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 information 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 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. Depending on the model of operation, markets must also demonstrate the following:
        i. **Farmers' markets:** (a) two or more *bona fide* farmers attend the market each week, who are willing to participate in the FMNP and who 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 operator of the market is (1) a *bona fide* farmer who meets the "50% Grow Rule" or (2) 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.) <u>and</u> 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 for the FMNP.
        iii. **Mobile markets**: (a) the operator of the market is (1) a *bona fide* farmer who meets the "50% Grow Rule" or (2) a nonprofit <u>and</u> 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. Depending on the model of operation this includes, at a minimum, operating:
        i. **Farmers markets:** (a) a weekly reoccurring market (b) three hours per day, and (c) three consecutive months per year.
        ii. **Farm stands:** (a) a weekly reoccurring market (b) three hours per day, and (c) three consecutive months per year.
        iii. **Mobile markets**: (a) weekly reoccurring stops (b) two or more stops per day, and (c) three consecutive months per year. Each stop must have a unique address, with a specific time and date. If the mobile market operates near an existing farmers market, management reserves the right to restrict the operation of the mobile market as it relates to the FMNP.
    d. Have an organizational structure including: (a) a market name (b) a sponsoring organization, and (c) a designated manager. The sponsor may be a/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)** annually. The application must be submitted prior to the acceptance of any FMNP checks by farmers at market, ideally by March 1. If changes occur in hours, location, etc. simply email or call the Department to update your record.
b. Provide evidence of who the *bona fide* farmers are for each market, specific to each **day and location,** by submitting one of the following:
    i. **Vendor List (FMC-11).** Multi-vendor farmers markets should submit this form to provide evidence of who the *bona fide* farmer vendors are at their market.
    ii. **Crop Plan (FMC-12).** Farm stands operated by b*ona fide* farmers, selling their own produce, should submit this form to provide evidence that they meet the "50% Grow Rule."
    iii. **Supplier List (FMC-10).** Nonprofits who buy and re-sell produce from *bona fide* farmers should submit this form to provide evidence that the market sources from *bona fide* farmers and meets the requirement that at a minimum, 50% (by volume) of the fruits and vegetables being offered for sale are sourced from *bona fide* farmers.
c. Submit the market's rules and regulations, by-laws, and/or vendor applications. ***Bona fide* farmer-operated farm stands are the only market model exempt from this requirement.** If an application is missing rules, the application will be considered incomplete and will not be processed. 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: (a) criteria for vendor participation (e.g. producer only) (b) a definition of the term "local" (c) standards for product displays and the posting of prices (d) standard assurances outlining requirements for vendor compliance with market rules and regulations (e.g. vendor conduct, food safety, adherence to FMNP rules) and (e) a description of the vendor complaint process and how sanctions will be imposed.
d. If operating a mobile market, submit a written list of the weekly reoccurring stops, including the address with a zip code, the hours of operation, and the opening and closing day.
e. Receive and read the material provided in the authorization package from the Department. Markets who meet all the requirements will be mailed an authorization package annually.

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 farmers 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.
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 meet the "50% Grow Rule" and who want to participate in the FMNP; the counter-signature attests to the farmer's eligibility for the FMNP at the market(s) of the one who counter-signed.
h. Forward to the Department all completed **Farmer Participation Agreements (FMC-6)** containing a counter-signature by a representative of the market in a timely manner.
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. Monitor program operations on a regular basis, including but not limited to:
    i. Conduct farm visits as necessary to verify *bona fide* farmer status for the purposes of the FMNP.
    ii. Ensure FMNP farmers meet the "50% Grow Rule" during the FMNP season.
    iii. Ensure only authorized FMNP farmers are accepting FMNP checks at the market. A list of authorized farmers is released by the Department starting June 1 and is available online www.agriculture.ny.gov and by request. The Department also emails the list as a PDF to all participating markets routinely during the FMNP season, to the market email address on file.
    iv. Ensure authorized FMNP farmers are posting the laminated sign "We Gladly Accept NYS Farmers Market Checks" at all times during the operation of the market hours.

v. Ensure FMNP checks are only exchanged for eligible food products at the market.
vi. 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."
vii. Ensure no **"check-trafficking"** is occurring at the market. 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.

k. Forward to the Department **Attendance Rosters (FMC-7)** monthly. This applies to multi-vendor farmers markets and farm stands operated by a management group who then invites a farm to set-up at the farm stand. This does not apply to *bona fide* farmer-operated farm stands or mobile markets.
l. Forward to the Department **Purchasing Logs (FMC-9)** monthly. This applies to nonprofit farm stands and mobile markets who primarily purchase local produce from *bona fide* farmers for resale. **This does not apply to traditional multi-vendor farmers' markets or *bona fide* farmer-operated farm stands.**
m. 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.
n. Provide suitable space in the market for nutrition education by Cornell Cooperative Extension. This does not apply to mobile markets and farm stands.
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 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 Market 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 Market, 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 Market.

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, 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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10B Airline Drive Albany, NY 12235 www.agriculture.ny.gov

Fax: (518) 457-8398
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Questions? Albany (518) 457-7076 prompt #1 Toll-free (800) 554-4501

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