



Building Standards and Codes

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TECHNICAL BULLETIN

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19NYCRR 1225 – Fire Prevention
19NYCRR 1226 – Property Maintenance²

Topic: Code Provisions Applicable to Agricultural Buildings and Premises

This document was prepared by the Department of State in consultation with the Department of Agriculture and Markets and is intended to clarify the applicability of the Uniform Fire Prevention and Building Code (Uniform Code) to *agricultural buildings*. The document does not address all issues relating to the applicability of the Uniform Code to *agricultural buildings*. Rather, it focuses on some of the most commonly asked questions and misunderstood provisions. It is offered as guidance to code enforcement officers and to the farming community. This document is not intended to cover all scenarios or uses. The applicability to the Uniform Code to each building or use needs to be evaluated individually.

As a preliminary matter, it is important to note that this document deals only with issues relating to the applicability of the Uniform Code. This document does not address other laws of interest to the farming community, such as the Agriculture and Markets Law, the Real Property Tax Law, and local zoning and land use laws and ordinances. This is critical, because the fact that a building is not an *agricultural building* for the purposes of the Uniform Code does not necessarily mean (1) that the building is not part of a “farm operation” for the purposes of Article 25-AA of the Agriculture and Markets Law; or (2) that the land on which the building is located is not “land used in agricultural production” for the purposes of Article 25-AA of the Agriculture and Markets Law and Section 481 of the Real Property Tax Law; or (3) that the building is not an agricultural building, farm building, or the like for the purposes of any applicable local zoning or land use law or ordinance; or (4) that the land on which the building is

¹ The “Code Effective Date” for this Technical Bulletin is May 12, 2020, which is the effective date of the 2020 update of the New York State Uniform Fire Prevention and Building Code (the Uniform Code).

² The Uniform Code is contained in Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York (19 NYCRR) Parts 1220 through 1227 and the publications incorporated by reference into those Parts, including, but not limited to the 2020 NYS specific code books which are based on the 2018 International Code Council books.

located is not a farm, farming operation, or the like for the purposes of any applicable local zoning or land use law or ordinance.

The following questions will be addressed in this document:

- What is the definition of an *agricultural building* for the purposes of applying the Uniform Code?
- What questions should be asked to determine if a structure is an *agricultural building* for the purposes of applying the Uniform Code?
- What does the phrase “a place of human habitation” mean?
- What does the phrase “a place of employment where agricultural products are processed, treated, or packaged” mean?
- What does the phrase “a place used by the public” mean?
- Are *agricultural buildings* exempt from the Uniform Code?
- What does the phrase “used directly and solely for agricultural purposes” mean?
- What about sugarhouses?
- Do setbacks and fire separation requirements apply to exempt agricultural buildings?
- Can a fire wall separate an exempt *agricultural building* from a regulated use?
- Can I follow the Existing Building Code for the Change of Occupancy of a previously exempt *agricultural building*?
- How are solar panels, wind turbines, and ESS installed on or in an exempt *agricultural building* and premises regulated?
- Does an exempt *agricultural building* need a building permit, a certificate of occupancy, or a certificate of compliance?

What is the definition of an *agricultural building* for the purposes of applying the Uniform Code?

Agricultural building is defined in the 2020 Building Code of New York State (2020 BCNYS) as:

A structure designed and constructed to house farm equipment, farm implements, poultry, livestock, hay, grain, or other horticultural products. This structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated or packaged, nor shall it be a place used by the public.

What questions should be asked to determine if a structure is an *agricultural building* for the purposes of applying the Uniform Code?

QUESTION 1: Is the structure designed and constructed to house farm equipment, farm implements, poultry, livestock, hay, grain, or other horticultural products?

- If the answer to Question 1 is “no” the structure is not an *agricultural building*.
- If the answer to Question 1 is “yes,” ask Questions 2, 3, and 4.

QUESTION 2: Is the structure a place of human habitation?

QUESTION 3: Is the structure a place of employment where agricultural products are processed, treated or packaged?

QUESTION 4: Is the structure a place used by the public?

- If the answer to either Question 2, 3, or 4 is “yes” the structure is not an *agricultural building*.

Please see subsequent questions and answers for additional information on “*place of human habitation*”, “*place of employment where agricultural products are processed, treated or packaged*,” and “*used by the public*.”

What does the phrase “a place of human habitation” mean?

For the purposes of the definition of *agricultural building*, any structure that contains a “habitable space” is “a place of human habitation,” and therefore, cannot be an *agricultural building*. This is based on the definition of “habitable space” found in Section 202 of the 2020 BCNYS and reads as follows:

A space in a building for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.

See the section entitled “What does the phrase “used directly and solely for agricultural purposes” mean?” for a discussion of accessory spaces in a structure that will not necessarily preclude the structure from being an *agricultural building*.

What does the phrase “a place of employment where agricultural products are processed, treated, or packaged” mean?

For the purposes of determining whether a structure is a “place of employment” the first step is to determine if one or more “employees” work in the structure. The Department of State is of the opinion that for this purpose, an “employee” is any individual engaged in or permitted to work on the farm, subject to the following exception: any member of the “immediate family” of the owner or operator of the farm is not considered to be an “employee” if they work on the farm out of familial obligations and are not paid wages or other compensation based on hours or days of work. The “immediate family” of an owner or operator includes persons related to the owner or operator by up to the third degree of blood or law. Therefore, a structure that is used to process, treat, and package agricultural products grown on the farm, where there are no “employees” as described above, could be considered an *agricultural building*, provided the structure meets all other applicable criteria.

To “process, treat, or package” agricultural products means to manipulate any agricultural product(s) in such a way that either increases or creates a safety hazard to building occupants, adjacent properties, or the general public. The use of motorized equipment for the indoor packaging, treatment, or processing of agricultural commodities could potentially increase the level of fire and life safety hazard for buildings and occupants. For instance, the level of hazard resulting from hanging hemp, or any crop, to air dry is considerably lower than the potential hazard of utilizing a commercial heater for the drying of such hemp. Such hazard could be the result of several factors including the following:

- Equipment that imposes loads in the structural system beyond the system’s capacity. For example, heavy equipment suspended from ceiling joists, rafters or trusses.
- Equipment that imposes loads in the electrical system beyond the system’s capacity. For example, equipment requiring a higher voltage or amperage than what is provided or higher than what the existing electrical wiring can support.
- Equipment that generates harmful fumes without adequate ventilation systems. For example, plant oil processing equipment utilizing solvents as a means of extraction.
- Equipment that produces heat or otherwise creates a fire-hazard, particularly in the vicinity of combustible storage such as hay and dry goods.
- Equipment that is not listed and labeled for its intended purpose such as the use of a domestic cooking range to reduce maple sap.

In these cases, the level of safety hazard may exceed what is typically found in a traditional agricultural operation and it is possible that the building no longer meets the definition of an *agricultural building*.

Given the inherent safety hazard of the packaging, treating, or processing operation, a building might be more appropriately classified as a Group F - Factory if larger than 2,500 square feet, or as a Group B - Business if 2,500 square feet in area or less. Even when a change of occupancy classification is not warranted, it would be advisable, for the protection of persons and property, to have the building evaluated by a qualified individual to determine the building's ability to safely accommodate the equipment and use.

What does the phrase “a place used by the public” mean?

For the purposes of the definition of *agricultural building*, a structure is a “place used by the public” if any part of the structure is entered and/or used, other than on the limited basis described below, by persons who are neither the owner or operator, a member of the owner's or operator's immediate family, nor an employee of the agricultural operation (see the discussion of “place of employment,” above, regarding the meaning of the terms “immediate family” and “employee”). Some examples of events and activities which, if conducted in a structure, would result in the structure being a “place used by the public” include, but are not limited to, sales and retail activities, tours, demonstrations, weddings, and farm-to-table or other meal service.

The reasonable, occasional, and incidental entry of a structure by persons who are not the owner or operator, a member of the owner or operator's immediate family, or an employee of the agricultural operation does not necessarily cause the structure to be “a place used by the public.” Examples include entry by a person to deliver mail, entry by a veterinarian to examine animals housed in the structure, entry by the owner or long-term lessee of a horse being boarded in the structure to feed and care for the horse, and entry by workers for the purpose of repairing the structure or equipment in the structure.

Are *agricultural buildings* exempt from the Uniform Code?

No. Structures meeting the definition of an *agricultural building* are not exempted from the Uniform Code in its entirety. *Agricultural buildings* are exempt from the *construction-related* provisions of the 2020 Building Code of New York State (the 2020 BCNYS) and from the *construction-related* provisions of the 2020 Fire Code of New York State (the 2020 FCNYS).

The exemption of *agricultural buildings* from the construction-related provisions of the 2020 BCNYS is found in Exception 2 to Section 101.2 of that code, which reads as follows:

2. *Agricultural buildings*, including barns, sheds, poultry houses and other buildings and equipment on the premises that are used directly and solely for agricultural purposes, shall not be subject to the construction-related provisions of [the 2020 BCNYS].

The exception of *agricultural buildings* from the construction-related provisions of the 2020 FCNYS are found in the Exception to Section 102.2 of that code, which reads as follows:

Exception: *Agricultural buildings*, including barns, sheds, poultry houses and other buildings and equipment on the premises that are used directly and solely for agricultural purposes, shall not be subject to the construction-related provisions of [the 2020 FCNYS].

The exceptions provide that *agricultural buildings* shall not be subject to the construction-related provisions of the 2020 BCNYS and 2020 FCNYS, and provide several examples of buildings (*barns, sheds, poultry houses, and other buildings and equipment on the premises used directly and solely for*

agricultural purposes) that would typically be considered to be *agricultural buildings*. Any building or structure, including any barn, shed, poultry house, or other building or equipment on the premises that is used directly and solely for agricultural purposes, that does not also meet the definition of *agricultural building*, must be classified in accordance with Chapter 3 of the 2020 BCNYS; and is subject to the construction-related provisions of the 2020 BCNYS, to the construction-related provisions of the 2020 FCNYS, and to all other applicable provisions of the Uniform Code.

Agricultural buildings are subject to the administrative, operational and maintenance provisions of the 2020 FCNYS.

Agricultural buildings are subject to all provisions of the 2020 Property Maintenance Code of New York State (the 2020 PMCNYS).

What does the phrase “used directly and solely for agricultural purposes” mean?

The fact that the exceptions in the 2020 BCNYS and 2020 FCNYS include several examples of structures that might be *agricultural buildings* and the fact that one of those examples includes the phrase “*used directly and solely for agricultural purposes*” has given rise to the question of whether a structure that otherwise meets the definition of *agricultural building* is disqualified from being an *agricultural building* if the structure contains some accessory space that is not “*used directly and solely for agricultural purposes*.”

In the opinion of the Department of State, a structure that is designed and constructed to house farm equipment, farm implements, poultry, livestock, hay, grain, or other horticultural products is an *agricultural building* unless the structure is (1) a place of human habitation; (2) a place of employment where agricultural products are processed, treated or packaged; and/or (3) a place used by the public. The fact that the structure might also contain an accessory space that is not used directly to house farm equipment, farm implements, poultry, livestock, hay, grain, or other horticultural products (such as a restroom, break room, or office space available for use only by persons who are permitted to enter an *agricultural building*), does not disqualify the structure from being an *agricultural building*, provided that the structure continues to be neither a place of human habitation; nor a place of employment where agricultural products are processed, treated or packaged; nor a place used by the public.

What about sugarhouses?

A *sugarhouse* is defined in Chapter 40 of the 2020 FCNYS as “*a building used, in whole or in part, for the collection, storage, or processing of maple sap into maple syrup and/or maple sugar.*”

A *sugarhouse* that is designed and constructed to store maple sap would be a structure designed and constructed or used to “house” a substance (maple sap) that might be considered to be a horticultural product and, therefore, might be an *agricultural building*, provided that it satisfies the other criteria discussed above. However, a *sugarhouse* that is designed and constructed or used for other purposes (such as a place of employment where maple sap is processed into maple syrup and/or maple sugar) would not be an *agricultural building*. Further, a *sugarhouse* that might otherwise qualify as an *agricultural building* will cease to be an *agricultural building* if the *sugarhouse* is used for any of the *alternative activities* described in Chapter 40 of the 2020 FCNYS, since the *sugarhouse* would then become a place used by the public.³ Therefore, except for those *sugarhouses* that (1) are designed, constructed, and used solely to store maple sap, (2) satisfy the other elements of the definition of

³ Chapter 40 of the 2020 FCNYS defines *alternative activity* as “*an activity not normally conducted in a sugarhouse, which supports the maple product industry. Examples of such activities include product sampling, pancake breakfasts, educational tours and activities, and the marketing and sale of merchandise.*”

agricultural building, and (3) are not used for any *alternative activities*, *sugarhouses* are not *agricultural buildings*, and must comply with all applicable provisions of the Uniform Code, including Chapter 40 of the 2020 FCNYS.

Do setbacks and fire separation requirements apply to exempt *agricultural buildings*?

A local municipality may impose setback requirements from *agricultural buildings* to property lines through zoning law (see related document titled [Statewide Uniform Code vs. Local Zoning Codes](#)). As it pertains to the Uniform Code, an exempted *agricultural building* is permitted to be located zero feet from a lot line or from the imaginary line separating buildings on the same lot without the need for the typical fire separation of a non-exempted building. However, a building that is not an *agricultural building* but is located on the same lot is not exempted, and therefore, alterations to that existing building may be required for compliance with the fire and smoke protection features of Chapter 7 of the 2020 BCNYS. Some existing buildings may be required to comply with Sections 705.3 and 706.1.1 of the 2020 BCNYS, regardless of the level of alteration, examples as follows:

- Section 705.3 of the 2020 BCNYS “Buildings on the Same Lot”, reads:

For the purposes of determining the required wall and opening protection, projections and roof-covering requirements, buildings on the same lot shall be assumed to have an imaginary line between them.

Where a new building is to be erected on the same lot as an existing building, the location of the assumed imaginary line with relation to the existing building shall be such that the exterior wall and opening protection of the existing building meet the criteria as set forth in Sections 705.5 and 705.8.

- Section 706.1.1 of the 2020 BCNYS “Party Walls”, may apply. The Section requires, in part, that:

Any wall located on a lot line between adjacent buildings, which is used or adapted for joint service between the two buildings, shall be constructed as a fire wall in accordance with Section 706. Party walls shall be constructed without openings and shall create separate buildings (emphasis added).

Can a fire wall separate an exempted *agricultural building* from a regulated use?

While Section 503.1 of the 2020 BCNYS allows portions of a building that are separated by a fire wall to be considered as separate buildings, it does so only for the purposes of that section. A structure that contains a fire wall, is still considered one building for all other purposes. Therefore, a portion of a building that has not been constructed to meet the requirements of the Uniform Code such as an exempted *agricultural building*, cannot be separated from a regulated building solely by the addition of a fire wall for reasons that include:

- The structure is still considered one building for all portions of the Uniform Code, except 503.1, therefore the building is either regulated or it is not but cannot be both.
- The structural stability requirements of a fire wall (Section 706.2 of the 2020 BCNYS) must be designed, constructed, and inspected in accordance with the provisions of Section 706 of the 2020 BCNYS, which requires work to be performed on both sides of the wall.
- The requirements of Section 703 of the 2020 BCNYS, for fire resistance ratings and fire tests, require fire resistance ratings to be established by testing both faces of the subject assembly. This would require the fire wall construction to be inspected from the side designated as exempt.
- Sections 706.5 through 706.11 of the 2020 BCNYS regulate the construction of fire walls on both sides. Without inspections on both sides of the wall, it cannot be determined that compliance has been achieved.

Therefore, the previously exempt portion of the building would require upgrades for compliance with the applicable provisions of the Uniform Code, since it is now part of a regulated building.

Can I use the Existing Building Code for the Change of Occupancy of a previously exempt agricultural building?

The compliance path for the conversion of a previously exempt *agricultural building* begins with the 2020 Existing Building Code of New York State (2020 EBCNYS) by first determining that the building meets the definition of an existing building per Chapter 2 of the 2020 EBCNYS (provided it was legally occupied) and classifying it as a Group U occupancy based on Chapter 3 of the 2020 BCNYS. The scope of the 2020 EBCNYS then indicates that the 2020 EBCNYS applies in part to the change of occupancy of existing buildings. However, each compliance method will likely lead to either substantial application of the 2020 BCNYS or prove difficult to comply with, especially when changing to a higher hazard occupancy. Note the partial listing of 2020 EBCNYS provisions below:

- Prescriptive Method. Section 506.1 indicates, in part, that “*a change of occupancy shall not be made in any building unless that building is made to comply with the requirements of the Building Code of New York State for the use or occupancy.*”
- Work Area Method. For a Change in occupancy classification, Chapter 10 includes multiple references to the applications of the 2020 BCNYS, such as references to heights and areas, structural members, fire protection systems, fire separation, lighting, ventilation, means of egress, electrical, plumbing, and mechanical requirements.
- Performance Compliance Method. The performance-based method relies on a point system that works in concert with the occupancy classifications of Chapter 3 of the 2020 BCNYS. For Group U, only a complete change in occupancy is permitted to use this method, yet Group U is not included in the tables. It is unlikely that enough points would be accrued to demonstrate a satisfactory safety score to meet compliance through this method.

How are solar panels, wind turbines, and ESS installed in or on exempt agricultural buildings and premises regulated?

In the opinion of the Department of State, any appurtenances connected or attached to a building or structure such as equipment and building systems like electrical systems, plumbing systems, mechanical and HVAC systems, which are installed in or on an exempted building, and are in support of the exempted building and its use, are part of the building and are therefore also exempt. Therefore, in the opinion of the Department of State, solar panels, wind turbines, and energy storage systems (ESS) installed in or on exempted *agricultural buildings* and premises, where the energy generated and stored is used “*directly and solely for agricultural purposes,*” are exempt from the construction-related provisions of the Uniform Code. As a general rule, systems generating or storing a maximum of 110% of the energy consumed exclusively by the exempted *agricultural building* or buildings, not to include dwellings or any other uses on the premises, are considered to be used “*directly and solely for agricultural purposes.*” The installation of solar panels, wind turbines, and ESS on or in a previously exempt *agricultural building*, but used for purposes other than agricultural purposes, shall NOT be considered to be exempt from the construction-related provisions of the Uniform Code, and therefore, may also require upgrades to the existing building to permit the installation in accordance with the Uniform Code. However, consistent with the provisions applicable to the building they are installed on or in, solar panels, wind turbines, and ESS are never exempt from the operational and maintenance provisions of the Fire Code and the Property Maintenance Code.

Note that some ESS are exempt from the code by virtue of their size. Chapter 12 of the 2020 FCNYS stipulates the requirements for the installation of ESS. According to Table 1206.1, ESS below the thresholds indicated, are exempted from the requirements of Section 1206.

Since solar panels, wind turbines, and ESS are not exempt from the operational and maintenance provisions, it is advisable that the applicable requirements be evaluated prior to installation, when it is easiest and least costly to make necessary changes.

Ground-mounted photovoltaic systems (solar panels) and wind generation towers (wind turbines) that are not attached to a building are exempt from the Uniform Code. They may, however, be subject to other state or federal regulations.

Does an exempt *agricultural building* need a building permit, a certificate of occupancy, or a certificate of compliance?

In accordance with the minimum standards for administration and enforcement (19 NYCRR Part 1203), *Building permits shall be required for work which must conform to the Uniform Code.* (19 NYCRR Section 1203.3 (a)(1)). Local governments are allowed to require administration and enforcement provisions above and beyond 19 NYCRR Part 1203. Therefore, although the minimum standard regulations may not require a building permit be obtained for the construction of a building meeting the definition and exemptions for an *agricultural building*, the local law for the municipality where the building is located may still require a building permit. The building may then be reviewed for compliance with local laws, rules, and regulations other than the Uniform Code, such as local zoning provisions.

In accordance with 19 NYCRR Section 1203.3 (d), *“a certificate of occupancy or a certificate of compliance shall be required for any work which is the subject of a building permit and for all structures, buildings, or portions thereof, which are converted from one use or occupancy classification or subclassification to another.”* As such, an *agricultural building* that is not subject to the building permit requirements of 19 NYCRR Part 1203 and is not converted from one use to another, would also not be subject to a certificate of occupancy or certificate of compliance per the minimum standards. Similar to building permits however, local governments are allowed to require administration and enforcement provisions above and beyond 19 NYCRR Part 1203. Therefore, although the minimum standard regulations may not require that a certificate of occupancy or compliance be obtained in order to use or occupy a building which meets the definition and exemptions for an *agricultural building*, the local law for the municipality where the building is located may still require a certificate. This certificate may show, for example, that the building is in compliance with local laws, rules, and regulations other than the Uniform Code, such as local zoning provisions.

Variations

As a reminder, in a case where the owner believes that strict compliance with all applicable code provisions would be unwarranted, the owner can consider applying for a variance, in accordance with [19 NYCRR Part 1205](#). A variance may be granted where the Board of Review finds, that:

- *“strict compliance with such [code] provision or requirement would entail practical difficulties or unnecessary hardship or would otherwise be unwarranted; provided, however, that any such variance or modification shall not substantially adversely affect provisions for health, safety and security and that equally safe and proper alternatives may be prescribed.”* and
- the party seeking the variance or modification has shown by the weight of the evidence that strict compliance with the particular provision or requirement:
 - would create an excessive and unreasonable economic burden;
 - would not achieve the code's intended objective;

- would inhibit achievement of some other important public policy;
- would be physically or legally impracticable;
- would be unnecessary in light of alternatives which ensure the achievement of the code's intended objective or in light of alternatives which, without a loss in the level of safety, achieve the code's intended objective more efficiently, effectively, or economically; or
- would entail a change so slight as to produce a negligible additional benefit consonant with the purposes of the code.

Voluntary Compliance

The fact that a building qualifies as an *agricultural building* and is, therefore, exempt from the construction-related provisions of the 2020 BCNYS and 2020 FCNYS, does not preclude voluntary compliance with those provisions. Any owner contemplating construction of an *agricultural building* may wish to consider designing and constructing the building in compliance with those construction-related provisions to enhance the health and safety of the persons who will be using the building and any livestock that will be housed in the building, and to extend the expected useful life of the building.

The information contained in this bulletin is not intended as a comprehensive listing of all Uniform Code requirements applicable to *agricultural buildings*. Other provisions of the Uniform Code may apply.

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