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State Agriculture Commissioner Releases Guidance for the Safety in Agricultural Tourism Act Provides Guidance for Agri-Tourism Business Owners on Issuing Notice of Inherent Risk of On-Farm Activities and Visitor Responsibilities

The New York State Department of Agriculture and Markets today released guidance that clarifies the responsibilities of agri-tourism and equine business operators and their visitors under the Safety in Agricultural Tourism Act. Governor Cuomo signed the law in 2017, establishing enhanced protection for farm owners from liabilities associated with inviting the public onto their farms for agricultural tourism events and activities. This includes farm and winery tours, equine activities, and u-pick operations that are conducted for educational or recreational purposes, and that benefit the farm through the sale, marketing, production, harvesting or use of the farm's products.

Commissioner Ball said, "The goal of the legislation is to not only ensure legal protections for farms that inform the public of the potential on-farm risks but also to reduce liability insurance costs for agri-tourism and equine businesses. The Department is pleased to provide guidance for these agri-business owners to help them obtain the protection of the new law so that they continue to offer the tremendous educational and recreational benefits they provide to so many visitors interested in learning more about New York agriculture."

The guidance, found [here](#), provides an overview of the Safety in Agricultural Tourism Act and best practices for farmers in evaluating the possible risks of the agricultural tourism activity. It also helps operators to create effective and informative signs. In addition, the document describes the public's responsibilities when visiting these agri-tourism locations.

As part of the guidance, the Department outlines the major requirements of business operators, which includes:

- posting warning signs in conspicuous locations on the potential risks of the on-farm activities and the responsibilities of visitors;
- distributing written information to visitors directing them to the posted signage;
- posting directional signage;
- taking reasonable care to prevent foreseeable risks; and
- providing training to employees.

The Department recommends that farm operators consult with insurance and legal professionals to identify potential risks to visitors specific to their farms by performing a "risk assessment." In addition, these business owners should periodically review their operation to determine whether any changes are needed to the signage, training or operations to better ensure the safety of visitors and protection under the statute. The new law provides increased protection from lawsuits only to farms that provide the required disclosure and follow the additional requirements of the new law.

New York Farm Bureau President David Fisher said, "Today's announcement is significant for diverse farms and agritourism businesses around the state that have made inherent risk reform a top priority for years. New York Farm Bureau advocated for these necessary reforms in order to hopefully provide some relief to the excessive costs of liability insurance for equine facilities, u-pick it operations, and Christmas tree farms. We appreciate Commissioner Ball and his staff's efforts in drafting guidance about this new law, and New York Farm Bureau will continue to work with his department to educate our members about the changes. It is also important for the general public to understand that there are inherent risks that come with stepping foot on a farm."

Dr. Karin Bump of Cornell Cooperative Extension Madison County said, "With less than 2% of our population now directly connected to farming, it has become increasingly important to open our farm operations to the public to ensure opportunities to experience, ask questions, and explore the nature of farms and farming. However, doing this comes with some risk to the farm owner. I look forward to working with the Department and partner agencies to help educate farmers, and the equine industry, in particular, on the nature of inherent risk legislation, the responsibilities of farm operators, and important steps in mitigating risk and ensuring that due diligence has been followed."

New York Apple Association President Cynthia Haskins said "Agritourism outlets such as apple u-pick operations, farm markets and cideries need this type of liability protection for the inherent risks of inviting the public onto farms. Agritourism is growing in popularity. Growers take the necessary steps in making sure their operations are safe. This legislation recognizes responsibility involves everyone."

About the NYS Department of Agriculture and Markets

The Department, through its various divisions and programs, promotes New York agriculture and its high-quality and diverse products, fosters agricultural environmental stewardship, provides consumer protections, and safeguards the State's food supply, land, plants and livestock to ensure the viability and growth of New York's agriculture industries.



OVERVIEW OF THE SAFETY IN AGRICULTURAL TOURISM ACT

The “Safety in Agricultural Tourism Act,” now part of New York’s General Obligations Law (“GOL”), provides that owners and operators of agricultural tourism areas “shall not be liable for an injury to or death of a visitor if the provisions of General Obligations Law Section 18-303(1)(a) – (e) are met. Among the major requirements to receive the protection of the statute are:

- Posting a conspicuous Warning to Visitors sign, notifying visitors of the inherent risks relevant to the on-farm activity, the farm operation and site conditions. The farm operator is responsible for developing this sign and taking reasonable care to prevent reasonably foreseeable risks to visitors.
- Distributing written information to visitors, with language specified by the Department of Agriculture and Markets, directing the attention of all visitors to the required Warning to Visitors sign. (See Appendix 1)
- Posting directional signage and identifying “off limits” areas.
- Posting a conspicuous notice at every point of sale or distribution of tickets that visitors have certain responsibilities identified in the General Obligations Law.
- Posting a conspicuous notice to visitors of the right to a refund for those unprepared or unwilling to accept the inherent risks of the on-farm activity or to the duties of reasonable care imposed on the visitor.
- Providing adequate training to employees.

A “one size fits all” approach does not ensure all the protection afforded by the Safety in Agricultural Tourism Act. For example, generic signage may not identify risks posed by the activities conducted on the farm. Forms used in other States under similar laws may not satisfy the requirements of New York law.

To obtain the maximum protection afforded by this law, farm operations should work with their insurance and legal professionals and perform a “risk assessment” to identify potential risks to visitors specific to the farm.

Moreover, farm operators need to periodically review their operation to determine whether any changes need to be made to the signage, training or operations to better ensure both the safety of visitors to the farm and protection under the statute.



STATUTORY REQUIREMENTS FOR PROTECTION

To obtain the protection offered by General Obligations Law, Section 18-303(1)(f), farm owners and operators are required to comply with the following statutory requirements:

A. DIRECTIONAL SIGNAGE

Subsection 18-303(1)(a) provides that operators “post and maintain way finding signage to delineate the paths, areas and buildings that are open to the public.” Farm operators should also clearly identify areas that are off limits to visitors with signage stating, for example: “Employees Only” or “No Visitors.” The development of this signage is the responsibility of the farm operator.

B. EMPLOYEE TRAINING

Subsection 18-303(1)(b) requires operators to “adequately train employees who are actively involved in agricultural tourism activities.” What constitutes “adequate” will depend on the farm operation and the nature of the activities. The development of a training program should consider the information and skills that would help employees prevent visitors from being harmed by foreseeable and preventable risks. The training should also prepare employees to provide guidance and instructions to the public as well as to effectively communicate the risks of the on-farm activity and the responsibilities of visitors on a working farm.

C. WARNING TO VISITORS SIGNS CONCERNING INHERENT RISKS OF FARM ACTIVITIES

Subsection 18-303(1)(c) requires farm operators to conspicuously post a Warning to Visitors sign “relative to the inherent risks of participating in activities on working farms” at every point of sale or distribution of tickets, whether on or off the farm. The statute provides no definition of inherent risk and no specific language, required content or format for the sign.

The information provided by the operator in the warning sign should clearly identify the risks for farm visitors. Be as specific as possible when identifying the risks of participating in the specific activities on the farm. The sign should also address the risks of the farm operation and the site conditions. The sign should be prominently displayed and easy to read. If there are multiple on-farm activities, more than one sign may be needed to provide adequate notice of the risks of the different activities.

Generic warnings may be insufficient; and simply stating farms are “dangerous” is not enough. Similarly, using signs found on the internet and signs developed to satisfy the



requirements of the laws of other states may not satisfy the requirements of GOL 18-303(1)(c) and not provide the farm operator with the protection available under New York law.

Moreover, farms should periodically review all signage required by the statute to ensure that all the signs are in good condition, clean, legible and up-to-date. If the farm operator adds a new activity or attraction, or opens a new area of the farm to visitors, the signage should be updated, as necessary.

D. OPERATOR PROVIDED WRITTEN INFORMATION

Farms are required to provide visitors with written information that conspicuously directs the attention of all visitors to the Warning to Visitors sign. The statute provides that the Department specify the text and graphics of this written information. Appendix A provides text and graphics meeting the requirements of Section 18-303(1)(c).

Copies of this written information should be provided to all visitors. It is advisable to inquire if visitors need additional assistance beyond the written information to help ensure that each visitor understands the risks and obligations of participating in the activity.

E. VISITOR RESPONSIBILITY SIGNAGE

Subsection 18-303(1)(d) requires operators to post a conspicuous notice at every point of sale or place of ticket distribution stating that visitors to an agricultural tourism area have the responsibility to:

- Exercise reasonable care regarding the disclosed risks of the agricultural activity;
- Reasonably comply with posted directional signs;
- Reasonably remain in areas designated for the agricultural tourism activity;
- Reasonably follow all conspicuously posted rules of conduct or verbal or other communication; and
- Not to willfully remove, deface, alter or otherwise damage signage, warning devices or implements or other safety devices.

These visitor responsibilities are identified in both GOL Subsections 18-303(1)(d) and 18-303(2).

The statute recognizes a farm operator's right to establish rules of conduct to help manage risk of the agricultural tourism activity. These rules can provide specific information and more robust guidance regarding the responsibility of



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farm visitors than the visitor responsibilities listed in the statute. If properly displayed or communicated, these rules can provide further protection from liability when a visitor's injury results from disregarding the rules or safety instructions. Farms should also periodically review these rules to make sure they remain up-to-date.

F. POSTING OF NOTICE OF RIGHT TO A REFUND

Subsection 18-303(1)(e) requires farm operators to post conspicuous notice to visitors of the right to a refund of the amount paid in the initial sale of the tickets. The right to a refund is conditioned on the purchaser's "declaration" to the operator that he or she is unprepared or unwilling to accept the inherent risks of the on-farm activity or assume the duty of reasonable care imposed on the visitor upon the return of the tickets unused and intact.

Notice concerning the right to a refund is an independent sign requirement for the farm operator. However, it would be prudent for an operator to also include this language in its Warning to Visitors and Visitor Responsibilities signs.

G. OPERATOR DUTIES

Section 18-303(1)(e) requires the farm operator to "take reasonable care to prevent foreseeable risks to visitors, consistent with the responsibility of a landowner to keep his or her premises reasonably safe for intended and reasonably foreseeable uses and users...." Accordingly, not only must a farm operator post warning signs "relative to the inherent risks of participating in activities on working farms," the operator must use reasonable care to address foreseeable risks. Either the failure to disclose a foreseeable risk or the failure to take reasonable care to prevent foreseeable risks could result in the loss of statutory protection in the event that harm resulted from those lapses.

Moreover, it is important to assess risk through the eyes of a visitor who is unfamiliar with farms and the potential dangers associated with farm operations. What seems obvious to an owner or operator might pose a significant but unappreciated risk to someone with little knowledge of farms and farming.

CONCLUSION

To obtain the full protection offered by this statute will require a thorough assessment of the risks of the agricultural tourism activities being conducted on the farm, both with respect to the activity itself and the farm operation. This assessment will help identify foreseeable risks that will need to be addressed by the farm and disclosed to farm visitors participating in agricultural tourism activities. It is advisable to seek assistance of professionals with expertise in the management of farm risk, both in connection with initially conforming the farm's



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practices to the requirements of the Safety in Agricultural Tourism Act and periodically reviewing those practices and making changes, if necessary. Periodic review will help ensure the farm operation continues to receive the full protection offered by this statute.

APPENDIX A

The following language constitutes the text and graphics specified by the Department as meeting the requirements of General Obligations Section 18-303(c) with respect to a farm operator's obligation to provide written information to conspicuously direct the attention of visitors to the required Warning to Visitors sign:

BEFORE STARTING YOUR ON-FARM ACTIVITY, YOU ARE REQUIRED TO READ THE POSTED WARNING TO VISITORS AND VISITOR RESPONSIBILITIES SIGNS TO LEARN ABOUT:

- The risks inherent to participating in on-farm activities; and
- Your responsibilities when participating in the activities on this working farm.

THE WARNING TO VISITORS SIGN IS POSTED AT [insert location of sign, modify if more than one sign]. This sign identifies the inherent risk(s) of the on-farm activities in which you will be participating – *activities that may expose you to the risk of personal injury, death or damage to your property.*

THE VISITOR RESPONSIBILITIES SIGN IS POSTED AT [insert location of sign, modify if more than one sign]. This sign describes your responsibilities as a visitor on a working farm, which include: obeying directional and "off limits" signs, following instructions and obeying warnings from farm representatives; complying with posted rules of conduct; and exercising reasonable care concerning disclosed risks.

- If you do not understand the information contained in the Warning to Visitors or Visitor Responsibilities signs or have any questions about their content, please ask a farm representative for help before you begin your on-farm activity.
- If you are accompanied by individuals who need help in understanding the inherent risks of participating in the on-farm activities or the responsibilities of a visitor on a working farm, please explain, or ask a farm representative to explain the risks and responsibilities to those people so that they understand them.

IF YOU (OR THOSE YOU ARE WITH) ARE UNPREPARED OR UNWILLING TO ACCEPT THE RISKS DISCLOSED OR THE RESPONSIBILITIES IMPOSED ON A VISITOR TO A WORKING FARM, PLEASE ADVISE THE ATTENDANT AND RETURN THE TICKET(S) INTACT AND UNUSED. YOU WILL BE ISSUED A REFUND FOR THE AMOUNT PAID FOR THE TICKET(S) WHEN FIRST ISSUED.