

# Inherent Risk for NYS Equine Farm Owners and Operators

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The Safety in Agricultural Tourism Act was signed into NYS Legislation by Governor Cuomo in 2017. This landmark legislation affords inherent risk/liability protection for NYS Farmers and Farm Operators offering opportunities for the public to enter their farm property to engage in agritourism and/or equine activities.

**In order to be covered, farms must adhere to all conditions and requirements of the legislation.**



## **FAST FACTS**

- > **NEW NYS legislation as of 2017**
- > **For Agritourism events including indoor and outdoor Equine Activities - *excluding equine therapy\****
- > **Protection against liability for injury or death of a visitor**
- > **7 key components must be met for protection:**
  - 4 Signs (S) + 1 handout (H) + 2 management components (M)
- > **One Size Does Not Fit All!**

## **What you need to know**

Prior to legislation passage, NYS was one of only 3 states without some form of inherent risk/limited liability protection for equine owners and operators. Dating to the early 1990's, each State's policy creation is different in intent and implementation. It is critical to follow the criteria unique to each state in order to be afforded a level of protection under the legislation. **One size does not fit all!**

The NYS legislation is linked to agritourism and recognizes equine as part of that framework. Within the legislation, there are **7** required areas to address in order to be afforded protection under this law; 4 signs (S)+ 1 handout (H)+ 2 management components (M)

1. **Directional Signage (S):** Easily visible signage that indicates places/areas/pathways that are open to the public as well as off limit (i.e. Do Not Enter).
2. **Warning to Visitors Signage (S):** Every place of 'sale' (entry points for visitors) must have easily visible signage that ***specifies*** the risk visitors may encounter from being on a farm property/engaging in activities on a farm property. This cannot be general 'warning visitors' signage and must be specific to each farm, farm operation, and unique property conditions.
3. **Operator Provided Written Information (H):** Visitors must be provided with written information with text specified by the NYS Dept. of Agriculture. This is the only signage with specified text directed by the legislation - all other signage must be created unique to the farm operation. The required text is identified in Appendix A of the NYS Dept. of Agriculture's guidance on the law. [https://www.agriculture.ny.gov/Press%20Releases/Inherent\\_Risk\\_Guidance.pdf](https://www.agriculture.ny.gov/Press%20Releases/Inherent_Risk_Guidance.pdf).

\*Equine Therapy is excluded as it was viewed as a medical treatment modality rather than a form of agritourism.

## DON'T Be Generic!



## DO Be Protected!

- > Know the legislation
- > Act on all 7 components
- > Work with your insurance agents and legal team
- > Conduct regular risk assessments of property, animals, and agritourism offerings
- > As you do this, view your operations through the perspective of a visitor with no prior exposure to agriculture.

4. **Visitor Responsibility Signage (S)**: A unique component of the NYS legislation is the recognition of visitor responsibility. The following 'Responsibility to' language is provided by the statute and intended to be included as part of the required signage. Operators are encouraged to establish additional visitor responsibilities (or 'barn rules') based upon their operation and offerings. This signage must be conspicuous at every point of sale/point of entry.
  - Exercise reasonable care regarding the disclosed risks of the agricultural activity
  - Reasonably comply with posted way finding signs
  - Reasonably remain in areas designated for the agricultural tourism activity
  - Reasonably follow any and all written information or conspicuously posted rules of conduct provided by such operator to visitors, or verbal or other form of communication of rules of conduct where needed for effective communication for people with disabilities; and
  - Not to willfully remove, deface, alter or otherwise damage signage, warning devices or implements or other safety devices.
5. **Public Posting of 'Notice of Right to a Refund (S)'**: This signage is required to ensure that a visitor that has purchased an entry ticket (or has paid for an experience or lesson) can receive a refund if upon reading the required information/signage pertaining to inherent risks determines they are not willing to accept such risks.
6. **Employee Training (M)**: Management must provide adequate training for all employees involved with agritourism operations in order to ensure that visitors are protected from harm against foreseeable and preventable risks. Employees must also be trained on visitor responsibilities and how to interact with visitors to ensure compliance with this legislation.
7. **Operator Duties (M)**: Farms owners/operators are responsible for ensuring compliance with all aspects of this legislation in order to be afforded the protection it offers. Owners/Operators must at all times take reasonable care to address preventable and/or foreseeable risks to visitors including those with no prior experience with, or exposure to, agriculture or the aspects of agriculture offered at their Farm. Failure to do can result in loss of protection by this legislation.

*The information provided here within is informational and educational in nature and not intended in any way to replace the specific language in the NYS Statute 'Safety in Agricultural Tourism Act' which is part of the NYS General Obligations Law Section 18-302 and 18-303. The provided information should also not be considered in any way as a substitute for legal or insurance advice.*

### References:

- Bosquet Holstein, PLLC. (November, 2017). The New York Safety in Agricultural Tourism Act Finally Enacted
- New York Farm Bureau (Spring, 2018). Inherent Risk in New York: One Size Does Not Fit All.
- NYS General Obligation Law 18-203 and 18-303
- Szubleski, J., Koumijan, L., (March 19, 2018). State Agriculture Commissioner Releases Guidance for the Safety in Agricultural Tourism Act. Press release from the New York State Department of Ag and Markets.

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