



## Can NY wineries sell wine by the bottle at farmers markets?

NY wineries can sell NY labeled wines by the bottle at a farmers' market if the market has received a "designation" from the NYS Department of Agriculture and Markets as a "farmers' market" under the NYS Agriculture and Markets Law. The winery must be licensed as a winery or farm winery by the NYS Liquor Authority.

The legal basis for sales of NY labeled wine by NY wineries at farmers' markets (as well as at the NYS Fair and at county fairs) is Section 76.5 of the NYS Alcoholic Beverage Control (ABC) Law. But individual markets must be officially "designated" as bona fide "farmers' markets" by Ag and Markets to enable NY wineries to sell their wine by the bottle. As of August 1, 2010, NY wineries no longer need to obtain a "no-fee" permit from the NYS Liquor Authority to sell at "designated" markets.

A farmers' market "designation" is based on Article 22 of the Agriculture and Markets Law, which defines a "farmers' market" as "any building, structure or place, the property of a municipal corporation or under lease to or in possession of a public or private agency, individual or business used or intended to be used by two or more producers for the direct sale of a diversity of farm and food products from producers to consumers and food buyers.

A "producer" is defined by Article 22 as "any person or persons who grow, produce, or cause to be grown or produced any farm or food product in New York State." A "farm or food product" is defined as "any agricultural, horticultural, forest, or other product of the soil or water, including but not limited to, fruits, vegetables, eggs, dairy products, meat and meat products, poultry and poultry products, fish and fish products, grain and grain products, honey, nuts, preserves, maple sap products, apple cider, fruit juice, wine, ornamental or vegetable plants, nursery products, flowers, firewood and Christmas trees."

Multiple vendor farmers' markets operated on a weekly or other periodic basis are the primary type of farmers' market designated to permit NY wineries to sell NY labeled wine by the bottle. Single or multiple-day events, such as food and wine festivals, can also be designated as farmers' markets if they include two or more bona fide agricultural producers in addition to the wineries, and if the non-winery producers are present on the same day(s) and times as the NY wineries. Designated farmers' markets may be either outdoor or indoor. If the designated market or event occurs on a Sunday, wine may be sold only after 10:00 AM under State law.

Section 76.5 of the NYS ABC Law specifies that that NY wineries may sell NY labeled wines at farmers' markets "operated on a not-for-profit basis". For the purpose of designations, this is interpreted by Ag and Markets to mean that the market sponsor earns no "profit" from vendor fees (i.e. that vendor fees are only helping to cover the

cost of operating the market), NOT that the market sponsor must be a not-for-profit organization or that participating farmers and producers cannot not earn a “profit”.

Most NY wineries have “tasting permits” from the State Liquor Authority that allow them to sample their wines at various venues. If a farmers’ market does NOT have a “designation” from NYS Agriculture & Markets, NY wineries with tasting permits can still participate and sample their wines, but they cannot sell them by the bottle. If a farmers’ market has been “designated”, a NY winery can sell wines by the bottle after sampling them, just as at the winery (the ideal marketing strategy). Regardless of designation, the participating winery, NOT the market sponsor, is responsible under its license for ensuring compliance with NY State Law prohibiting the sale and/or tasting of wine by minors (under 21 years of age).

If you are unsure that your farmers' market has been designated to enable NY wineries to sell their NYS labeled wine by the bottle, or wish to have it designated, please contact the NYS Department of Agriculture and Markets at (718) 722-2830/31 or [soni.singh@agriculture.ny.us](mailto:soni.singh@agriculture.ny.us) to obtain an application form. There is no cost for a “farmers’ market designation”, which is in the form of a letter plus attachment. Copies of the document should be kept at the market office and on-site at the market to assure NY wineries that they can legally sell their wines by the bottle - and also for inspection by State or local officials.

Farmers’ market’s rules and regulations should require that participating farmers and producers (including wineries) comply with all applicable federal, state, and local laws and regulations. Ideally, the rules should also require that participating food processors provide the market sponsor with proof of compliance with food safety requirements, such as a copy of their NYS Food Processing license (20-C) or equivalent, and that wineries provide a copy of their NYS Winery or Farm Winery license. Market rules might also state that wineries are responsible for collecting NYS sales tax (wine and other alcoholic beverages are taxable in NY), and that out-of-state wineries, wholesale wine distributors, and non-winery retailers (e.g. wine shops) are not permitted to sell wines or conduct wine tastings at farmers' markets.

At present, there are no provisions for NY breweries to sell or sample NY-brewed beer at farmers’ markets, whether or not the beer includes NY grown ingredients.

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