

AGRICULTURE

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Winery Special Occasion Events on Preserved Farmland

Proposed New Rules: N.J.A.C. 2:76-27

Authorized By: Susan E. Payne, Executive Director, State
Agriculture Development Committee.

Authority: P.L. 2014, c. 16.

Calendar Reference: See Summary below for explanation of
exception to calendar requirement.

Proposal Number: PRN 2017-168.

Submit written comments by October 6, 2017, electronically
to sadc@ag.state.nj.us or by regular mail to:

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State Agriculture Development Committee

PO Box 330

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The agency proposal follows:

Summary

The State Agriculture Development Committee (SADC) is proposing new N.J.A.C. 2:76-27 to implement P.L. 2014, c. 16, (the "preserved farm winery law") allowing, under certain circumstances, special occasion events (SOEs) to be held at wineries located on farms preserved under the Agriculture

Retention and Development Act, N.J.S.A. 4:1C-11 et seq. (ARDA), the Garden State Preservation Trust Act, N.J.S.A. 13:8C-37 through 40 (GSPTA), or any other State law enacted for farmland preservation purposes.

The preserved farm winery law, at N.J.S.A. 4:1C-32.7, defines "special occasion event" as a "wedding, lifetime milestone event, or other cultural or social event defined by the appropriate county agriculture development board and conducted pursuant to the requirements set forth in" N.J.S.A. 4:1C-32.8. A "winery" is defined in section 32.7 as "a commercial farm where the owner or operator of the commercial farm has been issued and is operating in compliance with a plenary winery license or farm winery license pursuant to" N.J.S.A. 33:1-10 of the New Jersey Alcoholic Beverage Control Act.

N.J.S.A. 4:1C-32.8 directs the SADC to establish a 44-month pilot program during which special occasion events may be conducted on preserved farm wineries provided that: (1) the gross income generated from all SOEs during the calendar year amounts to less than 50 percent of the annual gross income of the winery; (2) the SOE uses, to the maximum extent practicable, the agricultural output of the winery in order to promote agricultural tourism and advance the winery's agricultural or

horticultural output; (3) the special occasion event is held on a Friday, Saturday, Sunday, or Federal or State holiday, but may also be conducted on any other day of the week with the SADC's approval, or with county agriculture development board ("CADB" or "board") approval upon the SADC's delegation of approval authority to the CADB; (4) the SOE is conducted in: a temporary structure, such as an open canopy or tent, put in place only for the minimum amount of time reasonably necessary to accommodate the special occasion event; an existing, permanent agricultural building; a farm or open-air pavilion; or any other structure used in the normal course of the winery's operations; (5) the special occasion event complies with applicable municipal ordinances, resolutions, and regulations addressing litter, solid waste, traffic, and the protection of public health and safety; (6) the winery is subject to site plan review and applicable development approvals required by ordinances enacted pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.; (7) the SOE is subject to noise standards established in the Noise Control Act, N.J.S.A. 13:1G-1 et seq., and the rules adopted pursuant thereto; (8) the special occasion event complies with any municipal ordinance regulating the performance or playing of music inside the winery's buildings and structures; (9) the SOE ends at a specific time, if required by

a municipal curfew ordinance; (10) the special occasion event would not knowingly result in a significant and direct negative impact to properties adjacent to the winery; and (11) the winery hosting an SOE enforces State and Federal requirements related to the legal drinking age. The pilot program expires on March 1, 2018.

N.J.S.A. 4:1C-32.8 also provides that "gross income" from a special occasion event shall include, but not be limited to: admission fees; rental fees; setup, breakdown, and cleaning fees; and all other revenue not directly related to the winery's agricultural output but received by the winery as a result of conducting the SOE.

N.J.S.A. 4:1C-32.9 permits audits of preserved farm wineries, which may be ordered by a CADB or the SADC, to insure compliance with the gross income requirement in section 32.8. The audit is to be conducted by an independent certified public accountant (CPA) approved by the board or the SADC, the reasonable costs of which are to be borne by the winery. The CADB or the SADC may establish a list of CPAs approved to conduct such audits, and copies of the audits are to be submitted to the board and the SADC. A winery cannot be subject to more than one audit per year, unless good cause to the contrary is demonstrated by the CADB or the SADC.

N.J.S.A. 4:1C-32.9 also requires that wineries engaged in SOEs annually certify to the CADB that the events account for less than 50 percent of the annual gross income of the winery during the preceding calendar year, and the board is to submit the annual gross income certification to the SADC. The CADB or the SADC can request, and the winery shall submit, additional documentation that may be necessary in conjunction with the audit.

N.J.S.A. 4:1C-32.10 establishes civil administrative penalties, collected by the SADC pursuant to the Penalty Enforcement Law of 1999 (PEL), N.J.S.A. 2A:58-10, and the suspension of winery operations, after a hearing before the SADC, for violations of the preserved winery law. An owner or operator who violates the law is liable to the following civil penalties: up to \$1,000 for a first offense; up to \$2,000 for a second offense; up to \$3,000 for a subsequent offense. Upon a finding of a second offense pursuant to the PEL, the SADC shall, after a hearing, suspend the winery from conducting SOEs for a period of up to six months; upon a finding of a third offense pursuant to the PEL, the suspension period, after a hearing before the SADC, is between at least six months but not more than one year; upon a finding of a fourth or subsequent offense

under the PEL, the suspension period, after an SADC hearing, is at least one year but not more than two years.

The preserved farm winery law requires the SADC to adopt rules to effectuate the law's purposes and gives the SADC authority to adopt an agricultural management practice to help implement the law.

The SADC worked closely with Governor Christie's office to develop preliminary registration and compliance reporting for preserved farm wineries in order to establish baseline information about the number of operations affected by the law and to obtain descriptions of the SOEs being conducted. The data generated by the registration and compliance reports helped inform the SADC in the drafting of the proposed rules.

The proposed rules were widely circulated to affected interest groups and only limited comments were received, including those expressing shortcomings of the pilot program's statutory bases. Since the pilot program was established by legislation, any perceived deficiencies in the law are beyond the scope of the SADC's rulemaking responsibilities. To the extent practical, input from stakeholders was incorporated in the final rulemaking, including provision for exchanges of registration and certification data, and consultation, between municipalities, CADBs, and the SADC.

Proposed new N.J.A.C. 2:76-27.1 and 27.2 pertain to the applicability and purpose of the proposed new subchapter.

Proposed new N.J.A.C. 2:76-27.3 contains various definitions of key terms either in, or reasonably necessary to implement, the preserved winery law. The majority of the definitions help effectuate the gross income and audit requirements set forth in N.J.S.A. 4:1C-32.8 and 32.9. The definition of "controlled group of entities" incorporates by reference, 26 CFR 1.1563-1 et seq., which sets out the Federal definition of controlled group of corporations and component members and related concepts.

Proposed new N.J.A.C. 2:76-27.4 provides that preserved farm wineries conducting SOEs shall file, by March 31 of each calendar year, a registration form with the appropriate CADB and with the SADC containing basic identifying information about the winery, its property location, the names of its business officers, a general description of its activities, a survey or site plan of the property upon which the winery is located, and a listing and description of SOEs conducted at the winery. The registration also lists SOEs not occurring on Fridays, weekends, or Federal or State holidays, that have been approved by the CADB. The wineries are required to update the registration within 30 days, and submit the update to the CADB and SADC in

order to maintain a valid registration, if the information in it substantially changes after the initial filing. Registration forms and updates are to be sent by the CADB, within 30 days of receipt, to the municipality in which the winery is located. Failure to submit a completed registration form or required updates to the CADB and the SADC may be considered a violation of the preserved winery law.

Proposed new N.J.A.C. 2:76-27.5 requires preserved farm wineries hosting SOEs to file, by March 31 of each calendar year, a compliance certification form requesting the winery to provide "yes" or "no" answers to the 11 criteria listed in N.J.S.A. 4:1C-32.8; consenting to an audit; and acknowledging the potential for civil penalties and suspensions if the winery operates in violation of the law. The wineries are required to update the certification within 30 days, and submit the update to the CADB and SADC in order to maintain a valid certification, if the information in it substantially changes after the initial filing. Certification forms and updates are to be sent by the CADB, within 30 days of receipt, to the municipality in which the winery is located. Failure to submit a completed certification form or required updates to the CADB and the SADC may be considered a violation of the preserved winery law.

Preserved farm wineries hosting SOEs must file with the CADB, by March 31 of each calendar year, a certification of income form pursuant to proposed N.J.A.C. 2:76-27.6. The form certifies that the annual gross income from SOEs amounted to less than 50 percent of the annual gross income of the preserved farm winery for the prior calendar year. A copy of the form is to be submitted by the board to the SADC. The form seeks a report on total sales data broken down by on- and off-premises tasting room wine and non-wine sales; wine and non-wine sales at special occasion events; admission fees; rental fees; setup, breakdown, and cleaning fees; catering fees; food sales; and all other revenue not directly a result of the winery's agricultural output but received by the winery as a result of conducting the SOE. The names and addresses of business entities associated with the winery and involved in special occasion events are also to be listed on the form. Failure to submit a completed income certification form to the CADB may be considered to be a violation of the preserved winery law.

Proposed N.J.A.C. 2:76-27.7 requires the preserved farm winery, at the request of the CADB or the SADC, to supplement the information provided in the income certification form within 60 days of the request in order for the board or SADC to verify compliance with the annual gross income requirements in N.J.S.A.

4:1C-32.8 and 32.9. The purpose of seeking further financial data would arise if the initial income certification report set forth in section 27.6 was incomplete, confusing, and/or raised questions concerning accuracy. The additional documentation is to be prepared consistent with the winery's accounting methods and reporting period set forth in its Federal income tax return, and shall include: all calendar year filings of New Jersey Alcoholic Beverage Tax forms and schedules; all calendar year New Jersey Sales and Use tax forms; and detailed schedules of sales data broken down by on- and off-premises tasting room wine and non-wine sales; wine and non-wine sales at special occasion events; admission fees; rental fees; setup, breakdown, and cleaning fees; catering fees; food sales; and all other revenue not directly a result of the winery's agricultural output but received by the winery as a result of conducting the SOE. The names and addresses of business entities associated with the winery and involved in special occasion events are also to be listed on the form. Winery records to be provided include internal point-of-sale reports and accounting books and records prepared by, or for, the winery, such as QuickBooks or Excel spreadsheets. The preserved farm winery would also be required to supply copies of its most recent Federal income tax return and supporting schedules to the CADB or the SADC.

A comprehensive audit demonstrating the winery's compliance with the gross annual income requirement in N.J.S.A. 4:1C-32.8 and 32.9 may be performed, pursuant to N.J.A.C. 2:76-27.8, if the additional documentation specified in N.J.A.C. 2:76-27.7 and provided by the winery at the CADB's or SADC's request, continues to be insufficient or unsatisfactory. Consistent with N.J.A.C. 4:1C-32.9, the audit is to be conducted by an independent certified public accountant approved by the CADB or the SADC, and at the winery's expense; the winery shall not be subject to more than one audit in a calendar year, unless good cause is demonstrated by the board or the SADC; and copies of the audit report shall be submitted to, and/or shared by, the board or the SADC.

Proposed new N.J.A.C. 2:76-27.9 establishes the confidentiality of the income and other supporting data provided by preserved farm wineries in accordance with N.J.A.C. 2:76-27.6, 27.7, and 27.8. Section 27.9 states that such income and supporting data are exempt from disclosure under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., as proprietary commercial or financial information.

The penalty and suspension provisions in the preserved farm winery law at N.J.S.A. 4:1C-32.10 are incorporated at proposed new N.J.A.C. 2:76-27.10.

As the SADC has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The SADC anticipates that the proposed new rules will have a beneficial social impact. The proposed new rules will ensure equitable treatment of wineries participating in the winery pilot program by establishing uniform procedures for verifying winery compliance with the preserved farm winery law's income limit, including audits when necessary, as well as formalizing existing procedures for winery registration and compliance. The rules will also make the income verification process more efficient for the SADC and CADBs that are statutorily charged with oversight of this pilot program, and more predictable for participating wineries.

The proposed new rules also benefit the public, which has expended substantial sums over the years to preserve farmland under the ARDA and GSPTA, by insuring that the privilege of operating a winery on a preserved farm is exercised in accordance with the preserved farm winery law.

Social benefits accrue as a result of the proposed new rules because the sales and income data generated by the

preserved farm wineries will inform the executive and legislative branches of the State government on the efficacy of the pilot program, whether the program should be made permanent, whether it can be expanded to allow for SOEs on preserved and unpreserved farms that do not contain wineries, and how the program can, generally, be improved.

Economic Impact

The SADC foresees minimal financial burdens on preserved farm wineries that comply with the proposed new rules. The new rules require wineries to provide sales information by category to support their income certifications and, if additional information is necessary to determine compliance with the income limit, a CADB or SADC may request certain tax and accounting records that are typically maintained as part of normal business procedures. The proposed new rules take a phased approach to income verification in order to minimize documentation that wineries must provide to demonstrate compliance with the preserved farm winery law's income limit and to avoid, to the maximum extent possible, requiring winery owners to conduct audits at their own expense. The accounting industry would benefit financially if an audit were conducted, but this would arise only if a preserved farm winery does not provide the CADB

and the SADC with the initial documentation needed to insure that the winery complies with the law's income requirements.

The public could potentially be advantaged economically as a result of the proposed new rules, as the data generated from the preserved farm wineries will inform the executive and legislative branches of the State government on the efficacy of the pilot program, whether the program should be made permanent, whether it can be expanded to allow for SOEs on preserved farms that do not contain wineries, and how the program can, generally, be improved for the public's benefit.

Federal Standards Statement

While the SADC is proposing this rulemaking under the authority of New Jersey's preserved farm winery law, the proposed rule incorporates Federal, Internal Revenue Code (IRC) regulations at 26 CFR 1.1563-1 et seq., in the definition of "controlled group of entities" found at N.J.A.C. 2:76-2.3. Incorporating the IRC regulations attempts to ensure that wineries do not evade the income limits in the preserved farm winery law by receiving income from SOE service providers, such as caterers, over which the winery's principals possess the requisite control but which otherwise appear to be separate business entities. There is no analogous State law or regulation addressing this particular issue.

Jobs Impact

The SADC does not anticipate that the proposed new rules would result in an increase or decrease in the number of jobs available in the State. However, there is the potential for an increased need for accountant's services by preserved farm wineries that do not initially provide clear or complete income information in accordance with proposed N.J.A.C. 2:76-27.6 and 27.7.

Agriculture Industry Impact

The proposed new rules will impact only preserved farm wineries, which comprise a small segment of the State's agriculture industry. The proposed new rules will ensure equitable treatment of wineries participating in the winery pilot program by establishing uniform procedures for verifying compliance with the preserved farm winery law's income limit, including audits when necessary, as well as formalizing existing procedures for winery registration and compliance. The proposed new rules take a phased approach to income verification in order to minimize documentation that wineries must provide to demonstrate compliance with the preserved farm winery law's income limit and to avoid, to the maximum extent possible, requiring winery owners to conduct audits at their own expense.

This proposed rulemaking may have an impact on the broader agriculture industry because the sales and income data generated by preserved farm wineries will inform the executive and legislative branches of the State government on the efficacy of the pilot program, whether the program should be made permanent, whether it can be expanded to allow for SOEs on preserved and unpreserved farms that do not contain wineries, and how the program can, generally, be improved.

Regulatory Flexibility Analysis

The SADC believes that it is highly likely that all of the seven preserved farm wineries that will be affected by the proposed new rules are "small businesses" within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, this proposed rulemaking is pursuant to the statutory requirements of the preserved winery law, and the SADC does not have the discretion to propose lesser standards. Moreover, no lesser requirements or exceptions can be provided based upon business size without undermining the intent and purpose of the preserved winery law. The reporting, recordkeeping, and compliance requirements are discussed in the Summary above. Any costs of compliance are discussed in the Summary and Economic Impact statement above.

The SADC understands that preserved farm wineries vary in size of operations, number of personnel, and available resources, and will work with all of the affected wineries in a cooperative manner to insure compliance with the proposed new rules.

Housing Affordability Impact Analysis

The proposed new rules would have an insignificant impact on the affordability of housing in New Jersey, and there is an extreme unlikelihood that the proposed new rules would evoke a change in the average costs associated with housing because the new rules only pertain to the preserved farm winery law.

Smart Growth Development Impact Analysis

The proposed new rules would have an insignificant impact on smart growth, and there is an extreme unlikelihood that the proposed new rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the new rules only pertain to the preserved farm winery law.

Full text of the proposed new rules follows:

SUBCHAPTER 27. WINERY SPECIAL OCCASION EVENTS ON PRESERVED

FARMLAND

2:76-27.1 Applicability

This subchapter applies to all wineries on preserved farmland included in the pilot program established by N.J.S.A. 4:1C-32.7 et seq.

2:76-27.2 Purpose

The purpose of this chapter is to establish procedures for the registration, compliance, income certification, financial reporting, and auditing of wineries included in the pilot program pursuant to P.L. 2014, c. 16.

2:76-27.3 Definitions

The following words and terms shall have the followings meanings, unless the context clearly indicates otherwise.

"Accounting method" means a set of rules used to determine when and how the winery reports income and expenses on its Federal income tax return, such as the cash, accrual, hybrid, and special methods.

"Accounting records" means hardcopy books, electronic records (that is, QuickBooks, Excel, and other accounting software), and supporting data used in filing the winery's Federal income tax returns and financial statements of the winery.

"Annual accounting period" means the consecutive 12-month period for which the winery maintains its accounting records, beginning on January 1 and ending on December 31.

"Annual gross income" means all of the winery's income (from all sources) for the calendar year, including income from special occasion events and income from the winery's agricultural output.

"Annual gross income from special occasion events" means the annual gross income received for admission fees; rental fees; setup, breakdown, and cleaning fees; catering fees; and all other revenue that is not directly related to the agricultural output of the winery, but is generated by the winery in conjunction with conducting special occasion events in a given calendar year. It does not include wine sales or income derived from the sale of complementary and supplementary products related to the winery's wine, such as wine glasses, winery-branded T-shirts, bottle openers, etc.

"Balance sheet" means a financial statement that shows the winery's assets, liabilities, and net worth on a specific date, which is usually the last day of an annual accounting period.

"Board" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a subregional agricultural retention board established pursuant to N.J.S.A. 4:1C-17.

"Calendar year" means 12 consecutive months beginning on January 1 and ending on December 31.

"Cash flow statement" means a financial statement that shows the inflows and outflows of cash from the winery's activities during a stated annual accounting period and the related footnotes.

"Committee" means the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4.

"Comprehensive compliance audit" means an audit of the winery's accounting records, financial statements, and income tax returns with an emphasis on auditing the winery's sales and income accounts, also known as a forensic audit.

"Controlled group of entities" means a combination of two or more entities that are under common control within the meaning of 26 CFR 1.1563-1 et seq, which is incorporated herein by reference and available at <https://www.gpo.gov/fdsys/pkg/CFR-2010-title26-vol13/pdf/CFR-2010-title26-vol13-sec1-1563-1.pdf>.

"Financial statements" means the winery's balance sheet, income statement, and cash flow statement.

"Fiscal year" means 12 consecutive months ending on the last day of any month except December.

"Income statement" means a financial statement that shows income and expenses, also known as a profit and loss statement.

"Municipality" means any city, borough, town, township, or village.

"Point-of-sale" means the method by which sales are recorded at the time of a sale and entered into the accounting records.

"Premises" means the property under easement, which is defined by the legal metes and bounds description in the preserved farmland deed of easement.

"Preserved farmland" means land on which a development easement was conveyed to, or retained by, the State Agriculture Development Committee, a county agriculture development board, a county, a municipality, or a qualifying tax exempt nonprofit organization pursuant to the provisions of section 24 of P.L. 1983, c. 32 (N.J.S.A. 4:1C-31), section 5 of P.L. 1988, c. 4 (N.J.S.A. 4:1C-31.1), section 1 of P.L. 1989, c. 28 (N.J.S.A. 4:1C-38), section 1 of P.L. 1999, c. 180 (N.J.S.A. 4:1C-43.1), sections 37 through 40 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-37 through 13:8C-40), or any other State law enacted for farmland preservation purposes.

"Special occasion event" means a wedding, lifetime milestone event, or other cultural or social event as defined by the appropriate county agriculture development board, and conducted pursuant to the requirements set forth in N.J.S.A. 4:1C-32.7 et seq.

"Winery" means a commercial farm where the owner or operator of the commercial farm has been issued and is operating in compliance with a plenary winery license or farm winery license pursuant to N.J.S.A. 33:1-10.

2:76-27.4 Registration procedures for winery special occasion events

(a) Any winery conducting special occasion events on the premises must annually complete and submit to the Committee and Board by March 31 of each calendar year, a registration form provided by the Committee that contains, at a minimum, the following information:

1. Name of winery;
2. Address of winery;
3. Tax block and lot of winery;
4. Municipality and county winery is located within;
5. Chief executive officer or principal officer of winery;
6. A general description of the winery, including years of operation, number of acres of grapes grown at the winery, and how wine is marketed for sale;

7. A property survey or site plan prepared by a New Jersey-licensed surveyor or engineer depicting the premises and the areas used for special occasion events; and

8. A listing of all special occasion events to be conducted on the premises for the current calendar year including event name, description, number of attendees, location on the premises, frequency, and dates.

(b) Any winery conducting special occasion events on the premises held on days of the week other than Friday, Saturday, Sunday, or Federal or State holidays must seek approval from the Committee, or from the Board if the Committee delegates its approval authority to the Board, and submit evidence of approval to the Committee for conducting those special occasion events at the time of registration for the current calendar year.

(c) If any information listed by the winery on its registration form substantially changes after the registration form is submitted for the current calendar year, the winery must provide an updated registration form and submit it to the Committee and Board within 30 days after such change occurs in order to maintain a valid registration.

(d) The Board shall forward copies of any registration forms and registration form changes to the municipality within 30 days of receipt from the winery.

(e) Failure to submit the fully-completed registration form to the Committee and the Board in the time and manner set forth may be considered a violation of the Act by the Committee.

2:76-27.5 Certification of compliance procedures for winery special occasion events

(a) Any winery conducting special occasion events on the premises must annually complete and submit to the Committee and Board by March 31 of each calendar year, a certification of compliance form provided by the Committee that contains answers in the affirmative or negative to each of the following questions:

1. Will the annual gross income generated by special occasion events for the calendar year account for less than 50 percent of the annual gross income of the winery?;

2. Will the special occasion events use the agricultural output of the winery to the maximum extent practicable, promote agricultural tourism and advance the agricultural or horticultural output of the winery?;

3. Does the winery request to conduct events other than on Friday, Saturday, Sunday, or Federal or State holidays?;

4. Will the special occasion events being proposed be conducted in one of the following: (a) a temporary structure,

such as an enclosed or open canopy or tent or other portable structure or facility, and any temporary structure would be put in place for only the minimum amount of time reasonably necessary to accommodate the special occasion event; (b) an existing permanent agricultural building; (c) a farm or open air pavilion; or (d) another structure used in the normal course of winery operations and activities?;

5. Will the special occasion events being hosted comply with applicable municipal ordinances, resolutions, or regulations concerning litter, solid waste, and traffic and the protection of public health and safety?;

6. Will the winery operate in compliance with site plan review and any applicable development approvals, as may be required by the municipality?;

7. Will the special occasion event comply with noise standards set forth in the Noise Control Act, N.J.S.A. 13:1G-1 et. seq.??;

8. Will the special occasion event comply with any applicable municipal ordinance that restricts the performing or playing of music inside the winery's buildings and structures?;

9. Will the special occasion event end at a time compliant with any applicable curfew established by municipal ordinance?;

10. Will the special occasion event knowingly result in a significant and direct negative impact to any property adjacent to the winery?;

11. Will the winery enforce State and Federal requirements concerning the legal drinking age?;

12. Does the winery certify that it consents to an audit at its own expense to determine compliance with N.J.S.A. 4:1C-32.7?; and

13. Does the winery certify that it is potentially subject to civil penalties and suspension of operations if it conducts special occasion events on the premises in a manner inconsistent with N.J.S.A. 4:1C-32.7?.

(b) If any information listed by the winery on their certification of compliance form substantially changes after the registration form is submitted for the current calendar year, the winery must update its—certification of compliance form and submit to the Committee and Board within 30 days after such change occurs in order to maintain a valid certification.

(c) The Board shall forward copies of any certification of compliance forms to the municipality within 30 days of receipt from the winery. The Board or the Committee may consult with the municipality to determine if the winery is in compliance with applicable municipal standards.

(d) Failure to submit the fully-completed certification form to the Committee and the Board in the time and manner set forth may be considered a violation of the Act by the Committee.

2:76-27.6 Certification of income procedures for winery special occasion events

(a) Any winery conducting special occasion events on the premises must annually complete and submit to the Board, by March 31 of each calendar year, a certification of income form provided by the Committee that certifies the annual gross income from special occasion events accounted for less than 50 percent of the annual gross income of the winery for the prior calendar year. The Board shall forward the certification of income form to the Committee. The certification of income form shall include sales data provided by the winery to support its certification of compliance with this subchapter. The sales data will include, at a minimum, total winery sales by categories as listed below:

1. On-premises tasting room sales - wine only;
2. On-premises tasting room sales - non-wines, and
by type;
3. Off-premises tasting - wine sales;
4. Off-premises non-wine sales;

5. Wine sales at special occasion events;

6. Non-wine sales at special occasion events;

7. Admission fees, rental fees, setup, breakdown, cleaning fees, catering fees, food sales, and all other revenue that is not directly a result of the sale of the agricultural output of the winery, but is generated by the winery in conjunction with conducting special occasion events.

8. Names and addresses of any controlled group of entities connected to the winery that are in any way involved in special occasion events and annual gross income associated with each entity.

(b) Failure to submit the fully-completed certification form to the Board in the time and manner set forth may be considered a violation of the Act by the Committee.

2:76-27.7 Financial reporting procedures for winery special occasion events

(a) Upon request by the Board or Committee, the winery will be required to provide additional documentation within 60 calendar days from the date of request, as may be necessary for the Board or Committee to verify compliance with N.J.S.A. 4:1C-32.7 et seq. The documentation shall be prepared consistent with the winery's accounting method as designated in the

winery's Federal income tax return for the annual accounting period. The additional documentation provided must conform to the following procedures:

1. The winery will be required to submit accounting records and related documentation/schedules to allow the Committee to verify compliance with this section. These accounting records include the following:

i. All calendar year New Jersey Alcoholic Beverage Tax forms as filed (with supporting schedules), including, but not limited to, Winery Manufacturer's Tax Sales Report (Form R-1-W) and Inventory Control of Wineries (Form R-41);

ii. All calendar year New Jersey Sales and Use Tax forms as filed;

iii. Detailed schedules of annual gross income and annual gross income from special occasion events from the following:

- (1) On-premises tasting room sales - wine only;
- (2) On-premises tasting room sales - non-wines, and by type;
- (3) Off-premises tasting - wine sales;
- (4) Off-premises non-wine sales;

(5) Wine sales at special occasion events;

(6) Non-wine sales at special occasion events;

(7) Admission fees, rental fees, setup, breakdown, cleaning fees, catering fees, food sales, and all other revenue that is not directly a result of the sale of the agricultural output of the winery, but is generated by the winery in conjunction with conducting special occasion events.

(8) Names and addresses of any controlled group of entities connected to the winery that are involved in special occasion events, and annual gross income associated with each entity.

iv. Winery accounting records for the annual accounting period to support wine/non-wine sales including:

(1) Internal point-of-sale (POS) sales reports;

(2) Accounting books and records (that is, QuickBooks, Excel, or similar accounting software).

2. The winery shall supply copies of its most recent Federal income tax return to the Board or Committee and shall include copies of its accounting records and financial statements as may be necessary to support the entries on its Federal income tax return, as for example, a reconciliation of any difference between accounting records, financial statements, and the Federal income tax return. The winery's annual accounting period, for purposes of compliance with this subchapter, shall be the calendar year even if a fiscal year is utilized for preparation of Federal income tax returns.

2:76-27.8 Financial audit procedures for winery special occasion events

Where the additional documentation requested in N.J.A.C. 2:76-27.7 does not verify compliance with the provisions of N.J.S.A. 4:1C-32.7 et seq., a comprehensive compliance audit of the winery's financial statements, accounting records, and Federal income tax returns may be required. The audit will be conducted by an independent certified public accountant approved by the Board or Committee, with the cost thereof being paid by the winery. An owner or operator of the winery shall not be subject to an audit authorized pursuant to this section more than once per calendar year without good cause demonstrated by

the Board or the Committee. Copies of the audit shall be submitted to the Board and shared with the Committee if an audit is determined necessary by the Board or submitted to the Committee and shared with the Board if an audit is determined necessary by the Committee.

2:76-27.9 Confidentiality of financial information

Financial information provided by wineries in compliance with this subchapter shall be considered proprietary and, as such, not subject to disclosure under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., except if such disclosure is otherwise required pursuant to law.

2:76-27.10 Violations and penalties

(a) An owner or operator of the winery who violates N.J.S.A. 4:1C-32.7 et seq., or these regulations shall be liable to a civil penalty of up to \$1,000 for the first offense, up to \$2,000 for the second offense, or up to \$3,000 for a subsequent offense, to be collected in a civil action commenced by the Committee.

(b) In addition to the penalties established pursuant to (a) above:

1. For a second offense, the Committee shall, after a hearing, suspend the owner or operator of the winery from conducting special occasion events for a period of up to six months;

2. For a third offense, the Committee shall, after a hearing, suspend the owner or operator of a winery from conducting special occasion events for a period of at least six months, but not more than one year; and

3. For a fourth or subsequent offense, the Committee shall, after a hearing, suspend the owner or operator of the winery from conducting special occasion events for a period of at least one year, but not more than two years.

(c) Any penalty imposed pursuant to this section may be collected, with costs, in a summary proceeding pursuant to the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the Penalty Enforcement Law of 1999 in connection with N.J.S.A. 4:1C-32.7 et seq.