

## **Guidelines for Review of Local Laws Affecting Preparation and Marketing Activities by Start-Up Farm Operations<sup>1 2</sup>**

Some farmers import produce from other farms to sell at their farm marketing facilities, as raw or prepared products, to increase the diversity of products offered or to bridge periods of low supply of commodities produced on-farm. Product diversity may attract potential customers to a roadside stand or farm market. The Department believes the sale of some agricultural products grown off the farm should be allowed, but has not established a percentage of on-farm versus off-farm products for that purpose. The Department considers the facts of a particular case in making a determination whether a local law is unreasonably restrictive, but generally would view requiring at least a predominance<sup>3</sup> of on-farm products as reasonable. The Department considers agricultural commodities produced “on-farm” to include any products that may have been produced by a farmer on their “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 all such land, when it is located in a State certified agricultural district, as part of the farm operation.

### **Start-Up Farm Periods**

- The needs of “start-up” farm operations should also be considered. These farms may start out selling a large percentage of agricultural products grown off the farm in order to develop a customer base and maintain income while their farms are growing. If a percentage of on-farm products were required by a locality, allowing such farms a reasonable period of time to meet the percentage would be reasonable. The Department considers the following start-up periods to be reasonable<sup>4</sup>:

*Crops: 2 years*  
*Hops: 3 years*  
*Livestock: 2 years*  
*Nurseries and Greenhouses: 2 years*  
*Aquaculture: 2 years*  
*Apiaries: 2 years*  
*Christmas Trees: 8-10 years*  
*Maple: 2 years*  
*Orchards and Berries: 3-5 years*  
*Vineyards: 5 years*

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<sup>1</sup> This guideline provides information about how the Department treats preparation and marketing activities by start-up farms for purposes of AML §305-a. Please see *Guidelines for Review of Local Laws Affecting Direct Farm Marketing Activities* for more detailed discussion of farm marketing, generally.

<sup>2</sup> Any farm that has received a start-up designation from the Department prior to the issuance of this guidance document (8/31/15) will continue to be evaluated by the Department under all relevant guidance applicable to the approved start-up plan that was in effect at the time of the designation, regardless of whether the start-up period has expired. However, should the farm seek the Department’s review of a new or different use or purpose for its farm operation that is not included in the approved start-up plan, the new or different use or purpose may be evaluated by the Department under its current guidance.

<sup>3</sup> At least 51% on an annual basis. Note that predominance for farms which produce, prepare and market their crops as alcoholic beverages is viewed across all beverages produced. That is, while an individual alcoholic beverage may be produced at the farm entirely from off-farm crops, at least 51% of the crops used to produce all of the farm’s alcoholic beverages, on an annual basis, must be from the farm’s own production..

<sup>4</sup> Local governments may, of course, provide longer start-up periods in their discretion; and should consider weather, disease and other factors that may impact production.

*Woody Biomass: 3 years*

*What types of crops, livestock and livestock products may be imported from other farms during the start-up period and thereafter?*

- Crops, livestock and livestock products that are imported from other farms must be representative of the crops, livestock and livestock products that the farm or start-up farm grows/raises and sells. For example a Christmas tree farm that does not produce any other products could be limited to importing Christmas trees, greens for wreaths and related products if the local government chose to limit the products offered for sale as part of any local approvals that may be required.
- A farm that doesn't produce a certain product can import that product to diversify the crops, livestock and livestock products that it offers for sale where the intent to produce the crop, livestock or livestock product is clear.

*How much produce can a start-up farm import from other farms during the start-up period and thereafter and still be eligible for "farm operation" protection?*

- A start-up farm can be limited to importing other produce on a "one-for-one basis." If the farm is in its first year of production, the amount would be based upon the expected production of the land that the farm has in production or the expected yield of livestock being raised that will be sold by the farm at its on-farm marketing facilities. Import limits in subsequent years would be based on the farm's previous year's production that was sold or intended for sale on the farm. Therefore, as the farm's own production increases, more produce from other farms can be imported.
- The evaluation of imports can be based upon weight, volume or value; as long as the method chosen is consistent across the operation.

*Examples:* 1) A vegetable farmer produces and sells 10,000 pounds of vegetables at his or her on-farm marketing facilities each year. The farm should be allowed to import up to 10,000 pounds of vegetables to prepare and market at the farm.

2) A livestock farm purchases 50 cattle to raise and sell at the farm. The farm should be allowed to import an equivalent amount of beef for sale at the farm during the first year of operation while the farm's own cattle are being raised to sell the following year.

3) A new vineyard that plans to grow grapes for wine production has 5 acres of vines planted. These five acres are expected to yield 10,000 pounds of grapes (or 5,000 gallons of juice) when mature. The vineyard can import 10,000 pounds of grapes or 5,000 gallons of juice to prepare and market as wine at the farm during the first year of operation.

4) A new hop and grain farm that plans to grow hops and grains for beer production has 1 acre of hops and 20 acres of grains planted. Since hops are a high value crop, the expected yield of the 1 acre planted is worth \$20,000 (but only weighs 500 pounds) and the 20 acres of grains are expected to yield 10,000 pounds of grain. The farm can import up to 10,000 pounds of grain and up to another \$20,000 of hops, grains or other produce to prepare and market as beer at the farm during the first year of operation.

### **On-farm preparation of processed foods**

- The purpose of the Agricultural Districts Law is to keep land in agricultural production. Therefore, the Department protects preparation and marketing activities to the extent that a farm is engaged in the production of crops and livestock.
- Farms can import crops or livestock and prepare value-added products from the imported goods to the extent that the farm grows or raises such crops or livestock, on a “one-for-one basis,” for sale at retail as part of their direct marketing activities. Since the purpose of the start-up periods and the predominance standard is to assist farm operations in direct marketing their own products on the farm, produce and livestock cannot be imported to prepare/process for sale at wholesale.
- The scope of marketing tools that a farm needs varies depending upon the amount of crops or livestock that the farm grows or raises and how the farm wishes to market its products (e.g., as raw products or prepared/processed and value-added items). Some of the larger farm markets may have facilities for the on-site preparation of processed foods (e.g. a kitchen, bakeshop, etc.), as well as facilities for consumption of foods (e.g., a café). 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 preparation and marketing tools. Generally, if the products that are prepared are composed of a predominance of ingredients produced on the farm, the Department will protect a kitchen, bake shop or café. However, a start-up farm that only grows a minimal amount of crops or raises a limited number of livestock would not require the same preparation and marketing tools (kitchen, bake shop or café) as a larger, established farm.
- A start-up farm may, however, need a small kitchen or other preparation facility to prepare crops or livestock for sale at the farm. A large commercial-style kitchen, bake shop or café would likely not be needed or warranted, however.
- In all cases, it would not be unreasonable to have a farmer provide the municipality with proof that their facilities are in compliance with local Health Department and/or Federal, State or reasonable local law requirements.