RULES AND PROCEDURES FOR FARMERS (FMC-5)

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 Programs (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 Department, with support from designated markets, will approve farmers for participation in the FMNP. The rules and procedures as described below apply to all approved farmers in the FMNP. The Department reserves the right to interpret the information below as necessary in individual circumstances.

1. **Eligibility.** To be eligible a farmer must:
    a. Be considered a ***bona fide* farmer**. 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, locally grown fruits, vegetables, and/or culinary herbs. For the purposes of the FMNP, to be considered **locally grown**, at a minimum, the product must be grown in New York State and/or adjacent states; a market manager/sponsor is permitted to restrict the definition of locally grown further to include portions of New York State, all of New York State, portions of adjacent states, or all of adjacent states, based on their market location, farmer geographic participation, and overall market objectives.
    b. Participate in an authorized FMNP market as a *bona fide* farmer at some point during the FMNP season which is June 1–November 30; farmers may participate in the FMNP as a vendor and/or supplier. Depending on the model of operation of the market outlined below, farmers must also demonstrate the following:
        i. **Farmers' markets:** (a) when vending at a farmers' market participating in the FMNP, the *bona fide* farmer must 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) when operating a farm stand participating in the FMNP, selling produce primarily from their own farm, the *bona fide* farmer must meet the "50% Grow Rule." Note: To enroll a personal farm stand in the FMNP, farm stand operators must submit a market application (see **Rules and Procedures for Markets (FMC-04)** for more information on the market application process).
        iii. **Mobile markets**: (a) when operating a mobile market participating in the FMNP, selling produce primarily from their own farm, the *bona fide* farmer must meet the "50% Grow Rule." Note: To enroll a mobile market in the FMNP, mobile market operators must submit a market application (see **Rules and Procedures for Markets (FMC-04)** for more information on the market application process).

2. **Application.** To apply a farmer must:
    a. Submit a **Farmer Participation Agreement (FMC-6)** annually prior to accepting any FMNP checks at market; a farmer may choose to directly submit their agreement to the Department or have a market manager/sponsor forward their agreement on behalf of the farmer. Agreements require a counter-signature from a market manager/sponsor operating an authorized FMNP market. Exceptions apply.
    b. Submit a **Crop Plan (FMC-12)** annually to <u>every</u> market manager where the farmer accepts FMNP checks – not to the Department - as evidence of his/her *bona fide* farmer status. Crop plans wills be retained in the records of authorized FMNP markets for three years, and may be audited by the Department at any time. Note: If a farmer decides to enroll their personal farm stand into the FMNP, a crop plan must be included with the market application, as evidence of who the *bona fide* farmer is at the farm stand (see **Rules and Procedures for Markets (FMC-04)** for more information on the market application process).
    c. Satisfy the annual training requirement. Farmers new to the FMNP must train face-to-face with their market manager/sponsor or participate in an online training webinar delivered by the Department.

Farmers returning to the FMNP satisfy the training requirement when they read the **Rules and Procedures for Farmers (FMC-05)**.

d. Receive and read the material provided in the authorization package from the Department. Farmers who meet all the requirements will be mailed an authorization package annually. The annual authorization package will include the farmer's FMNP ID card to be used at the bank during the reimbursement process and it will include promotional signage for their market stall; farmers new to the FMNP will also receive their FMNP stamp in the package.

3. **Administration.** To participate in the FMNP a farmer must perform or provide as necessary the following services, and abide by the following requirements:
   a. Only accept FMNP checks after receiving their annual authorization package from the Department;
   b. Only accept FMNP checks at markets listed on their **Farmer Participation Agreement (FMC-6)**. If a market is added to their schedule, farmers can update their record by contacting the Department.
   c. Only accept FMNP checks from participants during the FMNP season from June 1-November 30.
   d. Only accept FMNP checks from participants at authorized FMNP markets. A list of authorized FMNP markets is available online (www.agriculture.ny.gov) and is updated routinely throughout the season.
   e. Only accept FMNP checks for locally grown fresh fruits, vegetables and/or culinary herbs.
   f. Display the promotional sign "We Gladly Accept NYS Farmers' Market Checks" at their market booth at all times from June 1-November 30 or for the entire market season, whichever is shorter.
   g. Adhere to the **"50% Grow Rule"** at participating FMNP markets; meet a market's higher standard where applicable (e.g. 100% producer only market).
   h. Permit a farm visit to occur, as necessary, by a representative from an FMNP market manager/sponsor and/or from the Department to verify information submitted on a crop plan.
   i. Treat FMNP checks like cash and safeguard them from possible loss or theft.
   j. Always accept cash in addition to checks from check recipients.
   k. Never return cash as change for purchases made exclusively with FMNP checks.
   l. Never participate in **"check-trafficking."** Check trafficking occurs when a customer or non-FMNP vendor exchanges the FMNP check improperly for cash or other currency. For the purposes of the FMNP, "check-trafficking" is defined as cashing and/or any other non-eligible currency redemption of FMNP checks for customers, non-FMNP farmers or non-FMNP vendors.
   m. Never accept mutilated FMNP checks or checks lacking the micro strip along the bottom, as they will be rejected by either the local bank or the clearinghouse bank.
   n. Display notices at the point-of-sale stating that any tropical citrus, or other non-locally grown produce cannot be purchased with FMNP checks because they are not locally grown.
   o. Stamp each FMNP check using their authorized FMNP stamp with **black ink only**.
      i. Stamps are issued by the Department to each participating farmer; farmers can request a replacement stamp by calling the Department for which a fee may be assessed.
      ii. The stamp image must be clearly legible, including the state seal and all four digits; unstamped or illegibly stamped checks will not be paid; farmers do not need to endorse or stamp the back side of the FMNP check.
   p. Redeem all FMNP checks by December 15.
      i. **Depositing FMNP checks.** Farmers may deposit FMNP checks into a personal or business checking account at any banking institution. Some banks charge a service fee for deposits; to avoid paying such fees, prior to depositing any FMNP checks, farmers should speak with their bank officer regarding **bank fees** that may apply to their account. If a fee cannot be avoided, FMNP checks may be cashed at a KeyBank branch in New York State (see below).
      ii. **Cashing FMNP checks.** Farmers may cash FMNP checks at any KeyBank branch in New York State. Farmers may choose to cash FMNP checks even if they do not have an account with KeyBank **at no cost to the farmer**. A maximum of 250 checks ($1,250) may be cashed per business day. To cash FMNP checks at Key Bank branches, farmers must present the teller with their signed and stamped FMNP ID card. The ID card must bear the same FMNP stamp number as the image stamped on the checks being cashed. The teller may ask farmers for other identification such as a driver's license.
      iii. **Problems?** If farmers encounter problems with depositing or cashing FMNP checks, please try to resolve them with the bank officer. If further assistance is needed, please contact, or have the bank officer contact the Department at 518-457-7076.

4. **Violations and Sanctions.**
   a. If an FMNP-authorized farmer is identified through a farm inspection to not meet the requirements of the program, he/she will be notified in writing by the Department that such a finding has occurred and he/she is being disqualified from the program.
   b. If an FMNP-authorized farmer has been identified through compliance purchases to have committed a violation, he/she will be notified in writing by the Department that such a violation has occurred and that future violations can result in termination from the program. A copy of the letter will be provided to the market sponsor or manager.
   c. If a farmer is identified through a second compliance purchase to have committed a second such violation, he/she will be again notified in writing and required to provide an explanation by a specified date and/or to participate in a violation conference to discuss continued participation in the program. A copy of the letter will be provided to the market sponsor or manager. Violations that occurred in the prior year will be considered to be part of a consecutive series.
   d. A second violation may, and a third violation **will** result in disqualification from the FMNP. **Immediate disqualification from the FMNP will occur if a farmer**: (1) is found to be trafficking FMNP checks or (2) is found to be discriminating against check customers or (3) fails to respond to a second violation notice or (4) fails to attend a scheduled violation conference.
   e. If a disqualification decision is made by the Department, the farmer will be notified in writing that he/she is being disqualified from the program. Farmers disqualified from the program may be ineligible to participate in future years. Upon disqualification, the farmer's stamp will be cancelled immediately and will no longer be valid for check depositing or cashing. The farmer must then return his/her FMNP stamp, FMNP sign, and FMNP ID card to the Department. A disqualified farmer may request a Fair Hearing at the Department at which an Administrative Hearing Officer will review the disqualification decision.

5. **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.

6. **Standard assurances.** The Farmer hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189) as implemented by Department of Justice regulations at (28 CFR Parts 35 and 36); Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000), all provisions required by the implementing regulations of the U.S. Department of Agriculture (7 CFR Part 15 et seq.); and FNS directives and guidelines to the effect that no person shall, on the ground of race, color, national origin, age, sex, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the Agency receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement.

   By providing this assurance, the Farmer agrees to compile data, maintain records and submit records and reports as required to permit effective enforcement of the nondiscrimination laws, and to permit Department personnel during normal working hours to review and copy such records, books and accounts, access such facilities, and interview such personnel as needed to ascertain compliance with the non-discrimination laws. If there are any violations of this assurance, the Department of Agriculture shall have the right to seek judicial enforcement of this assurance.

   This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA.

This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

This assurance is binding on the Farmer, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from the Department. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the Farmer.

7. **Civil rights violations complaint process.** Farmers 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, 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.

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Department Contact Information:

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Fax: (518) 457-8398
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