

THE SMALL CIDERY AND SMALL DISTILLERY PROGRAM

UPDATED SMALL DISTILLERY PROGRAM GUIDELINES 2022-23ⁱ

Program Overview

The Small Distillery Component of the Ontario Small Cidery and Small Distillery Program (the Program) supports Small Distilleries' growth and competitiveness. The Ontario government is striving to create an environment where agri-food business can thrive and prosper. The Program will provide grants to eligible small distillers to help them scale up into medium and large businesses by investing in growing their businesses and create jobs. The Program will be delivered by Agricorp, an agency of the Ontario government.

Program Definitions

"Affiliated Licensed Distillery" means a distillery in a group of Licensed Distilleries that is affiliated as the term "affiliate" is defined in subsections 17 (5) and subject to the rules set out in subsection 17(6) of Part II of, the *Alcohol, Cannabis and Gaming Regulation and Public Protection Act, 1996*, namely:

- One of the corporations is the subsidiary of the other, or
- The corporations are both subsidiaries of a third corporation, or
- Each of the corporations is controlled by the same person or persons.

"AGCO" means the Alcohol and Gaming Commission of Ontario.

"Applicant" means a Small Distillery that applies to the Program.

"By the Glass" means sales of Ontario Spirits under a Manufacturer's Limited Liquor Sales Licence (commonly referred to as a By the Glass Licence), as issued by the Alcohol and Gaming Commission of Ontario.

"Contract Bottling" means the final bottling or other packaging of Spirits by a person other than the Applicant, under an agreement or arrangement, including any incidental processes such as final filtration or the addition of any substance to the Spirits that, if added, must be added at the time of bottling or packaging under an agreement or arrangement.

"Contract Production" means production of Spirits by a person other than the Applicant under an agreement or arrangement.

"Direct Delivery Authorization" means an authorization issued by the LCBO to permit the Recipient to deliver alcohol to Licensees, such as restaurants and bars.

“Distillery Program Cap” means the maximum annual amount of Program funding available to all Recipients cumulatively under the Small Distillery Component of the Ontario Small Cidery and Small Distillery Program.

“Grant Payment” means the total amount of Program funding provided to an eligible Applicant in the Program Year, inclusive of any initial payment and any second payment.

“LCBO” means the Liquor Control Board of Ontario.

“Liqueur” means an alcoholic beverage made from a distilled Spirit that has been flavoured with fruit, cream, herbs, spices, flowers or nuts and bottled with added sugar or other sweetener (such as high-fructose corn syrup).

“Licensee” refers to an individual or a corporation licensed under the Liquor Licence Act to sell and serve liquor.

“Licensed Distillery” means a distillery with a valid Manufacturer’s Licence.

“Manufacturer’s Licence” means a licence issued by the Registrar of the Alcohol and Gaming Commission of Ontario under section 22 of the *Liquor Licence Act*. A Manufacturer’s Licence is not a licence to manufacture liquor.

“Maximum Available Grant” means the maximum annual grant funding limit that a Recipient may be entitled to receive per Program Year, calculated in accordance with these Program Guidelines.

“On-Site Distillery Retail Store Authorization” means an authorization issued to a manufacturer of distilled Spirits to operate a store for the retail sale of its distilled Spirits by the Registrar of Alcohol, Gaming and Racing according to the terms laid out in [the AGCO Distillery Retail Store Information Guide](#).

“Program” means The Ontario Small Distillery Component of the Ontario Small Cidery and Small Distillery Program established by Order in Council 332/2017, as amended.

“Program Year” means April 1, 2022 to March 31, 2023 and includes the period when Grant Payments are issued.

“Ready-To-Drink Product” means a Spirit-based product to which ingredients such as sugar, fruit juices, vegetable juices, natural or artificial flavouring preparations, water, mineral water, herbs, spices, other botanical substances and/or carbon dioxide may be added. The alcohol by volume may not be less than 7% and may not exceed 17%.

“Recipient” means a successful eligible Applicant.

“Requirements of Law” means all applicable statutes, regulations, by-laws, ordinances, codes, official plans, rules, approvals, permits, licenses, authorizations, orders, decrees, injunctions, directions, agreements, the Program Order in Council 332/2017, as amended, and these Program Guidelines,

“Small Distillery” means an alcoholic Spirits producer (including its Affiliated Licensed Distilleries) with sales of less than 600,000 litres of alcoholic Spirits annually in Ontario, including Contract Production but not Contract Bottling.

“Spirits Fully Produced On-Site” means alcoholic Spirits and alcoholic Spirit products that have been produced at the manufacturer’s production site, which is also the location of the

Applicant's distillery retail store, in accordance with the required manufacturing steps from start to finish, set out in the most current version of the AGCO's Distillery Retail Store Information Guide, which can be found on the last page at [this link](#).

"Spirits" means any beverage containing alcohol obtained by distillation, including Liqueurs, but excluding Ready-To-Drink Products and Spirits Coolers.

"Spirits Cooler" means a Spirit-based product to which ingredients such as sugar, fruit juices, vegetable juices, natural or artificial flavouring preparations, water, mineral water, herbs, spices, other botanical substances and/or carbon dioxide may be added. The alcohol by volume may not exceed 7%.

"Tied House" means a restaurant /establishment located at a manufacturing site that holds a-Tied House licence from the Alcohol and Gaming Commission of Ontario.

"Worldwide Spirits Sales" means the total volume (in litres) of Spirits an Applicant sells worldwide (including Ontario), including Spirits sold by all Affiliated Licensed Distilleries, sold under contract for another Spirits producer, or sold by another producer of Spirits under contract for the Applicant or any of its affiliates.

Applicant Eligibility

To be eligible for funding, an Applicant is required to meet all of the following criteria:

- Be a legal entity that is a sole proprietor, corporation, partnership or unincorporated association. Articles of Incorporation or other acceptable proof of legal name and status must be made available to Agricorp upon request;
- Be a Licensed Distillery and meet the definition of a Small Distillery based on sales in the previous calendar year prior to applying to the Program;
- Hold a valid Manufacturer's Licence;
- Hold a valid On-Site Distillery Retail Store Authorization;
- Hold a valid LCBO Direct Delivery Authorization if direct delivery sales of Spirits are made in the previous calendar year;
- Have Worldwide Spirits Sales of less than 900,000 litres in the previous calendar year prior to applying to the Program, including sales from production by Affiliated Licensed Distilleries and Contract Production, but not including Contract Bottling;
- Have appropriate governance structures, accountability and control processes in place to administer and manage the grant funds;
- Submit a completed application form by the date and time indicated in these Guidelines;
- Agree to comply with the terms and conditions of the Program as set out in these Guidelines; and
- Be in compliance with and remain in compliance with all Requirements of Law.

Affiliated Licensed Distillers

Only one affiliate within an Affiliated Licensed Distillery may apply to the Program in the Program Year on behalf of the entire group.

Application Process

Application deadline: **May 31, 2022 no later than 11:59 p.m. Applications are now closed.**

Agricorp will send application forms to potentially eligible Small Distilleries. Applicants must complete and submit the application form by the application deadline in order to be eligible.

The completed application will be reviewed by Agricorp to determine if the Program eligibility criteria have been met. If the application submitted is incomplete, Agricorp reserves the right to deem it ineligible.

How Grant Payments are Calculated

Determination of Eligible Spirit Sales Volumes

The sales volumes of Spirits used for the determination of eligibility for a Grant Payment under the Program are:

- The volume of Spirits Fully Produced On-Site by the eligible Licensed Distillery (including its Affiliated Licensed Distilleries) and sold between **January 1, 2021 and December 31, 2021** by the LCBO, to Licensees, or by the Licensed Distillery's on-site retail store; and
- Up to an equal volume of Spirits produced by the eligible Licensed Distillery (including its Affiliated Licensed Distilleries) that are not Spirits Fully Produced On-Site (i.e. not meeting all the requirements laid out in the AGCO's Distillery Retail Store Information Guide) and that are sold between **January 1, 2021 and December 31, 2021**, by the LCBO, to licensees, or by the Licensed Distillery's On-Site Retail Store and through Tied House and By the Glass licences. See the table below for examples of how this would be applied.

For greater clarity, the sales volumes of Spirits used for the determination of eligibility for Grant Payments shall be based on Ontario sales only.

NOTE: In order to be included in the eligible Alcoholic Distillery sales volume, any outstanding 2021 calendar year direct delivery sales volumes reported through the "LCB 2414" reports must have been submitted to the LCBO no later than **March 14, 2022**. Any 2021 sales volume data submitted after March 14, 2022 will not be used for payment calculations.

Table explaining the determination of Eligible Spirits Sales Volume that is not Spirits Fully Produced On-Site and the determination of Total Eligible Spirit Volume

	Sales Volume of Spirits Fully Produced On-Site (Column A)	Sales Volume of Spirits That Are <u>Not</u> Spirits Fully Produced On-Site (Column B)	Eligible Sales Volume for Spirits That Are <u>Not</u> Spirits Fully Produced On-Site (Column C – i.e. eligible Column B litres)	Total Eligible Spirit Sales Volume (= Column A + Column C)
Example 1	100,000 L	500,000 L	100,000 L	200,000 L
Example 2	100,000 L	50,000 L	50,000 L	150,000 L
Example 3	100,000 L	0 L	0 L	100,000 L

Determination of Grant Payment

Agricorp will determine the Applicant's Grant Payment based on its eligible Spirit sales volumes, within the limits of the Distillery Program Cap. Each eligible Applicant may receive up to \$4.42 per litre of total eligible Spirits sold, up to a maximum of \$220,000.00 per year, subject to the following:

1. If an eligible Applicant's total eligible Spirits sales volume exceeds 300,000 litres per calendar year, the Applicant will receive less than the Maximum Available Grant (i.e. \$220,000.00). Specifically, the Applicant's Grant Payment will be reduced, or phased-out, proportionate to the volume above 300,000 litres that the Applicant has in eligible Sprits sales, based on the following formula:

Grant Payment = Maximum Available Grant - ((Applicant's total eligible Spirits sales volume - 300,000) x phase-out rate of 0.73)

Grant Payment = \$220,000 - (Applicant's total eligible Spirits sales volume - 300,000) x 0.73

Phase-out rate = Maximum Available Grant ÷ (phase-out end volume minus phase-out beginning volume)

Phase-out rate = \$220,000 ÷ (600,000 - 300,000) = **0.73**

2. If an Applicant sells more than 600,000 litres per calendar year of Spirits in Ontario, the Applicant is no longer eligible to receive a Grant Payment in the Program Year; and
3. If total potential payments to all eligible Recipients under the Program exceed the annual Distillery Program Cap, a proration rate will apply to each of their payments. The proration rate will reduce proportionately each Recipient's payment until the total payments to all eligible Recipients are within the annual Distillery Program Cap.

For greater clarity, this would result in each Recipient's Grant Payments being reduced below the amount the eligible Recipient was originally calculated to receive, and therefore below the maximum \$4.42/litre rate.

The formula for the proration rate is:

$$\text{Proration rate} = \text{Distillery Program Cap} \div \text{total payments to all eligible Applicants}$$

The formula for the Grant Payment in this scenario would be:

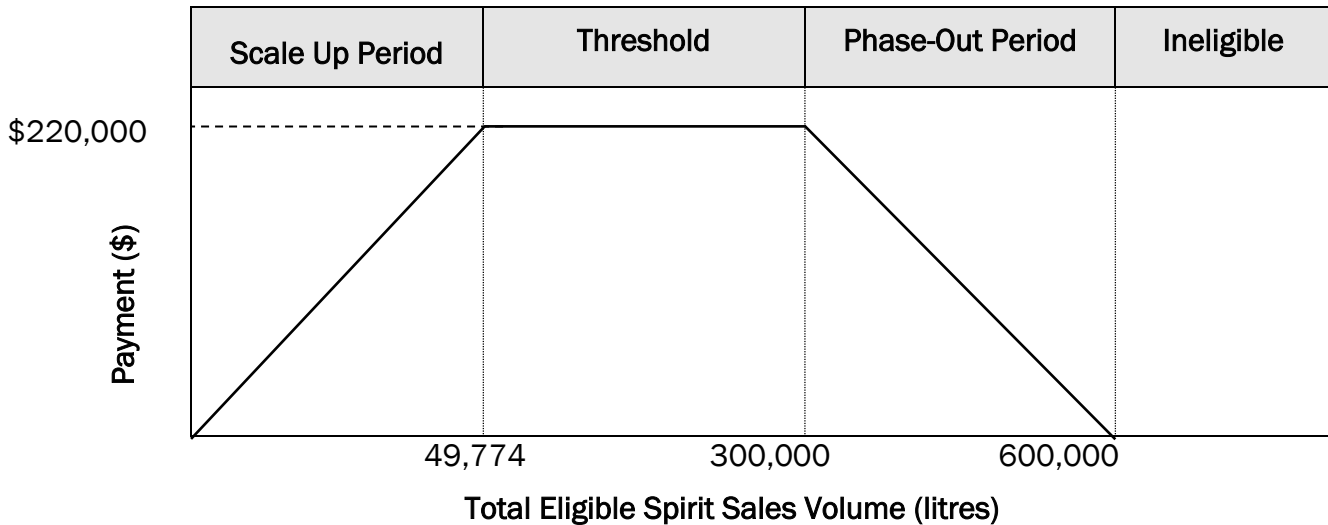
$$\text{Grant Payment} = \text{original Grant Payment} - (\text{original Grant Payment} \times \text{proration rate}).$$

4. UPDATE: Second Payment

A second payment may supplement any initial payment already paid to eligible Applicants.

The payment calculation method is illustrated in the graph below.

Graph illustrating Grant Payments at Different Sales Volumes (where the Distillery Program Cap is Not Exceeded) (not to scale)



Note: Scale Up Period reaches threshold at 49,774 litres = (\$220,000 ÷ \$4.42 per litre)

Example scenarios to show how Grant Payments are calculated*

SCENARIO 1 (Scale-up example): Eligible Applicant with less than 49,774 litres of eligible Spirits sold

The eligible Applicant has total eligible Spirit sales of 20,000 litres. If total payments to all eligible Recipients under the Program have not exceeded the annual Distillery Program Cap, the Recipient would receive a Grant Payment of \$88,400.

$$\text{Grant Payment} = 20,000 \times 4.42 = \$88,400$$

SCENARIO 2 (Threshold example): Eligible Applicant with more than 49,774 but less than 300,000 litres of eligible Spirits sold – i.e. sales within the threshold range, and therefore, reaching the Maximum Available Grant

The eligible Applicant has eligible Spirit sales of 150,000 litres. If total payments to all eligible Recipients under the Program are within the annual Distillery Program Cap, the eligible Recipient would receive a Grant Payment of \$220,000 as the Maximum Available Grant limit has been reached.

$$\text{Grant Payment} = \$220,000$$

SCENARIO 3 (Phase-out example): Eligible Applicant with more than 300,000 litres of eligible Spirits sold

The eligible Applicant has eligible Spirit sales of 400,000 litres. If total payments to all eligible Recipients under the Program are within the annual Distillery Program Cap, and with a phase out rate of 0.73, the eligible Recipient would receive a Grant Payment of \$147,000.

$$\text{Grant Payment} = \$220,000 - (400,000 - 300,000) \times 0.73 = \$147,000$$

SCENARIO 4 (Ineligible example): Applicant with more than 600,000 litres of eligible Spirits sold

The Applicant has Spirit sales of 700,000 litres. Because that volume exceeds the eligibility limit, the Applicant is not eligible to receive a Grant Payment.

$$\text{Grant Payment} = \$0$$

SCENARIO 5 (Proration example): Eligible Applicant whose payment is reduced because the Distillery Program Cap has been exceeded

The eligible Applicant has an eligible Spirit sales volume of 20,000 litres. Although the eligible Recipient would have received a Grant Payment of \$88,400 as in Scenario 1, total possible Grant Payments have exceeded the Distillery Program Cap, and therefore all payments must be equitably reduced or prorated. The Recipient, therefore, receives less than \$88,400.

If the Distillery Program Cap has been exceeded and payments need to be reduced by 15% so as not to exceed it, then the proration rate is 15% and all eligible Recipients have their Grant Payments reduced by 15%. The eligible Recipient, therefore, receives \$75,140.

$$\text{Grant Payment} = \$88,400 - (\$88,400 \times 0.15) = \$75,140$$

SCENARIO 6 (Phase-out example with proration): Applicant with more than 300,000 litres of eligible Spirit sales and whose payment is reduced because the Distillery Program Cap has been exceeded

The eligible Applicant has an eligible Spirit sales volume of 400,000 litres. Although the Recipient would have received a Grant Payment of \$147,000 with a phase out rate of 0.73, as in Scenario 3, total possible Grant Payments have exceeded the Distillery Program Cap, and therefore all payments must be reduced. The eligible Recipient, therefore, receives less than \$147,000.

If the proration rate is 15%, as in Scenario 5, and all eligible Recipients have their payments reduced by 15%, then the Recipient receives \$124,950.

$$\text{Grant Payment} = [\$220,000 - (400,000 - 300,000) \times 0.73] \times (1.0 - 0.15) = \$124,950$$

* Example scenarios are for information and illustration purposes only, and are *not* intended to be binding upon Agricorp, the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) or the Crown. Example scenarios assume eligibility for funding under the Program in every regard.

Information the Applicant Must Provide in the Application Form

The Applicant must provide the following information in the application form, in addition to the other information requested in the application form:

For Applicant Eligibility Determination

- Worldwide Spirits Sales volume from January 1, 2021 to December 31, 2021, including volume produced by all affiliates within Affiliated Licensed Distilleries, and including Contract Production, but not Contract Bottling.
- Ontario sales volume of Spirits from January 1, 2021 to December 31, 2021, including volume produced by all affiliates within Affiliated Licensed Distilleries, and including Contract Production, but not Contract Bottling.

- The Applicant's full legal name and listing the business names of the Applicant's Affiliated Licenced Distilleries.

For Eligible Payment Determination

- Total sales volume of Spirits Fully Produced On-Site that are sold between January 1, 2021 and December 31, 2021, by the LCBO to Licensees, or by the Licensed Distillery's on-site retail store.
- Total sales volume of Spirits that are not Spirits Fully Produced On-Site by the eligible Distillery and that are sold between January 1, 2021 and December 31, 2021, by the LCBO, to licensees, or by the Licensed Distillery's on-site retail store.
- Total volume of Spirits sold through on-site retail store between January 1, 2021 and December 31, 2021.
- The operation name(s) and location(s) of the Applicant's other production facility or facilities where the Spirits that are not Spirits Fully Produced On-Site were produced.

The Applicant will be required to self-report on the Applicant's on-site store sales for Spirits and must sign an attestation confirming the accuracy of that information, as well as all information that the Applicant provides in the application.

In addition to the information that the Applicant provides in the application, the Applicant will be required to submit any additional information that is requested by Agricorp in order to assess or determine the Applicant's eligibility and, if eligible any Grant Payments.

Additional Requirements for Applicants and Grant Payment Recipients

The following are additional condition for funding.

Applicants and Recipients must provide accurate, timely and complete information to Agricorp when requested, including, without limitation, supporting documentation as required to verify the eligibility of the Applicant or to verify the accuracy of the Grant Payment to the Applicant. Any Applicant who provides false or misleading information to Agricorp and/or its authorized representative(s) may be disqualified and required to repay any Grant Payments received under the Program.

The Recipient may be asked to complete a survey at the end of the Program Year in which any Grant Payment under the Program is received. The satisfactory completion of the survey will be a condition for receiving Program funding in any subsequent years of the Program.

Recipients must acknowledge that Agricorp, OMAFRA and the LCBO may share reported Alcoholic Cider sales information for the purpose of determining Grant Payments under the Program.

Grant Payment Recipients must agree to OMAFRA publicizing or otherwise publishing information such as their names and addresses and the amount of the Grant Payment.

Further, the information provided under the Program may be subject to disclosure under the *Freedom of Information and Protection of Privacy Act (Ontario)* or by order of a court, tribunal or otherwise by law.

Other Considerations for Applicant and Grant Payment Recipients Including Compliance

Agricorp, OMAFRA or their authorized representatives may conduct an audit or investigation of any Applicant or Grant Payment Recipient in respect of their eligibility and the Applicant/Grant Payment Recipient must cooperate with the audit or investigation including by providing information or access to a person, place or thing. Grant Payment Recipients must retain information relating to and supporting their eligibility for a period of seven years from the end of the Program Year.

If it is determined that the Recipient has received a Grant Payment that the Recipient was not eligible to receive, through administrative error or otherwise, the Recipient will repay the Grant Payment. Agricorp reserves the right to recover any debts to His Majesty the King in Right of Ontario. Any overpayments and other Program debt will be recovered in a manner consistent with His Majesty the King in Right of Ontario's collections practice and in consideration of applicable legislation and directives. Should a Recipient have any pre-existing debts owing to His Majesty the King in Right of Ontario, Agricorp may recover against that pre-existing debt through a set-off against any Grant Payments a Recipient may be eligible to receive under the Program.

As a condition of funding, Recipients are responsible for complying with all Requirements of Law.

The Government of Ontario, including Agricorp and OMAFRA, takes no responsibility for bringing a Program Applicant or Recipient into compliance with the Requirements of Law or for the consequences if the Program Applicant or Recipient fails to comply with the Requirements of Law.

Failure to comply with the Requirements of Law may result in the Applicant being ineligible to receive a Grant Payment under the Program and may require the repayment of any Grant Payments received by a Recipient under the Program. In addition to the rights set out above, Agricorp reserves the right to require repayment of funds provided pursuant to the Program that were obtained by ineligible, including non-compliant Applicants.

OMAFRA and Agricorp reserve the right to revise these Guidelines from time to time. Applicants have the onus of confirming that they are following the most recent version of the Guidelines prior to making an application.

The Program is a discretionary non-entitlement program. OMAFRA and Agricorp, make no guarantees that all or any eligible Applicants will receive a Grant Payment under the Program. Applying to the Program does not create any legal or other right to a Grant Payment under the Program.

In the event of a conflict between anything set out in these Guidelines, and Order in Council 332/2017, as amended, the latter prevails. Please note that, without limitation, Ontario reserves the right to adjust its proposed funding allocations, calculations and assumptions, as well as any persons or costs that may or may not be eligible for funding.

Contact Information

For more information about the Program contact Agricorp:

Telephone: 1-888-247-4999

Email: cidery.distillery@Agricorp.com

Website: Agricorp.com

Également disponible en français

ⁱ Updated and posted on September *, 2022