

A new Part 372 is adopted to read as follows:
(Effective Date of Regulation: 7/17/96)

PART 372

AGRICULTURAL AND FARMLAND PROTECTION

(Statutory authority: Agriculture and
Markets Law, Sections 16(l) and (2), 18[61], 324, 325, 326)

Sec.

372.1 Introduction

372.2 Definitions

372.3 County agricultural and farmland protection plans

372.4 Planning grants

Section 372.1 Introduction. This Part establishes the requirements for county agricultural and farmland protection plans, the procedures for development and approval of such plans and the application process for planning grants to assist counties in the development of plans,

372.2 Definitions. For the purposes of this Part, the following terms shall mean:

(a) Agricultural and farmland protection means the preservation, conservation, management or improvement of lands which are part of viable farms, for the purpose of encouraging such lands to remain in agricultural production.

(b) Agricultural district means a district established pursuant to section 303 or 304 of the Agriculture and Markets Law.

(c) Commissioner means the Commissioner of Agriculture and Markets of the State of New York.

(d) County agricultural and farmland protection board means a board established pursuant to section 302 of the Agriculture and Markets Law.

(e) Department means the New York State Department of Agriculture and Markets.

(f) Plan means the county agricultural and farmland protection plan, as prepared by the county agricultural and farmland protection board, provided for in Article 25-AAA of the Agriculture and Markets Law.

(g) In-kind services means compensated labor, materials or equipment provided by the applicant or the county, its employees or representatives in connection with the development of a county agricultural and farmland protection plan.

372.3 County agricultural and farmland protection plans.

(a) Plans. County agricultural and farmland protection boards may develop agricultural and farmland protection plans, in cooperation and consultation with the county's soil and water conservation district and the U.S.D.A. Natural Resources Conservation Service, The boards may cooperate and consult with other interested parties, such as municipalities, cooperative extension services, planning organizations, private land trusts, farm organizations, and civic and citizen organizations, in developing plans, The plans shall include at least the following elements:

(1) a statement of the county's goal(s) with respect to agricultural and farmland protection (e.g., to stabilize or enhance the agricultural economy of the county; preserve open space; abate land conversion pressure; maintain community goals with respect to development and growth; and protect natural resources such as air quality, watersheds, aquifers or wildlife habitats);

(2) an identification of the general location of any lands or areas that are proposed to be protected (e.g., the whole county, all agricultural district lands within the county, farms or farmlands in particular sections of the county), Specific tracts of land or farms need not be identified, Maps are not mandatory but may be used at the discretion of the board to illustrate strategies or to explain the plan more completely;

(3) an analysis of the lands or areas to be protected, such as their value to the agricultural economy of the county, their open space value, the level of conversion pressure being experienced, and the consequences of possible conversion;

(4) a description of the strategies intended to be used by the county to promote the maintenance of lands in active agricultural use and to implement the plan, including how the program will be financed; and

(5) a description or identification of other county and municipal planning and land use programs, if any, such as economic development, zoning and comprehensive land use planning, which may be shown to complement and be consistent with, the county agricultural protection plan, as well as identification of any county and municipal plans, policies or objectives which are inconsistent with or conflict with the plan.

(b) Planning and approval process. In developing an agricultural and farmland protection plan, the board and the county legislative body shall follow the planning and approval process in sequence as follows:

(1) the county agricultural and farmland protection board shall conduct at least one public hearing to solicit citizen views and recommendations;

(2) the board shall undertake specific efforts to involve members of the farm community in the planning process, and to assure that the final plan is made available to the farm community for comment before it is approved;

(3) the county agricultural and farmland protection board shall consult with the Department throughout the planning process;

(4) the county agricultural and farmland protection board shall submit the proposed plan to the county legislative body for approval;

(5) if the county legislative body approves the plan, its approval should be documented by a resolution;

(6) plans of work must be completed within 18 months to be eligible for state matching grants under this program, unless said period is extended by written agreement between the county and the Department; however the county legislative body need not approve the final plan within 18 months; and

(7) the county legislative body shall submit the plan to the commissioner for approval, The commissioner shall act upon the plan within forty-five (45) days of receipt of the document, and notify the county legislative body of the plan's approval or disapproval. A copy of the commissioner's decision shall be sent to the chair of the county agricultural and farmland protection board.

(c) Plan review process. The following criteria shall be used by the commissioner to determine the acceptability of a county agricultural and farmland protection plan:

(1) the consistency of the plan with state agricultural and farmland protection plans, policies and objectives; state environmental plans, policies, and objectives; and state comprehensive plans, policies, and objectives;

(2) the consistency of the plan with county and municipal plans, policies, and objectives which the plan could affect;

(3) the practicality of the plan (i.e., the extent to which it can reasonably be expected to meet the identified county goal(s) for agricultural and farmland protection);

(4) the extent to which the plan satisfies the analytical factors addressed under Section 324 of the Agriculture and Markets Law;

(5) the adequacy of substantiating data, information, and facts;

(6) the cost implications of the protection measures identified in the plan (i.e., what can be accomplished recognizing limited state/local funding mechanisms in view of the public benefit to be derived from protection of agriculture and agricultural lands); and

(7) whether the county legislative body has approved the plan.

372.4 Planning grants. (a) Matching grants program, Subject to the availability of funds, the Department of Agriculture and Markets shall maintain a matching grants program intended to assist counties in the development of agricultural and farmland protection plans.

(b) Applications. Applications for state matching funds shall be submitted to the Department by the county's agricultural and farmland protection board. Applications may be submitted to the Department at any time, A county may not make application for funds until it has established its agricultural and farmland protection board and a chairperson for such board has been elected.

All planning grant applications made to the Department shall contain at least the following information:

(1) the name of the county applying;

(2) the identification of the county agricultural and farmland protection board chair (name, address, and telephone number);

(3) the identification of an individual to be contacted concerning information contained within the application (name, address, and telephone number);

(4) a summary statement of the trends and conditions in the county that warrant agricultural and farmland protection measures;

(5) a description of the agricultural setting in the county including:

(i) the approximate number and types of farms in the area which is the subject of the plan;

(ii) the present and future prospect for farm viability in the county; and

(iii) other indications of the economic condition and importance of agriculture to the county;

(6) a detailed description of the plan of work to be followed in developing the county plan;

(7) the anticipated timeframe for completing the plan of work;

(8) a budget detailing the cost of developing the plan, including itemization of costs to be charged against state versus county matching resources available to the board by individual budget category;

(9) a description of in-kind services to be used for up to 80 percent of the required match;

(10) evidence of the availability of matching funds (such as a copy of a resolution, a copy of a portion of the county budget that demonstrates that the matching funds have been earmarked for such activities, a letter from the county executive that the county has appropriated matching funds, or a copy of letter(s) from an external granting agency that funding is provided to the county, or its agent, for the development of the plan);

(11) signature of the chair of the County legislative body; and

(12) the qualifications of the principals who will be developing the plan,

(c) Review and approval. (1) The commissioner shall review all requests for grant funding in consultation with the advisory council on agriculture, Criteria to be used by the commissioner in determining approval of applications are as follows:

(i) the responsiveness of the grant application to the analytical factors required under Section 324 of the Agriculture and Markets Law;

(ii) the degree to which the need for agricultural protection by the county is substantiated by facts and trends;

(iii) the adequacy of the plan of work (e.g., does it relate to the needs identified, is it logically constructed, and can it be accomplished within the timeframe predicted);

(iv) the qualifications of the principals who will be developing the plan;

(v) the reasonableness of the estimated cost of developing the plan versus the work to be performed;

(vi) overall compliance with procedural requirements of Article 25-AAA of the Agriculture and Markets Law; and

(viii) the completeness of the application.

(2) The commissioner, in consultation with the advisory council on agriculture, shall determine whether or not an application shall receive funding within ninety (90) days from the receipt of a complete application. The commissioner may negotiate the amount of funds awarded versus funds requested, The standard for determining the amount of funds awarded is the extent to which the plan meets the criteria set forth in paragraph (1) of this subdivision, as well as mutually acceptable modifications of the application and/or plan of work, and the availability of funds in relation to the number of eligible applications received.

(d) Eligible Costs. The following costs shall be eligible for state reimbursement:

(1) personal services, including fringe benefits for professional, secretarial, and legal services related directly to the development of the plan;

(2) consultant services;

(3) travel;

(4) conducting public hearings;

(5) expendable supplies;

(6) printing; and

(7) communication,

(8) State planning grant funds shall not be made available for the purchase of equipment, non-expendable supplies, or implementation of measures recommended in a plan.

(e) Funding limits and matching requirements, State grant funds shall not exceed \$50,000 to each county and shall not exceed 50 percent of the total cost of preparing an agricultural and farmland protection plan. Multiple county grant applications (i.e., phased planning) are acceptable providing total state grant funds do not exceed \$50,000 per county, County funds must match state funds at least on a one-to-one basis and include at least a 20 percent cash match (i.e., new or supplemental county funding) of the total state funds provided, In-kind services matches are acceptable for all eligible cost categories identified in subdivision (d) of this section, as well as for those items set forth in the definition of "in-kind services" in Section 372.2(g) of this Part, Indirect and overhead charges and volunteer services are not acceptable as a match. Counties are authorized to use as a match any private or other public (non-state) funds obtained to develop a plan.

(f) Funding and reporting requirements. The Department shall provide all funds to the county through a written contract, which shall be subject to approval by the State comptroller and attorney general, and shall incorporate the plan of work and approved budget, All funds paid to the county under the contract shall be paid only after submission of a State standard voucher by the county, which shall be subject to approval by the State comptroller and the availability of funds. At the commissioner's discretion, an advance of up to 25 percent of the total state funds awarded may be made under the contract to the county to initiate plan development, Whether an advance will be made, and the amount of same, is based upon the county's written request for an advance and statement of need, including the percentage of the funds requested, and the commissioner's determination that the advance is necessary for the county to initiate plan development, Thereafter, the remaining state funds will be provided on a reimbursement basis subject to the submission of quarterly progress reports, Ten (10) percent of all state funds awarded shall be withheld until the commissioner verifies that the entire plan of work is completed.