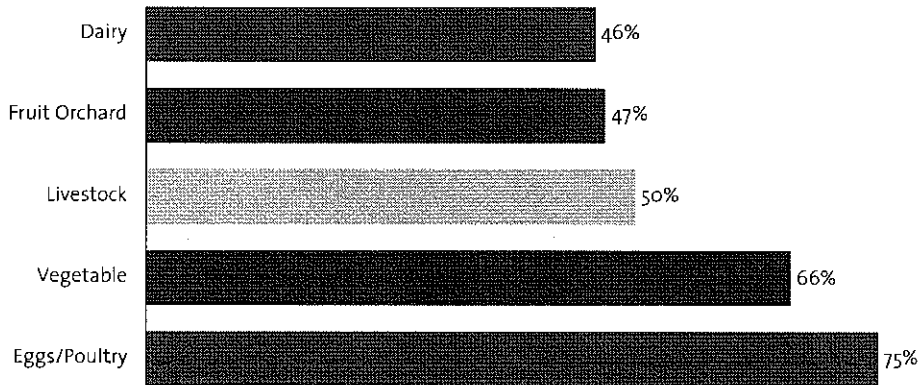
- Purchasing animals also represents a high cost at the outset of a farmer's business. One poultry farmer chose to install a processing facility on his property before he began raising birds, so that he would begin to see income during the fledgling stage of his business.
- Whether a farmer chooses to produce their own feed or purchase feed, the cost of feed and its storage is significant.
- Paying an outside processing facility adds sizable costs as well. One poultry farmer estimated that it cost anywhere from \$2 to \$4 per chicken at a USDA-approved slaughtering and processing facility. Another farmer predicted that it could easily be twice this. All large-animal producers must process their animals at an outside facility. For those farmers who can process their own product—namely small poultry operations or dairy farms—installation of facilities can represent both potential added income, if you process for other farms, but also very high cost. One farmer estimated the cost of installing a processing facility at \$250,000.
- Livestock farmers can also require more permits and be subject to more inspections than other types of farmers, bringing added costs and technical challenges.

Farm Type Influences Factors Like...

Expansion Plans

Egg and poultry farmers was the group with the highest percentage of those wishing to expand, followed by vegetable farmers.

PERCENTAGE OF FARMERS WITH THE DESIRE TO EXPAND, BY FARM TYPE



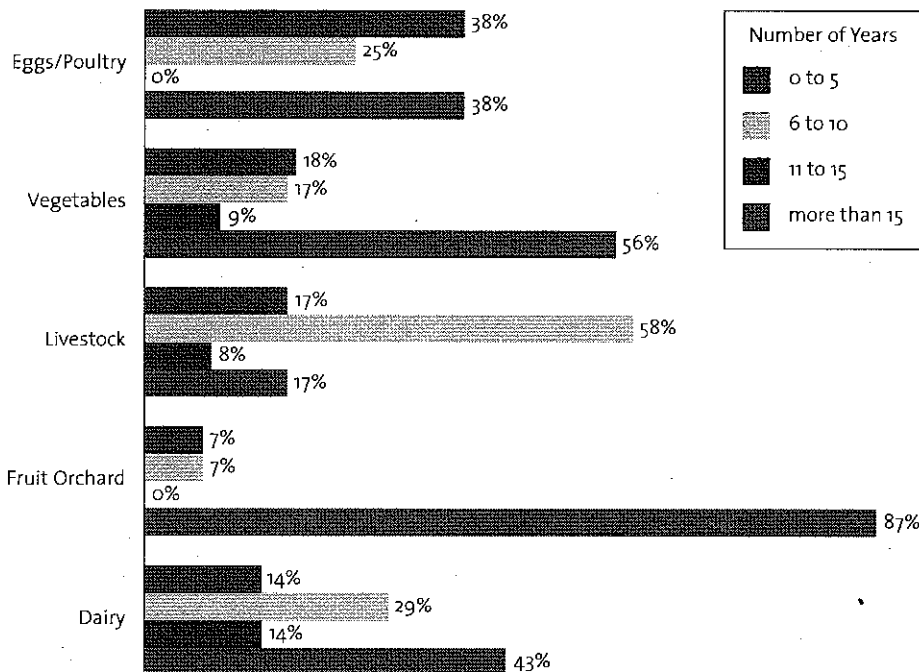
Survey Question: Do you have plans to expand your farming operation?

*Based on 118 responses.

Experience

Start-up farmers dominate the eggs and poultry group, while orchard farmers have the highest percentage of very experienced farmers.

LENGTH OF TIME RUNNING FARM BY FARM TYPE



Survey Question: How many years have you been running your own farm?

*Based on 120 responses.

Finding Land

Vegetable

- Leases were an unpopular option across all farm types. However, because vegetable farmers are able to begin earning some income in year one, combined with their ability to function with very basic—and often movable—infrastructure, vegetable farmers are more likely to accept short-term leases than other farm types.
- Water is an important consideration for every farm, but this is perhaps most essential for vegetable farmers, followed closely by orchards.
- A unique feature of the New York State farming landscape is the “Black Dirt” region. Due to a unique geological history, the Black Dirt region possesses a thick strata of exceptionally fertile soil, well-suited to vegetable farming. Farmers in this region do not face the same development concerns as other farmers, since the soil is poorly suited to building. However the land is so valuable to growers, that it remains in high demand. One farmer stated that it is difficult for new farmers with small operations to find land in the region. Another farmer pointed out that drainage is a constant challenge in this region. Finally, building permanent structures in this region is highly regulated and the possibilities of doing so limited, so Black Dirt farmers must either function with few structures, or have access to solid ground that is not on Black Dirt.

Orchard

- Good orchard land possesses very specific traits. Land that catches a cross-breeze is ideal, so often orchard farmers look for sloping hills at somewhat higher elevations. Well-drained soil is also an important consideration.
- Moving an orchard can be extremely risky to a farmer’s business. It can take 4-5 years to get an orchard producing at peak capacity, so if an orchard has to relocate, this can be a prohibitively lengthy interruption in a farmer’s income. While there are laws to protect farmers on rented land from being pushed off a property before they’re able to harvest an existing crop, these laws tend to be better-tailored to vegetable farmers with annual crops. Even after a harvest period, an orchard farmer relies on the perennial infrastructure of fruit trees.

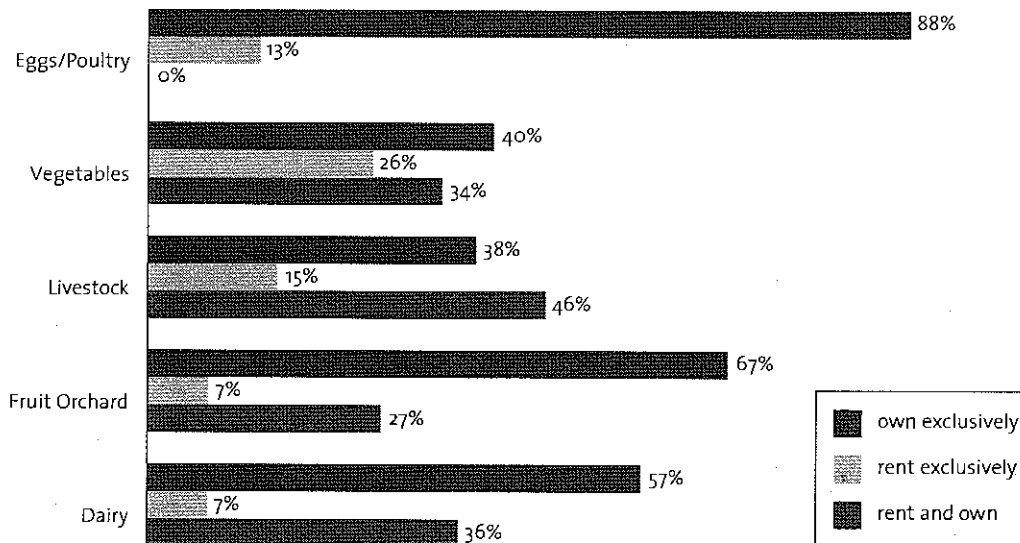
Poultry, Dairy, and Livestock

- Farmers that graze or pasture-feed their animals generally need larger tracts of land than other farmers. While they may be able to accept more marginal property, it is the size of the parcel that becomes their most pressing concern.
- Because of the need for significant built infrastructure, animal farmers may favor properties with existing fencing or structures. One poultry farmer reported that he significantly cut the costs of his processing facility by converting an old

Owner vs. Renter Status

Vegetable and livestock farmers have the highest percentage of renters, while orchard farmers have the highest percentage of owners.

LAND OWNERSHIP AND RENTERSHIP BY FARM TYPE



*Based on 123 surveys.

mechanic’s warehouse that existed on his farmland. Building codes and county ordinances are also a concern, as certain laws, such as septic codes, can severely impact the ease with which a producer installs certain facilities.

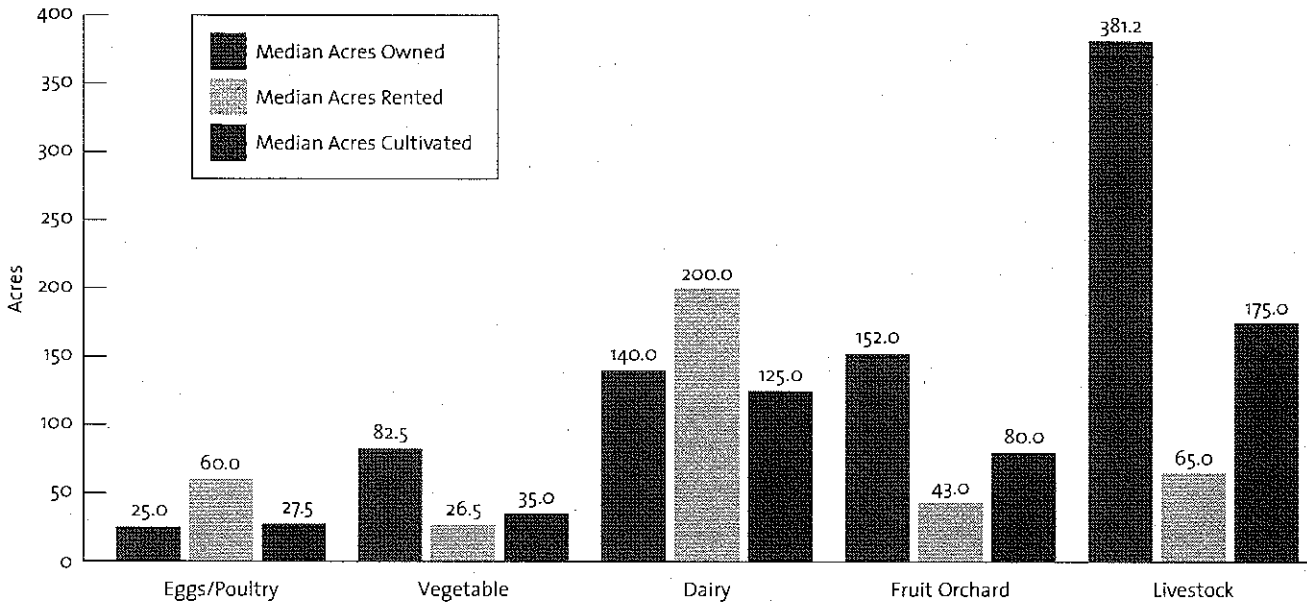
- Proximity to processing facilities or feed producers also factors into the decisions these producers make regarding farm location.
- The degree to which farmers are welcomed or accepted into their communities can greatly influence the ease with

which they operate and expand their business. Many farmers shared anecdotes about their reliance on the goodwill and understanding of neighbors—to keep an eye out for available properties, share equipment, and in some cases even finance loans. However, livestock farmers in particular expressed the challenges of gaining acceptance by neighbors who found living next to a livestock operation undesirable. As one goat farmer put it, “When it comes to animals you always have a problem.”

Acres Owned, Rented and Cultivated

The land-related needs of farmers vary according to what they produce. Livestock farmers own and cultivate the most land, while dairy farmers rent the most.

ACRES OWNED, RENTED AND CULTIVATED, BY FARM TYPE



Survey Question: If you own farmland, how many acres do you own? Rent? What is total cultivated of rented and owned?

Conclusion

The Greenmarket Farm Retention Project comprised a year of assessing farmer needs through surveys and focus groups; research on best practices; interviews with experts in the field; and internal dialogue and debate. This comprehensive study demonstrates that Greenmarket farmers' needs are real, the stakes are high, and the time to act is now.

A career in small-scale agriculture is more difficult than ever before. Gaps in services exist at all levels. Beginning farmers face the arduous challenge of accessing a shrinking pool of affordable financing options for daily operating expenses. More experienced farmers struggle with the sophisticated, costly needs surrounding long-term farm investments like repairing a collapsing barn or digging a well, as well as the ultimate investment goal: the purchase of a farm itself. These barriers hinder farmers from making crucial improvements to their businesses or land while threatening to push them farther away from New York City and its robust markets. Such trends in turn threaten the continued supply of regionally grown food to New Yorkers, and the sustainability of the regional food system as a whole.

Our farmers see Greenmarket as a crucial partner in the solution to these issues. Moreover, operating this type of program is an extension of GrowNYC's existing role safeguarding the future of its farmers markets. The research and analysis we completed over the past year enable us to define that role more specifically.

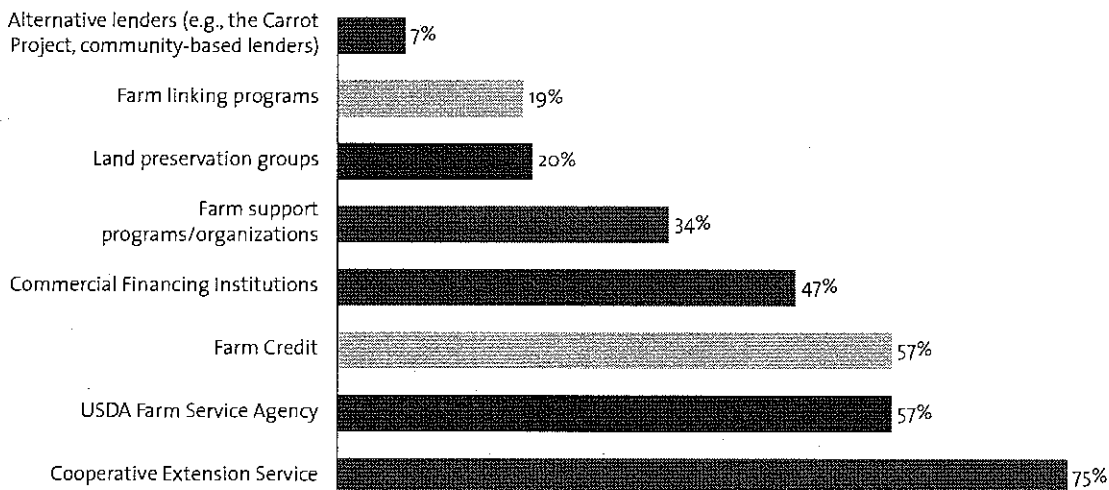
Based on surveys of Greenmarket's entire network of land-based growers and dozens of interviews with farmers and other agriculture experts, we propose a long-term plan structured around three interrelated strategies:

The first strategy is a technical assistance program to help farmers with such tasks as writing business plans, drafting leases, negotiating with landlords, accessing existing lenders, applying for loans, finding land, and formulating succession plans. Technical assistance is a need that Greenmarket staff have frequently heard from farmers in the program over the years. With extremely limited time and resources, many farmers struggle in navigating government systems, tracking finances, and negotiating for land.

Farmers' Resource Use

Most farmers turn to main-stream agricultural services, while few have used farm linking programs and alternative, non-profit lenders.

PERCENTAGE OF FARMERS WHO HAVE USED VARIOUS FARM- AND LAND-BASED RESOURCES



Survey Question: In your experience related to land, have you used the following services?

*Based on 137 responses.

Secondly, we propose the creation of an operating loan fund for farmers who have been denied access to lenders despite a proven commitment to the career and the potential for a sound business plan. We believe a Greenmarket-focused, farmer-friendly loan fund that feeds interest revenue back into the fund for other farmers would be substantially utilized by dozens of farmers each year.

The third strategy is to create a capital fund to preserve affordable farmland so farmers can continue doing business within a reasonable distance of the city. Though there are myriad strategies for land preservation, our research has shown that the purchase of conservation easements is one of the most effective tools to ensure the perpetuity of a working farm that is affordable for a full-time farmer. To have true impact, however, such easements must include restrictions—that the owner be earning at least half their income from farming, for instance, or that the farm be resold at agricultural value. These restrictions are only beginning to gain a foothold in the farmland preservation movement. They are largely untested in the region surrounding New York City, where country estates and hobby

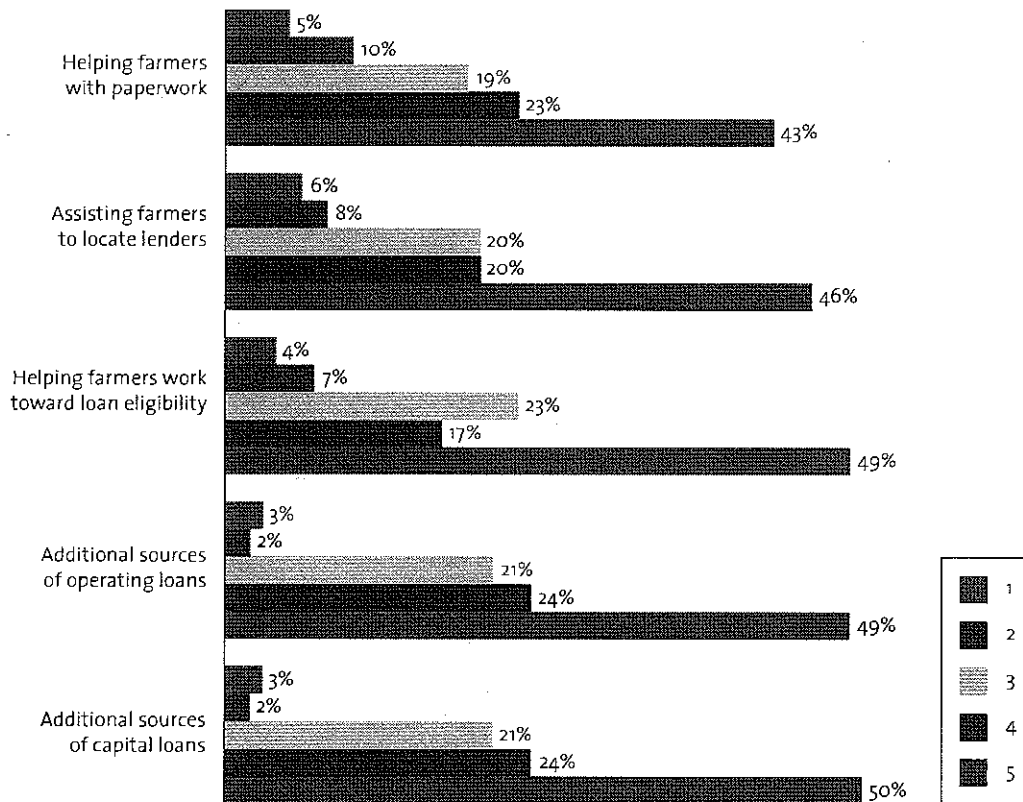
farms without development rights sell for nearly as much as land that holds its development rights. Encouragingly, certain restrictions are being successfully implemented in Massachusetts and Vermont, where state-funded easements require that land be resold at agricultural value. Through building partnerships with other groups working to strengthen the regional food system, GrowNYC will push for these and other tools to be deployed effectively in the areas surrounding New York City.

The Greenmarket Farm Retention Program will provide new resources to small regional farmers. When fully realized, the program will allow farmers to access much needed capital through an organization that they respect and trust, and to which they are accountable. It will also provide access for retiring farmers to ensure that their land stays in agriculture while providing opportunities for new farmers to build successful businesses. The Greenmarket Farm Retention Project lies at the foundation of GrowNYC's work to preserve farmland and ensure that regional farmers can continue to supply the New York City community with fresh, local food.

Strong Desire For Financial Assistance

Every category is of the highest importance, according to most farmers.

FARMERS' PRIORITY AREAS OF FINANCING ASSISTANCE



Survey Question: Regarding financing assistance, how important do you think the following are: [Rate 1(low) to 5(high)]?

*Based on 128 responses.

Appendix A

Greenmarket Farm Retention Project Survey

1. Instructions

Dear Greenmarket Farmer,

Thank you for taking the time to fill out this survey. It should take you approximately 30-40 minutes. We ask that you complete it no later than February 15.

This survey will help us explore ways of helping our farmers protect the farmland that produces Greenmarket's bounty, as well as acquire additional farmland and infrastructure for production—if desired. We want to learn about your farmland and infrastructure situation, as well as your needs related to these critical resources. We are especially interested in the challenges you face in pursuing your land-related goals. The desired outcome is a program at Greenmarket serving as a clearinghouse of information and support, with case managers who can help on an individual basis. We're also hoping our work results in a loan fund dedicated to Greenmarket farmers.

We may follow up with you in the coming months to clarify a response, or to learn more details about your answers.

Please note your answers will be pooled with those of other farmers, and your individual answers will remain confidential.

A few instructions:

- If the question does not apply to you, just skip it.
- In this survey, the terms "rent" and "lease" are used interchangeably.

If you have questions or comments please feel free to contact Heidi Dolnick of Greenmarket by phone, at 347-237-6246, or by email, at hjdolnick@gmail.com. We look forward to hearing from you.

2. Your Farm and Your Land Status

1. Please tell us your name and contact information. It will be kept confidential.

Name:

Email Address:

Phone Number:

2. What state do you farm in?

3. How many years have you been running your own farm?

0 to 5
6 to 10
11 to 15
more than 15

4. Please tell us how many acres you farm, and how many you own versus rent.

How many total acres do you farm?
How many of that total do you own?
How many of that total do you rent?
Other (please specify)

5. How many years have you been farming on your "base" farmland, (meaning the primary land that you farm)?

0 to 5
6 to 10
11 to 15
more than 15

6. Do you own your "base" farmland (meaning the primary land that you farm)?

yes
no
Other (please specify)

7. Does your "base" farmland (meaning the primary land that you farm) include:

The house you live in?
A house occupied by the landowner or another occupant?
Other farm-related housing (e.g., for farm labor or apprentices)?
A barn or other permanent structures?
Moveable structures (such as a hoop house)?
Other (please specify)

8. Do you farm more than one property (defined as different owners or different locations)?

yes
no
Other (please specify)

9. If the answer to Question 8 is yes, what is the maximum distance between parcels that you farm?

- 0 to 5 miles
- 6 to 10 miles
- 11 to 20 miles
- 21 to 40 miles
- 41 to 80 miles
- more than 80 miles

10. Do you rent land from:

- Another farmer
- A private landowner who is not a farmer
- An organization (such as a land trust or educational institution)
- A unit of government (such as a town, county or state)
- Other (please specify)

11. The next several questions refer to the farmland you RENT.

Skip to question 22 if you do NOT rent farmland:

- Do you have a written lease or leases?
- Do you have a "handshake" (verbal, not written) lease or leases?
- Do you have an informal agreement or agreements?
- Would you like to continue with this present arrangement?
- Are you satisfied with your arrangement?

12. If you are satisfied with your arrangement, describe what is working well.

13. If you are not satisfied, what are the challenges? (check all that apply)

- Not a long enough term
- Landlord is hard to work with
- Rent is expensive
- I can't do what I would like on the land
- Other (please specify)

14. If you currently rent land, how many different landlords do you have?

- 1
- 2
- 3
- 4
- more than 4
- Other (please specify)

15. Do you own or rent your residence?

- Own
- Rent

16. If you rent your residence, is it part of a farm lease?

- yes
- no

17. If the answer to Question 16 is yes, please describe the situation and your degree of satisfaction with the arrangement:

18. Please rate your relationship with each of your landlords. If you have only one, then only fill out this question. If you have more than one landlord, fill out Questions below.

Please rate your landlord based on the following criteria: [Rate 1 (strongly disagree) to 5 (strongly agree)]

- I trust my landlord
- We communicate well
- S/he supports farming
- S/he accommodates my needs
- S/he upholds his or her end of the agreement
- Other (please specify)

19. If you have more than one landlord, please repeat the question for landlord #2.

- I trust my landlord
- We communicate well
- S/he supports farming
- S/he accommodates my needs
- S/he upholds his or her end of the agreement
- Other (please specify)

20. If you have more than two landlords, please repeat the question for landlord #3.

- I trust my landlord
- We communicate well
- S/he supports farming
- S/he accommodates my needs
- S/he upholds his or her end of the agreement
- Other (please specify)

21. As far as you know, are any of the properties that you rent at risk of being taken away from you due to:

- Property being sold for development
- Property being transferred due to death, illness, foreclosure
- Property being rented to another farmer
- Other (please specify)

22. The rest of this section refers to land that you OWN. Skip to the next section if you do NOT own farmland.

Of the land that you own, do you rent any to other farmers?

- yes
- no
- Other (please specify)

23. If the answer to Question 22 is yes, approximately what percentage do you rent to other farmers?

- Less than 10%
- Between 11% and 20%
- Between 21% and 40%
- Between 41% and 60%
- More than 60%
- Other (please specify)

24. Does the land you rent out:

- Include a house?
- Include farm structures?

25. The following questions refer to the land that you own:

- Do you own it outright, i.e., no mortgage?
- Did you acquire it through inheritance or family gift?
- Are you in an ownership agreement with others (family or non-family)?
- Do you have a conventional mortgage (with a bank)?
- Do you have another financing arrangement?
- If you have another financing arrangement, please describe it.

3. Your Land History

Please consider your most recent land transaction as you answer these questions. If you have had several past transactions, please describe them in question 8.

1. If you have ever purchased a farm or farmland, was the seller:

- Another farmer
- A non-farming private landowner
- Other (please specify)

2. What were the biggest challenges/obstacles you faced in purchasing the property (check all that apply):

- Financing
- Locating suitable property
- The ins and outs of negotiating a purchase
- Working with a realtor
- Other (please specify)

3. If you have ever leased a farm or farmland, was the seller:

- Another farmer
- A non-farming private landowner
- Other (please specify)

4. What was the length of the lease term?

- 1 year
- 2 to 5 years
- 6 to 10 years
- 11 to 20 years
- 21 years or more

5. These questions refer to farmland you rented in the past:

- Did you have a written lease?
- Did the agreement include your residence?
- Did you lease your residence?
- Did you own your residence?

6. If the leasehold did not include a residence, where did you live?

7. If you have leased a farm or farmland in the past, what were the biggest challenges you faced? (Check all that apply)

- Finding property to lease
- Getting the agreement in writing
- Agreeing on the rent
- Communicating with my landlord(s)
- Getting clear on what was allowed
- Wanting a longer term (more years) than the landlord would agree to
- Not having or building improvements (such as structures, drainage, well, fencing, etc.)
- Lease was terminated: I lost the land
- Other (please specify)

8. If you've had earlier experiences in renting and/or purchasing land, please describe them here.

4. Your Plans

1. Do you have plans to expand your farming operation?

- yes
- no

2. If your expansion plans require more land, approximately how many more acres will you need?

Number of acres?

3. If you would like to own land or own more land (whether for your current operation or if you expand), what are the barriers preventing you from achieving this goal? (Choose all that apply)

- I don't have sufficient funds to purchase outright
- I can't find a suitable property
- I believe I would not qualify for a mortgage
- I have been turned down by at least two lenders
- Other (please specify)

4. If you would like to rent land or rent more land, which of the following best describes your goals? (Choose all that apply.)

- A lease agreement for 1 – 5 years
- A lease agreement for 6 – 20 years
- A lease agreement for more than 20 years
- A lease agreement that gives me an opportunity to purchase the leased property
- Other (please specify)

5. If you would like to lease property for 6 years or longer, what barriers prevent you from achieving this goal? (Choose all that apply.)

- I can't find suitable property.
- I can't find a landlord willing to rent to me for that length of time.
- I don't know how to develop a suitable lease.
- Other (please specify)

6. If you lease farm property, have you made or installed any improvements on the leased property? Examples are a structure, compost pad, major roof repairs, fencing; NOT maintenance or minor repairs.

yes
no

7. If yes, please describe the improvement(s) and your agreement with the landlord.

8. If no, what are the barriers that prevent you from doing so?

I don't know how long I will be on the property.
I won't get a reasonable return on my investment.
I can't (or believe I can't) get a loan for the improvement because it's on rented land.
My landlord or the lease terms prohibit it.
I just don't want to.
Other (please specify)

9. If you own farm property, what best describes your plans for its future:

I would like to pass the business to another farmer but keep the land in the family.
I do not have an identified successor.
I plan to sell it for non-farming uses (for example, for residential development).
I intend to keep the property in farming, but don't have a specific plan for how to do that.
I do not have a plan.
Other (please specify)

10. Do you plan to retire (meaning to cease management control of the business):

Within the next 5 years
In the next 10 -20 years
I don't plan to retire
Other (please specify)

11. Please describe any measures you have taken to ensure that your farm business continues operating after you retire.

12. If you have sold the development rights on your farmland, who did you sell them to?

13. Please rate the following.

I found the process of selling the development rights on my property:
very easy
somewhat easy
not too easy nor difficult
somewhat difficult
very difficult

14. If the development rights on your land have not been removed, (choose all that apply):

I would be interested in selling them.
I would consider donating them.
I don't understand enough about this option to have an opinion.
Other (please specify)

15. If you have investigated this or other ways to protect your land in the past, but ultimately did not, please explain why you didn't.

16. Would you consider accepting less than market value for your land in order to ensure it continues to be farmed?

yes
no
maybe

17. Please rate the following.

In your opinion, how difficult is the process for farmland owners to transfer their land to another farmer, through sale, lease or a gradual transfer arrangement?

very easy
somewhat easy
not too easy nor difficult
somewhat difficult
very difficult
don't know

18. If you intend to sell your land in the future, would you consider financing the sale yourself, rather than using a third party lender such as a bank?

yes
no
maybe
I do not intend to sell my land.

5. Financing your land acquisition

1. Have you obtained financing to purchase a farm or farmland?

yes
no

2. If you answered yes, how many loans for a farm or farmland are you currently carrying?

1
2
3
4
more than 4

3. Is the loan for land only?

Loan 1
Loan 2
Loan 3

4. Does the property include structures?
Loan 1
Loan 2
Loan 3
5. Does the property include your residence?
Loan 1
Loan 2
Loan 3
6. Who is the lender?
Loan 1
Loan 2
Loan 3
7. How difficult on a scale of 1 to 5 was it to obtain the loan? (1 being the least difficult, 5 being the most difficult.)
Loan 1
Loan 2
Loan 3
8. If you have tried UNSUCCESSFULLY to finance a purchase of a farm or farmland, where did you apply? (If you tried more than once, list all attempts.)
9. For the attempts you listed in question 8, how difficult on a scale of 1 to 5 was the loan application process? (1 being the least difficult, 5 being the most difficult.)
Attempt 1
Attempt 2
Attempt 3
10. What were the reasons given to deny your application(s)?
11. If you want to finance a purchase of a farm or farmland IN THE FUTURE, do you feel prepared to apply for a loan?
yes
no
maybe
Other (please specify)
12. What do you expect will be your biggest obstacle(s)?
13. Where might you turn for such a loan?
Commercial Bank
The USDA Farm Service Agency
Farm Credit
Family and Friends
Don't Know
Other (please specify)
14. If you rent land and have obtained a loan for permanent improvements (e.g., a building, well, fencing) on this land, what is the improvement(s) that you financed?
15. Who is the lender(s)?
16. What challenges or hurdles did you face in securing the loan(s)?
17. If you rent land and have tried UNSUCCESSFULLY to finance a permanent improvement on the rented property, where did you apply? (If you tried more than once, list all attempts.)
18. For the attempts you listed in question 17, how difficult on a scale of 1 to 5 was the loan application process? (1 being the least difficult, 5 being the most difficult.)
Attempt 1
Attempt 2
Attempt 3
19. What were the reasons given to deny your application(s)?
20. If you would like to install permanent improvements on rented land IN THE FUTURE, what would you want to install (e.g., barn, other structure, permanent drainage, etc.)?
21. Would you want/need to secure a loan for the improvement?
yes
no
Other (please specify)
22. Do you feel prepared to apply for such a loan?
yes
no
if no, why not?
23. What do you expect will be your biggest obstacle(s) in securing financing for the improvement(s)?
24. Where might you turn for such a loan?
Commercial Bank
The USDA Farm Service Agency
Farm Credit
Family and Friends
Don't Know
Other (please specify)
- ## 6. Needs and Gaps Related to Land Acquisition
1. Regarding assistance for farmers, how important do you think the following are: [Rate 1(low) to 5 (high)]
Helping farmers find farms or farmland to buy
Helping farmers negotiate the purchase of a farm or farmland
Helping farmers find land to rent
Helping farmers negotiate secure leases (meaning longer-term, more than 5 or 10-year terms)
Helping landlords work with farm tenants on more secure and equitable leases
Helping farmers get advice, support and information from farmland preservation groups such as land trusts and municipalities
Facilitating conversations and negotiations between farmers and landowners, to help create more successful land arrangements for farmers

Facilitating conversations and negotiations between farmers and farmland preservation groups such as land trusts and municipalities, to help create more successful land arrangements for farmers

Supporting and guiding farmers trying to secure loans for farmland

Supporting and guiding farmers trying to secure loans for permanent improvements/investments in farmland

Other (please specify)

2. What do you think are priority areas for farmer assistance in the area of land acquisition? (choose all that apply)

Legal (real estate attorney)

Loan paperwork processing

Lease drafting and negotiations

Landlord-tenant mediation

Financial planning to acquire land

Education for landlords about farmers and farming

Farm succession planning

Other (please specify)

3. Regarding assistance to landowners, how important do you think the following are: [Rate 1 (low) to 5 (high)]

Helping landowners sell land to farmers

Helping landowners rent land on a long-term basis to farmers

Facilitating conversations and negotiations between farmers and landowners

Facilitating conversations and negotiations between landowners and farmland preservation groups

Capital loans for acquisition of easements

Grants to land trusts for the purchase of easements

Helping landowners develop strategies to keep their land in agricultural production

Other (please specify)

4. Regarding financing assistance, how important do you think the following are: [Rate 1 (low) to 5 (high)]

Assisting farmers to locate lenders

Helping farmers work toward loan eligibility

Helping farmers with paperwork

Additional sources of capital loans

Additional sources of operating loans

Other (please specify)

5. In your experience related to land, have you heard of and/or used the following services? (choose all that apply). If you have used the service, please say how helpful it was in question 6.

Farm linking programs

Cooperative Extension Service

Commercial Financing Institutions

Farm Credit

USDA Farm Service Agency

Alternative lenders, (e.g., the Carrot Project, community-based lenders)

Land preservation groups (e.g., local land trusts, Scenic Hudson, Open Space Institute, Glynwood, etc.)

Farm support programs/organizations (e.g., PASA, Cornell

Small Farm Program, New England Small Farm Institute, Land For Good, NOFA, Equity Trust, etc.)

Other (please specify)

6. For services you have used, please rate how helpful they were. [Rate 1 (low) to 5 (high)]

Farm linking programs

Cooperative Extension Service

Commercial Financing Institutions

Farm Credit

USDA Farm Service Agency

Alternative lenders, (e.g., the Carrot Project, community-based lenders)

Land preservation groups (e.g., local land trusts, Scenic Hudson, Open Space Institute, Glynwood, etc.)

Farm support programs/organizations (e.g., PASA, Cornell

Small Farm Program, New England Small Farm Institute, Land For Good, NOFA, Equity Trust, etc.)

Other (please specify)

7. Thank You

On behalf of Greenmarket, thank you for taking the time to fill out this survey. We look forward to learning from your experiences and ideas. Your responses will be combined with others, so that we can see the general patterns of farmland ownership/use by the farmers who work with Greenmarket.

If you have any questions, please feel free to contact Heidi Dolnick at hjdolnick@gmail.com or 347-237-6246.

Appendix B

Existing Resources for Farmers

This is a partial list of existing services targeted to farmers in the northeastern U.S.

Financial Assistance

Beginning Farmers and Ranchers Loan

- A program of the USDA's Farm Service Agency, this program directs farm ownership and operating loan funds to farmers or ranchers who have operated their business for fewer than 10 years, and who is unable to obtain financing elsewhere.
- The maximum loan amount is \$300,000 per farmer or rancher.

The Carrot Project

- A nonprofit organization that uses a variety of partnership models to facilitate the administration and oversight of loans to farmers using sustainable practices. The Carrot Project works with community development finance organizations and community loan funds to incubate and promote agricultural lending, and works to link individuals and organizations to investment opportunities.
- Operates in Maine, Massachusetts, Vermont, and the Berkshire region.
- Maximum loan amounts range from \$35,000 to \$75,000, and can be used for working capital, capital improvements, or business expansion.

Equity Trust

- A Massachusetts-based nonprofit providing loans to nonprofits focused on rural development and farmers that operate Community Supported Agriculture programs.
- Loan size ranges from \$5,000 to \$200,000, and can be used for real estate, equipment, and working capital.

Farm Credit & Farm Credit East

- Farm Credit is a network of independent lending cooperatives geared toward providing financing to agricultural producers and other agricultural businesses.
- Farm Credit East serves six northeastern states, providing financial services in New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, and New Jersey. Farm Credit East offers loans for business and personal purposes, as well as some technical assistance, insurance, and equipment lease programs.

Farm Service Agency (FSA)

- FSA is a program of the USDA providing loans to family-sized farms and ranches for ownership and operating capital. Loans are designated for individuals and businesses that have been denied financing from other services, such as Farm Credit,

commercial lenders, or other lending institutions. FSA has local service offices throughout the United States.

Farm Start

- A program of Farm Credit East, Farm Start provides up to \$50,000 of working capital investment for new farmers within the first three years of establishing their business. The capital functions as an operating line of credit, payable over five years.

Local government bodies, such as county Economic Development Corporations

- Provide working capital loans to small agribusinesses for as much as \$100,000.
- Places high importance on job creation, innovation and diversification as determining factors for loan approval

Northeast Sustainable Agriculture Research and Education (SARE)

- Funded by the USDA, Northeast SARE offers innovation grants to commercial farmers whose ideas increase profitability or land stewardship. Grants range from \$15,000 for short-term projects to \$250,000 for long-term projects.
- Funds can only be used for costs directly associated with the innovation, and not for the farm's ongoing operating and capital costs.

Shade Fund

- A nonprofit program run jointly by The Conservation Fund and the US Endowment for Forests and Communities, providing capital to underserved business related to natural resources.
- Loans of up to \$50,000 available for working capital and equipment.

Small Business Microloans

- Provided by the US Small Business Administration, loans of up to \$50,000 are available to a range of businesses that are unable to obtain financing from other sources.
- Financing is available for working capital and equipment.

Technical Assistance

Cornell Cooperative Extension

- Provides assistance to agricultural producers and businesses through agricultural programs, resource-linking, and business management assistance.
- Includes the Small Farms Program, which targets research and extension programs specifically for small farms (defined as under \$250,000 in annual sales).
- Each state has a similar Cooperative Extension program operated out of the appointed land-grant university.

FarmLink

- Provides consulting and education to transition farms from retiring operators to an emerging generation of farmers. Services include available property listings to farm seekers, consulting on tax and management issues for retiring farmers, and a reference library.
- FarmLink programs operate in New York, Pennsylvania, Connecticut, and a variety of other states.

Hudson Valley Agribusiness Development Corporation

- The Hudson Valley Agribusiness Development Corporation (HVADC) is the only economic development agency in the Hudson Valley with a specific focus on the viability of the agricultural economy in the region.
- HVADC provides Comprehensive Business Assistance (needs identification, coach you through the challenges of starting a new business and monitor progress every step of the way), Value-Added Services (a "Know-How Network" of experts ranging from accountants and lawyers to marketing specialists, as well as mentors), Financing (access to equity or debt capital, connections to loan programs, corporate partners, angel networks and much more), and Networking (Connect with other agricultural entrepreneurs for all the benefits a good network can bring: moral support, cross-fertilization, sharing resources and expertise.)

Land For Good

- This program serves new farmers and land-use managers in New England through education and assistance. Program focuses include direct services for land acquisition and planning, public education, and networking.

National Sustainable Agriculture Information Service (NCAT, formerly ATTRA)

- A technical assistance provider geared towards sustainable and organic agricultural methods and traditionally underserved communities. Through their website, publications, and other media, NCAT provides technical information for marketing, business & risk management; beginning farmers; local food systems; and a variety of other topics.

New England Small Farm Institute

- A non-profit organization, which supports new farmers through a resource library, mentorships, publications, land-linking programs, and policy advocacy.

Northeast Beginning Farmers Project

- Provides education and resource-linking to small farmers
- Funded by USDA's Beginning Farmers and Ranchers Development Program
- Housed at the Cornell Small Farms Program

Northeast Organic Farming Association (NOFA)

- Promotes regional, organic food production through research and education, events, mentorship for beginning farmers, and policy advocacy
- Offers organic certification
- Has branches in seven states

Northeast Sustainable Agriculture Research and Education (SARE)

- Promotes sustainable agriculture practices through research and education, event sponsorship, networking, and grants.

NY FarmNet

- Provides farmers with information, contacts, referrals and consultants in financial and personal matters related to agricultural business management. Their focus is on facilitating partnerships and farm transfers, mediating domestic conflicts, and aiding in disaster response.

Pennsylvania Association for Sustainable Agriculture (PASA)

- Promotes sustainable farming methods in Pennsylvania through networking events and assistance with marketing, business planning, and various aspects of sustainable agriculture.

Publications targeting local farmers

- Agricultural trade publications provide information on commodity reports and agribusiness news, as well as equipment and land directories, farm classifieds, local events, and news.

Real Estate and Land Preservation

Conservation Land Trusts

- These organizations work to promote sustainability, stewardship, and affordability of land through conservation easements, open space projects, and community education.
- Land trusts operate in a variety of individual counties and regions, such as the Columbia Land Conservancy or the Hudson Highlands Land Trust

Glynwood

- Provides a variety of programming and services to promote public education about farming, including its Keep Farming program, which helps citizens, policymakers, and volunteers evaluate the role of farming in their community, and empowers these groups to understand and implement policies and opportunities to preserve farmland.

New York State Department of Agriculture and Markets

- Provides a variety of services to assist with the protection and development of New York's agricultural sector, including financial assistance to municipalities and counties for Purchase of Development Rights programs to protect viable farmland.

Open Space Institute

- Protects land through direct acquisition, conservation easements, and conservation financing.

Scenic Hudson

- Seeks to preserve the Hudson River Valley landscapes and farmland through policy work and by purchasing strategic properties, and conservation easements.