

## **RULES AND PROCEDURES FOR MARKETS (FMC-4)**

The New York State Department of Agriculture and Markets (Department), as administrator of both the Women, Infants and Children Farmers Market Nutrition Program (WIC FMNP) and the Senior Farmers' Market Nutrition Program (SFMNP), herein referred to as the Farmers Market Nutrition Program (FMNP), will designate markets in New York State as local partners in the administration of the FMNP. The Department, and all designated markets, shall provide for the operation and administration of the FMNP. The rules and procedures as described below apply to all participating markets in the FMNP. The Department reserves the right to interpret the rules and procedures below as necessary in individual circumstances.

### **1. Eligibility.** To be eligible a market must:

- a. Be comprised of **bona fide farmers**. For the purposes of the FMNP, to be considered a *bona fide* farmer, one must grow and harvest on land owned or leased by the farmer fruits, vegetables, and/or culinary herbs. Depending on the model of operation, markets must also demonstrate the following:
  - i. **Farmers' markets:** (a) two (2) or more *bona fide* farmers attend the market each week and (b) two (2) or more *bona fide* farmers are willing to participate in the FMNP and (c) two or more *bona fide* farmers meet the "50% Grow Rule". For the purposes of the FMNP to meet the "50% Grow Rule", of the fruits and vegetables being offered for sale by a *bona fide* farmer, at a minimum, 50% (by volume) must be grown and harvested on land he/she owns or leases.
  - ii. **Farm stands:** (a) the farmer operator meets the "50% Grow Rule" or (b) they are a private nonprofit agency (nonprofit) exempt from income tax under the Internal Revenue Code of 1986, as amended, (26 U.S.C. 1 et. seq.) and at a minimum, 50% (by volume) of the fruits and vegetables being offered for sale are sourced from *bona fide* farmers. Farm stands solely using honesty boxes are not eligible to participate in the FMNP.
  - iii. **Mobile markets:** (a) the farmer operator meets the "50% Grow Rule" or (b) they are a nonprofit and at a minimum, 50% (by volume) of the fruits and vegetables being offered for sale are sourced from *bona fide* farmers.
- b. Operate at a designated location, easily accessible by FMNP participants.
- c. Have a fixed schedule of operation including at a minimum: (a) one (1) day per week (b) three (3) hours per day, and (c) three (3) consecutive months per year.
- d. Have an organizational structure including: (a) a market name (b) a sponsoring organization, and (c) a designated manager. The sponsor may be an unincorporated association, not-for-profit corporation, co-operative corporation, municipal corporation, government agency, public benefit corporation, public authority, private corporation, or private individual.
- e. Supply a sufficient volume and variety of high quality locally grown fresh vegetables and fruits, including: dark green or leafy vegetables (e.g. spinach, broccoli, greens, or kale), root vegetables (e.g. carrots or beets), and/or winter squash.

### **2. Application.** To apply a market must:

- a. Submit a **Market Participation Agreement (FMC-8)** by March 1.
- b. Provide evidence of who the *bona fide* farmers are for each market **day and location:**
  - i. **Vendor List (FMC-11).** Multi-vendor farmers markets should use this document.
  - ii. **Crop Plan (FMC-12).** Farmer operated farm stands should use this document.
  - iii. **Supplier List (FMC-10).** Nonprofit farm stands and nonprofit mobile market operators, who do not grow 50% of the produce offered for sale, should use this document.
- c. Submit the market's rules and regulations, by-laws, and/or vendor applications. **Farmer operated farm stands are exempt from this requirement.** Resources are available and technical assistance can be provided by the Department to aid in the development of the market's rules and regulations. For example, recommended items to include :

- i. Criteria for vendor participation (e.g. producer only).
- ii. A definition of the term “local.”
- iii. Standards for product displays and the posting of prices.
- iv. Standard assurances outlining requirements for vendor compliance with market rules and regulations (e.g. vendor conduct, food safety, adherence to FMNP rules).
- v. A description of the vendor complaint process and how sanctions will be imposed.
- d. Provide additional documentation, as required:
  - i. **Farm stands.** Farmer operated farm stands must submit the **Farmer Participation Agreement (FMC-6)**.
  - ii. **Mobile market.** Mobile market operators must provide a list of the scheduled weekly stops, including addresses and time.

**3. Administration.** As a designated local partner a market must perform the following services, and abide by the following requirements:

- a. Administer the FMNP from June 1-November 30, or for the entire duration the market is open as specified on the **Market Participation Agreement (FMC-8)**, whichever is shorter.
- b. Only operate the FMNP at locations listed on the **Market Participation Agreement (FMC-8)**.
- c. Solicit *bona fide* farmers to participate in the FMNP.
- d. Provide training and/or guidance on how to receive training to all *bona fide* farmers participating in the market who want to participate in the FMNP; training is mandatory for farms new to the FMNP.
- e. Provide FMNP application material developed by the Department to all *bona fide* farmers participating in the market who want to participate in the FMNP; applications are online [www.agriculture.ny.gov](http://www.agriculture.ny.gov).
- f. Explain to all *vendors* participating in the market the FMNP Rules and Procedures.
- g. Counter-sign **Farmer Participation Agreements (FMC-6)** for eligible *bona fide* farmers participating in the market who want to participate in the FMNP; a counter-signature indicates the farmer qualifies as a *bona fide* farmer for the purposes of the FMNP at that market.
- h. Forward to the Department all completed **Farmer Participation Agreements (FMC-6)** containing a counter-signature by a representative of the market.
- i. Maintain a record of **Crop Plans (FMC-12)** for eligible *bona fide* farmers participating in the market who want to participate in the FMNP; if there are significant deviations from this plan, an updated plan must be provided by the farmer in a timely manner.
- j. Forward to the Department monthly **Attendance Rosters (FMC-7)**. This applies to multi-vendor farmers markets. This does not apply to farm stands or mobile markets.
- k. Forward to the Department monthly **Purchasing Logs (FMC-9)**. This applies to nonprofit farm stands and mobile markets who primarily purchase local produce from *bona fide* farms for resale. This does not apply to farmer operated farm stands.
- l. Maintain records related to this Agreement for a period of three (3) years after completion of this Agreement; these records may be inspected, audited, and copied by the Department.
- m. Provide suitable space in the market for nutrition education by Cornell Cooperative Extension. This does not apply to mobile markets and farm stands.
- n. Monitor program operations on a regular basis, including but not limited to:
  - i. Conduct farm visits as necessary to verify *bona fide* farmer status.
  - ii. Ensure only authorized farmers are accepting FMNP checks.
  - iii. Ensure authorized farmers are posting the laminated sign "We Gladly Accept NYS Farmers Market Checks" at all times during market operations.
  - iv. Ensure FMNP checks are exchanged for eligible food products.
  - v. Ensure no cash change is returned for purchases made exclusively with FMNP checks. Farmers should up-sell or permit the participant to put food items back “on the shelf.”
  - vi. Ensure no “check-trafficking” is occurring at the market. “Check-trafficking” is defined as cashing FMNP checks (at full value or at a discount) for anyone (including check recipients, unauthorized farmers, or non-farmer vendors) who has improperly obtained them from recipients.
- o. If requested, provide the Department with written justification for not approving a farmer’s application to participate in the FMNP. This must be provided within ten (10) days of the Department’s request.

- p. Accept training from the Department on the FMNP.
- q. Meet with Department staff to review and answer questions regarding FMNP operations.
- r. If requested and available, attend pre-season and post-season FMNP meetings with an area WIC Agency, Aging or Senior Agency, and/or Cooperative Extension staff involved in the FMNP to (1) provide information on the market to encourage FMNP check use by participants and to (2) review and evaluate program operations, check redemption, and program effectiveness for farmers and check recipients.
- s. Assist the Department, local WIC Agency, Aging or Senior Agency, or Cooperative Extension staff involved in the FMNP to resolve problems or complaints relative to WIC and senior recipient use of the market, check acceptance by farmers, and farmer authorization.
- t. Include reference to the FMNP in market publicity, and assist farmers and other market vendors, FMNP check recipients, the general public, and the news media in understanding the program using official program descriptions provided by the Department.
- u. Refer customer inquiries concerning participation in nutrition assistance programs to the WIC hotline (1-800-522-5006) or Senior Citizen hotline (1-800-342-9871).
- v. Assist the Department in evaluating the program's impact on farmers and check recipients and provide such information as the Department may require for reports to the USDA Food and Nutrition Service.
- w. Provide participating farmers with information prepared by the Department on becoming authorized to accept USDA Supplemental Nutrition Assistance Program (SNAP).
- x. If a market is scheduled to close prior to the closing date listed on the **Market Participation Agreement (FMC-8)** the market **MUST** inform the Department and clearly post the closing date at the market site at least two (2) weeks in advance of the closing.
- y. If the market is unable to operate as planned or to perform any of the actions required under this Agreement it must inform the Department immediately and in writing.

#### 4. Violations and Sanctions

- a. If an authorized farmer has been identified through compliance purchases to have committed a violation (see **Rules and Procedures for Farmers (FMC-4)**), he/she will be notified in writing by the Department that a violation of program rules has been recorded and that a subsequent violation can result in disqualification from the program. A copy of the letter will be sent to the market. Upon its receipt, the market must inform the farmer that the market is aware of the violation and that further violations could result in disqualification from the FMNP.
- b. If an unauthorized farmer or non-farmer vendor is found by means of compliance purchases to be accepting FMNP Checks, he/she will be notified of this in writing by the Department. A copy of the letter will be sent to the market. The market is to notify the unauthorized farmer or non-farmer vendor that further acceptance of FMNP checks will be grounds for suspension or termination of their participation in the market per the market's rules and regulations. If further check acceptance occurs, the market must sanction the farmer or vendor through suspension or termination of participation in the market or by alternative means.

- 5. **Fraud and abuse.** Committing fraud or abuse deems a market or farmer liable to prosecution under applicable federal, state and local laws.
- 6. **Agreement termination.** Agreements may be terminated by the Department for convenience of the State of New York upon giving ten (10) days written notice to the market. Upon receipt of such notice from the Department, the market shall immediately cease work related to this Agreement.
- 7. **Discrimination.** Participating farmers must not discriminate against FMNP check recipients in price, quality, or service, or establish separate produce displays exclusively for FMNP check recipients.
- 8. **Standard assurances.** The market assures the Department that in carrying out this Agreement, it will not exclude from participation in, deny the benefits of, or otherwise subject any person to discrimination based on race, color, nation origin, sex, handicap, age or marital status, and will comply with all requirement

imposed by or pursuant to the following: a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-6), and the nondiscrimination regulations of the U.S. Department of Agriculture as now or hereinafter amended (7 CFR Part 15, Subpart A). b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1686), and the nondiscrimination regulations of the U.S. Department of Agriculture (7 CFR Part 15a). c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and the nondiscrimination regulations of the U.S. Department of Agriculture (7 CFR Part 15b). d) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et. seq.), and the nondiscrimination regulations of the U.S. Department of Agriculture (7 CFR Part 15c). e) Title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et. seq.), (Regulations B, 12 CFR 202, March 23, 1977).

9. **Civil rights violations complaint process.** Markets that receive complaints from FMNP check recipients alleging civil rights violations must explain there is a complaint process and refer them to the USDA, FNS within five days, in accordance with FNS requirements as stated below:

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the [USDA Program Discrimination Complaint Form](#), (AD-3027) found online at: [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- (1) mail: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410;
- (2) fax: (202) 690-7442; or
- (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

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#### **Department Contact Information:**

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