



# MASSACHUSETTS FARM BUREAU FEDERATION, INC.

*"The Voice of Agriculture"*

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To: Interested Parties  
RE: MA Definition of Agriculture  
Agriculture and Zoning in MA  
From: Brad Mitchell, Director of Government Affairs  
MA Farm Bureau

It has come to our attention that there is some contention in the Town of Milton regarding the treatment/exemptions of agricultural entities under local zoning under state law. Further, I understand that there is some confusion regarding a discussion I had with local official in Milton relative to what constitutes "land in agricultural production" under these laws and Chapter 61a. This memo is to provide MA Farm Bureau's Federations interpretation of applicable state law.

The Commonwealth limits the authority under which local zoning may regulate agriculture under MGL 40a S. 3. MGL 40a S. 3 specifically references MGL Chapter 128 S. 1a as the definition to be used in defining agricultural operations to which MGL 40 S. 3 applies.

MGL 128 S. 1a includes "any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market."

A firewood operation occurring on a farm clearly meets this definition of MGL 128 S.1a and should be considered by the town to be subject to the provisions of MGL 40a S. 3.

Composting operations where compost inputs are solely sourced from a farm are considered to be part of the agricultural operation and subject to the provisions of MGL 40a S. 3. Composting operations which take inputs from off-farm, but which are licensed by the Department of Agricultural Resources (rather than DEP) are considered to be agricultural and subject to the provisions of MGL 40a Section 3.

MGL 40a S 3 establishes minimum amounts of goods (via dollar value or volume) which must come from on-site, or another qualifying farm in order to render an operation to be agricultural. While a minimum volume of goods must come from on-site, firewood and compost not produced on a site, but which come from another qualifying farm in the Commonwealth will count toward qualification for inclusion in the protection of MGL 40a Section 3:

"25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture..."

MGL 40a Section 3 also stipulates a minimum acreage which must be under production to be considered for protection of this law. While MGL 40a S3 and MGL 128 S.1a are silent on what constitutes "land under protection", MGL 61a offers insights as to the intent of the state. Specifically, MGL 61a considers access roads used for an agricultural operation, and land under buildings used for agricultural production to be considered "land under agricultural production".

I believe there has been confusion on this front between "land in production" and "unproductive land" which is covered under 61a when an equal amount of productive land is put under the provisions of MGL 61a.