

Guideline for Review of Local Laws Affecting Farm Operations Which Produce, Prepare and Market Crops for Wine, Beer, Cider and Distilled Spirits

The following Agriculture and Markets Law (AML) provisions are relevant when evaluating whether farms which produce, prepare and market crops for wine, beer, cider and distilled spirits are protected as a “farm operation” for purposes of AML §305-a¹ :

AML §301(11) “farm operation” – “...means the land and on-farm buildings, equipment,... and practices which contribute to the **production, preparation and marketing of crops, livestock and livestock products** as a commercial enterprise. ... 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.” (emphasis added)

Definition of “**crops, livestock and livestock products**” as contained in AML §301(2) (a) includes, but is not limited to “...corn, wheat, oats, rye, barley...” and [hops] and §301(2) (b) “[f]ruits,” including “...apples, peaches, grapes, cherries and berries.”

The on-farm “**production, preparation and marketing**” [AML §301(11)] of grains, grapes and other fruits are considered part of a farm operation. The Department considers agricultural commodities produced “on-farm” to include any products that may have been produced by a farmer on his or her “farm operation,” which could include a number of parcels owned or leased by that farmer throughout a town, county, or the State.

The Department considers the processing, distillation, brewing and fermentation activity and the on-farm buildings and equipment which are needed to produce, store, distill, brew and/or ferment grains, grapes or other fruits as part of the farm operation to the extent that the distilled or brewed product, cider and/or wine that is prepared is composed predominantly of grain, hops, grapes or other fruits produced on the farm.^{2,3} In addition, the on-farm marketing of distilled and brewed products, cider and wine, when the distilled and brewed products, cider and wine is composed predominantly of on-farm produced grain, hops, grapes or other fruits, is part of the farm operation.

¹ Please see the Department’s *Guideline for Review of Local Laws Affecting Preparation and Marketing Activities by Start-Up Farm Operations* for information about how the Department evaluates start-up farms that use their crops for the production and sale of beverages and other value-added products.

² On an annual basis, distilled or brewed products, cider and wine must be composed of 51% or more on-farm produced grains, hops, grapes or other fruits (if grapes or fruits are imported as whole fruit, then gross weight of the on-farm produced grapes/fruit must be at least 51% of the finished wine; if juice is imported, then the gross volume of juice from on-farm produced grapes/fruit must be at least 51% of the finished wine). Therefore, while an individual alcoholic beverage may be produced at the farm entirely from off-farm agricultural crops, at least 51% of the agricultural crops used to produce all of the farm’s alcoholic beverages, on an annual basis, must be from the farm’s own production. The farm must also grow a portion of each of the major ingredients used to make the alcoholic beverage. For example, a farm that wants to market its crops as beer must grow both grains and hops.

³ While the Department sets standards for protection of “farm operations,” the Alcoholic Beverage Control Law (ABC Law) provides the standards which must be met for farm brewery, cidery, winery and distillery licenses. Licensees must comply with the ABC Law standards to qualify for their licenses. While a license issued by the State Liquor Authority may allow for the sale of alcoholic beverages which are not made from crops grown by the farm, the Department does not consider such beverages to be part of a farm operation. Therefore, the production and sale of such beverages would not be protected under AML §305-a.

On-farm marketing of distilled, brewed, cider and wine-related products (e.g., food products such as cheese, pies and ice cream made with wine or on-farm produced fruit⁴, as well as products used for transport, preparation and consumption of distilled or brewed products, cider or wine, such as shot glasses, cork screws, chillers and wine/beer/cider glasses) is also part of the farm operation when the amount of annual sales of such products is consistent with the size and scope of the farm operation and is incidental to the annual sales of the farm's distilled or brewed products or wine. **Farm operations must keep sufficient records to prove that these requirements are met.** The needs of "start-up" farm operations should also be considered. These farms often start out selling distilled or brewed products, cider and/or wine which is composed entirely, or primarily, of grain, hops, grapes/fruit grown off the farm in order to develop a customer base and maintain income while their crop (such as hops or grains) or vines/fruit trees are growing. These farms should be allowed a reasonable period of time to meet the predominance standard.⁵

MARKETING ACTIVITIES (e.g., WEDDING RECEPTIONS, PARTIES and SPECIAL EVENTS)

The Department has concluded that on-farm wedding receptions, parties and special events (e.g., harvest festivals or distillery, brewery, cidery and wine tastings), including charitable events, held at farms which market their crops as wine, beer, cider and distilled spirits, help market the farm operation's product. These activities are evaluated on a case-by-case basis to determine whether they are protected as part of the farm operation. The Department interprets AML §301(11) to include such receptions, parties and special events held on-farm as part of a farm operation under certain conditions. The events, whether public or private, must be: 1) directly related to the sale and promotion of the beverage produced at the farm (from at least 51% on-farm produced grain, hops, grapes/fruit/juice); 2) incidental and subordinate to the retail sale of the beverage on-site; 3) hosted by the farm or customers of the farm (not outside, unrelated parties); and 4) feature the beverage produced at the farm (from at least 51% on-farm produced grain, hops, grapes/fruit/juice).

The Department considers events to be "incidental" only when the gross annual sales from the non-beverage portion of event sales (including any facility rental/vendor fees, admission fees, catering charges, sales of other alcoholic beverages, etc.) does not exceed 30% of total gross sales from the retail sale on-site of the beverage produced at the farm (from at least 51% on-farm produced grain, hops, grapes/fruit/juice) at such events, plus the retail sale of any other crops, livestock or products or beverage-related food products (produced on the farm) that may be sold at such events.⁶ All products must be sold at a cost no higher than the current retail price of such products sold at the farm. **Farm operations must keep**

⁴ Food products must be composed predominantly (at least 51%) of the farm's wine or fruit. Please see the Department's *Guidelines for Review of Local Laws Affecting Direct Farm Marketing Activities*, "On-farm preparation of processed foods."

⁵ Please see the Department's *Guidelines for Review of Local Laws Affecting Preparation and Marketing Activities by Start-Up Farm Operations* for the Department's view of reasonable time frames for various crops.

⁶ When farm event customers arrange for their own catering, alcoholic beverage service, etc., and the farm does not charge for such items, these costs would not, of course, be counted as gross sales to the farm. Admission fees or minimum donations which are donated to a charity are also not subject to this condition. Further, the fact that admission fees or all, or a portion of, sales from the event are donated to a charity does not mean that the primary purpose is not to market the farm's distilled or brewed products, cider or wine. The Department evaluates all AML §305-a matters on a case-by-case basis. Therefore, if necessary, the Department would examine the specific event(s) to determine whether it is part of the farm operation.

sufficient records to prove that this requirement is met. Further, local governments can require the farm to submit an annual report to the locality showing that these conditions have been met.

In cases where the farm operation holds a special event as part of its overall marketing strategy, the event is open to the general public, and no admission, facility rental or vendor fees are involved, an evaluation of fees versus sales of the farm's distilled or brewed products, cider and/or wine and wine-related food products would be unnecessary.

In all cases where on-farm wedding receptions, parties and special events are offered, the primary purpose of the events must be to market the farm's distilled or brewed products, cider and/or wines and the events must be sufficiently related to the farm operation. The Department examines the specific activities/events to determine whether they are part of the farm operation. In addition, these activities are subject to any State or federal requirements applicable to the processing, storage and sale of alcoholic products.

Information concerning the marketing of product grown and produced on the farm may be obtained from the *Guideline for Review of Local Laws Affecting Direct Farm Marketing Activities* (<http://www.agriculture.ny.gov/AP/agsservices/guidancedocuments/305-aFarmMarket.pdf>).

CAN THE TYPES OF MARKETING ACTIVITIES CONDUCTED BY A FARM BE LIMITED? CAN THE NUMBER AND SIZE OF RECEPTIONS, PARTIES AND SPECIAL EVENTS BE LIMITED?

The types, size and scope of marketing activities that a farm growing crops for beverage production needs varies depending upon the amount of crops that the farm grows and uses for its beverage products and how the farm wishes to market its crops. Farms may market their beverages through a variety of methods: tastings, food pairings, beverage-themed dinners, wedding receptions, parties, fundraisers, etc. The Department considers these practices as part of the farm operation as long as the farm produces enough of its own crops or livestock to substantiate the need for these types of marketing tools. For example, a start-up farm that only grows a minimal amount of crops (and consequently a limited amount of beverages) would not require the same marketing tools as a larger, established farm.

The Department evaluates whether local restrictions, such as limits on the number and size of special events, are unreasonably restrictive of a farm operation. Therefore, a farm that has a limited amount of crop-based beverages to sell, 1,000 gallons of wine for example, would not need multiple, large-scale events to market such beverages. The size and number of events can be limited each year, based upon the previous year's production.

CONDITIONS TO ENSURE THAT THE PRIMARY PURPOSE OF RECEPTIONS, PARTIES AND SPECIAL EVENTS IS TO MARKET FARM'S DISTILLED OR BREWED PRODUCTS, CIDER AND/OR WINES; AND TO ENSURE THAT THE EVENTS ARE SUFFICIENTLY RELATED TO THE FARM OPERATION

In addition to the conditions discussed on page 2:

- The farm's distilled or brewed products, cider and/or wines must be prominently featured at all locations in which the event is conducted on the site. Marketing materials (e.g., brochures, pamphlets, presentations, photos, branded items, etc.) must be prominently displayed; and the farm's distilled or brewed products,

cider and/or wines must be available for purchase at all locations and for the duration of the event.

- Any person serving the farm's distilled or brewed products, cider and/or wines must be thoroughly familiar with the farm and the products being served (not just a bartender); and the farm can only charge the customer for this service to the extent allowed by the ABC Law.

LOCAL PERMITS AND APPROVALS FOR MARKETING ACTIVITIES

In regulating these activities, local governments may require farm landowners that hold such events to undergo an expedited site plan review process and/or obtain an event permit from the regulating municipality. The Department discusses an expedited site plan review process in its *Guideline for the Review of Local Zoning and Planning Laws* (<http://www.agriculture.ny.gov/AP/agsservices/guidancedocuments/305-aZoningGuidelines.pdf>). If the municipality requires the farm landowner to obtain an event permit, the permit should be issued on an expedited basis and not be excessively costly to obtain. For example, an event permit application meeting these standards might request information on such things as the date(s) of the event, type of event being held, the anticipated number of people in attendance, parking, whether catered food or food prepared on-site, the fee charged to rent the facility or the cost of admission and a description of the buildings to be used during the event. The permit could also make provisions for any inspections that must be made by the Code Enforcement Officer/Building Inspector, Fire Marshall and/or Health Department, and other reasonable requirements that may be pertinent to the holding of such events.

While special use permits should not generally be required for a farm that markets through a limited number of small scale events; farms which market their crop-based beverages through multiple, large-scale events on a regular basis could be required to obtain a special use permit. The Department supports such an approach, in certain cases, when the permit process is streamlined, since it allows local governments to comprehensively address specific facts and circumstances presented by the farm's events. If a farm claims that the process to obtain a permit, or the conditions imposed, are unreasonably restrictive, the Department could review the matter under AML §305-a.

The Department reviews all matters under AML §305-a on a case-by-case basis. A Department determination that a farm's marketing activities are part of a farm operation and, therefore, eligible for protection under AML §305-a; does not extend to the sale of products or the use of marketing activities that were not reviewed by the Department. Therefore, a local approval based upon the Department's enforcement of AML §305-a could be revoked if the farm changes the products that it sells or the marketing activities used.

WHAT TYPES OF ACTIVITIES CAN BE OFFERED AT A FARM'S MARKETING EVENTS?

While events held at a farm which markets its crops as beverages may generally be considered part of a farm operation; not all activities which may be offered at such events are part of a farm operation. Specific marketing activities, and the components of those activities, are evaluated on a case-by-case basis. For example, the Department previously found that the following activities/uses at a certain farm's festival were not part of the farm operation: hot air balloon rides, fireworks, pedal karts, cow train and activities such as a jumping pillow and gemstone mining. The town involved in that matter explored a site plan review law to examine public events/venues and gatherings at farms.

The Department carefully evaluates farm marketing activities to ensure that the primary purpose of the events is to sell the farm's products; and that the activities are sufficiently related to the farm. For example, a corn cannon and pumpkin launcher were found to be part of the referenced farm's protected marketing activities since the farm's products were sold and directly used for the activity.