

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Department of Health and Human Resources/Bureau for Public Health TITLE NUMBER: 64

CITE AUTHORITY: W.Va. Code § 19-35-4.

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 102

TITLE OF RULE BEING PROPOSED: FARMERS MARKET VENDORS

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

TITLE 64

LEGISLATIVE RULE
BUREAU FOR PUBLIC HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 102

FARMERS MARKET VENDORS

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64-102-1. General.

1.1. *Scope.* -- This rule establishes the requirements governing farmers market vendor permits.

1.2. *Authority.* -- The West Virginia Department of Health and Human Resources is required to propose rules for legislative approval to implement the provisions of *W.Va. Code* § 19-35-1 *et. seq.* after consulting with the West Virginia Department of Agriculture and considering the guidelines established in the Farmers Market Vendor Guide and Memorandum F-16, Food Permits at Farmers Markets. *W.Va. Code* § 19-35-4.

1.3. *Filing Date.* --

1.4. *Effective Date.* --

1.5. *Applicability.* -- This rule applies to persons selling farm and food products at farmers markets within the state.

64-102-2. Definitions.

2.1. "Commissioner" means the Commissioner of the Bureau for Public Health or his or her lawful designee.

2.2. "Consignment farmers market" means a market in which two or more persons deliver their own farm and food products to a common location maintained by a third party that markets the vendors' products and receives a percentage share of the profits from sales, with the individual vendor retaining ownership of the farm and food product until it is sold. Consignment farmers markets offering for sale potentially hazardous foods are regulated by 64 CSR 17 (Food Establishments Rule).

2.3. "Farm and food products" means an agriculture, horticulture, agroforestry, animal husbandry, dairy, livestock, cottage food, beekeeping or other similar product.

2.3.a. Farm and food products include, but is not limited to:

2.3.a.1. Eggs;

2.3.a.2. Meats;

2.3.a.3. Poultry;

2.3.a.4. Dairy Products that are produced in an approved food manufacturing facility;

2.3.a.5. Commercially raised and harvested fish;

2.3.a.6. Sprouted Seeds;

2.3.a.7. Agriculture, horticulture, agroforestry, animal husbandry, livestock, cottage food, beekeeping or other similar products produced in an approved food manufacturing facility which requires temperature control; and

2.3.a.8. Other foods as determined by the Commissioner on a case by case basis.

2.3.b. Farm and food products do not include:

2.3.b.1. Products that do not require an operational permit, but require a vendor to register with a local health department as required by procedures manual memo F-16. This includes:

2.3.b.1.A. Non-dietary Jams, Jellies, and Preserves;

2.3.b.1.B. Applebutter, Molasses, and Sorghum;

2.3.b.1.C. Undiluted Honey and Undiluted Maple Syrup;

2.3.b.1.D. Dehydrated Fruits and Vegetables;

2.3.b.1.E. Vinegar - Plain, Herb, or Flavored;

2.3.b.1.F. Cakes, Cookies, and Candies;

2.3.b.1.G. Fruit Pies;

2.3.b.1.H. Yeast breads, nut and fruit breads; and

2.3.b.1.I. Other similar foods at the discretion of the Commissioner.

2.3.b.2. Products that do not require an operational permit, and do not require a vendor to register with the local health department, as required by procedures manual memo F-16. This includes:

2.3.b.2.A. Whole, uncut fruits and vegetables;

2.3.b.2.B. Commercially harvested mushrooms;

2.3.b.2.C. Prepackaged foods that do not require temperature control and that are produced in an approved food manufacturing facility; and

2.3.b.2.D. Other similar foods at the discretion of the Commissioner.

2.4. "Farmers market" means:

2.4.a. A traditional farmers market;

2.4.b. An on-farm market or farm stand; and

2.4.c. An on-line farmers market.

2.5. "Farmers market vendor or vendor" means a person or entity that sells his or her farm and food products at a farmers market.

2.6. "Health Officer" means the executive officer of the local board of health or his or her lawful representative.

2.7. "Local health department" means a health department serving one or more counties or one or more municipalities or a combination thereof.

2.8. "On-farm market or farm stand" means an individual producer that sells farm and food products at his/her farm.

2.9. "On-line farmers market" means a farmers market where two or more vendors collectively market farm and food products and retain ownership of those products until they are sold.

2.10. "Person" means an individual, partnership, association, syndicate, company, firm, trust, corporation, institution, department, division, bureau, agency, or any entity recognized by law.

2.11. "Traditional farmers market" means a farmers market where two or more vendors gather to sell farm and food products directly to the consumer at a fixed location.

2.12. "Uniform farmers market vendor permit" or "permit" means a permit issued by a local health officer authorizing the permittee to sell farm and food products at a farmers market.

64-102-3. Uniform Farmers Market Vendor Permits.

3.1. A vendor who sells farm and food products at a farmers market must have a valid uniform farmers market vendor permit.

3.2. A person delivering his or her product to a consignment farmers market is exempt from the requirements of this rule series.

64-102-4. Application.

4.1. A person must apply for a uniform farmers market vendor permit with the health officer a county in which the vendor intends to sell farm and food products at a farmers market.

4.2. A permit must be approved prior to the vendor offering for sale farm and food products at a farmers market.

4.3. Application for a permit must be made in writing on a form prescribed by the commissioner, together with the applicable fee. The application must include the following information:

4.3.a. The applicant's name, mailing address, telephone number and email address;

4.3.b. The county or counties in which the applicant intends to sell farm and food products;

4.3.c. The farm and food products the applicant intends to offer for sale; and

4.3.d. The signature of the applicant or his or her authorized representative.

4.4. The application and applicable permit fee must be submitted for approval at least fifteen (15) days prior to the applicant offering for sale farm and food products at a farmers market.

4.5. Only applications that are complete will be considered. In order to be considered complete, an application must include:

4.5.a. All of the information requested by the application;

4.5.b. The applicable permit fee; and

4.5.c. The signature of the applicant or his or her authorized representative.

4.6. The applicant may submit such additional documents or information as the applicant may consider relevant to the application and compliance with the provisions of this rule series.

4.7. In the event that an application is determined to be incomplete, the health officer will notify the applicant of the information necessary to complete the application within 10 days of his or her receipt of the application, and retain the application submitted pending receipt of the additional information.

4.8. *Fees.* The annual permit fee for applicants who intend to sell farm and food products:

4.8.a. At a farmers market(s) within the jurisdiction of one local health department is

\$15.00.

4.8.b. At farmers markets within the jurisdiction of more than one local health department is \$25.00.

4.9. *Permit Issuance.* The health officer will issue a permit to an applicant who intends to offer for sale farm and food products at a farmers market in all instances where a retail food establishment permit would be required, notwithstanding any other provisions of code or rule that require a food establishment permit or any other permit from a local health department.

4.9.a. The vendor must post the uniform farmers market vendor permit in a conspicuous place and must make the permit available to a health officer upon request.

4.9.b A permit expires at midnight on the 30th day of June following the date of issuance.

4.9.c. A permit is not transferable or assignable and automatically become invalid upon a change of ownership or upon suspension of the permit.

4.10. The health officer approving an application for a uniform farmers market vendor permit will notify all other health departments in the jurisdictions listed on the application.

4.11. Any changes in the types of farm and food products the vendor intends to offer for sale at a farmers market or the jurisdictions in which the vendor intends to operate, must be submitted to the health officer for prior approval.

4.11. A permit is subject to unannounced on-site periodic review by a health officer or his or her designee.

64-102-5. Denial, Suspension, or Revocation.

5.1 A health officer may deny approval of a uniform farmers market vendor permit for failure to meet the requirements of *W.Va. Code §§ 19-35-1 et. seq.*, as applicable, or the provisions of this rule series. If a health officer determines to deny approval of permit, the health officer will notify the applicant or vendor by a notice identifying the reasons for the determination. The notice will be delivered by either registered or certified mail.

5.2. A health officer may suspend a uniform farmers market vendor permit for failure to meet the requirements of *W.Va. Code §§ 19-35-1 et. seq.*, as applicable, or the provisions of this rule series. If a health officer determines to suspend a permit, the health officer will notify the applicant or vendor by a written notice identifying the reasons for the determination. The notice will be delivered in person or by either registered or certified mail.

5.3. A health officer may revoke a uniform farmers market vendor permit for repeated or serious violations of any of the requirements of *W.Va. Code §§ 19-35-1 et. seq.*, as applicable, or the provisions of this rule series or for interference with the health officer in the performance of his or

her duties. If a health officer determines to revoke a permit, the health officer will notify the applicant or vendor by a written notice identifying the reasons for the determination. The notice will be delivered in person or by either registered or certified mail.

5.4. A health officer who suspends or revokes a permit must notify all health departments within the jurisdictions identified on the vendor permit at which the vendor is authorized to sell farm and food products at farmers markets.

5.5. A denial, suspension or revocation will become final 30 days after the delivery of the notice of denial, suspension or revocation notice unless the applicant or vendor, within that 30-day period, gives written notice of a request for a hearing. Hearings will be conducted in accordance with the Administrative Procedure Act (*W.Va. Code §§ 29A-5-1 et. seq.*), and the Bureau for Public Health rule series, Rules of Procedure for Contested Case Hearings and Declaratory Rulings (64 CSR 1).

5.6. A health officer may not approve or reinstate a uniform farmers market vendor permit until he or she determines by an inspection that the farmers market vendor is in compliance with all applicable provisions of this rule and any orders, rules or instructions issued by the health officer.

64-102-6. Inspections.

6.1. A health officer will inspect a farmers market vendor once every six months or twice per season for seasonal farmers markets.

6.2. A health officer will make as many additional inspections as necessary to determine satisfactory compliance with the provisions of this rule or any orders, notices, instructions or specifications issued pursuant to this rule.

6.3. A health officer will discuss the inspection report with the person in charge at the time of inspection.