

West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner
Joseph L. Hatton, Deputy Commissioner



July 27, 2018

Thank you for your recent comments regarding the West Virginia Department of Agriculture's legislative rule Title 61CSR38 Farmers Markets.

After further review and consideration of the comments received, the West Virginia Department of Agriculture has modified the rule in the following areas of concern:

561-38-3. Definitions.

The following definitions were added and/or modified:

3.13. "Farmers market" means:

3.13.a. A traditional farmers market in which two or more vendors gather to sell farm and food products directly to consumers at a fixed location;

3.13.b. An on-farm market or farm stand run by an individual producer that sells farm and food products;

3.13.c. An online farmers market in which two or more vendors collectively market farm and food products and retain ownership of these products until they are sold; or

3.13.d. A consignment farmers market.

3.14. "Farm stand" means a farmers market operated by an individual not located on a farm and not necessarily at a fixed location.

3.19. "Food label" means a panel or panels found on a package food or cosmetic item. The principal basic information elements are contained in the provisions of 21 CFR part 101 and reviewed by the West Virginia Department of Agriculture.

3.24. "On-Farm Market" means a retail location on a vendor's farm property. This location must register with the Department as a Farmers Market. The sale of vendor-produced cottage foods is permitted at this location and still requires a Farmers Market Vendor permit where required by this rule.

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www.agriculture.wv.gov

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§61-38-6. Permitted and Prohibited Foods at Farmers Markets.

Whole uncut produce was added to list of foods that maybe sold at farmers markets without a farmers market vendor permit.

§61-38-7. Labeling.

This section has been updated to reflect the following:

7.1. All farm and food products sold at farmers markets shall be labeled. Labels shall contain the following information:

7.1.a. Product's common name;

7.1.b. Name and address of processor;

7.1.c. Ingredient list, with items listed in order from most to least;

7.1.d. Net weight or numerical count; and

7.1.e. Major allergens contained in product.

7.2. All farm and food products that require a Farmers Market Vendor permit shall include on the label the words "MADE IN A WV _____ KITCHEN" in capital, bold, 10-point type or larger, with the blank space to state whether the product was made in a home, farm, community or commercial kitchen.

7.3. All farm and food products for which a farmers market vendor permit must be obtained must be labeled in compliance with the United States Food and Drug Agriculture's labeling guidelines. All such labels must be reviewed by the Department. Label review reports will be issued, and farmers market vendors shall have copies of those label review reports available for inspection upon request.

7.4. While WVDA label review may not be required, prior to selling a farm and food product, on-site inspectors may review labeling to ensure compliance with these standards.

§61-38-8.3. Requirements for Farmers Market Vendors.

The word "nitrates" was removed.

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§61-38-9. Vendor Permit Process.

Section 9.3 is updated to reflect that farmers market vendor permit applications are due on March 1 each year and may be submitted in advance of that deadline.

Section 9.5.d has been updated to reflect the accurate referenced section to 6.1.

§61-38-10 Inspections of farmers markets.

Section 10.1 has been updated to reflect that consumer complaints must be made in writing.

§61-38-11. Inspections of kitchens.

Section 11.1 has been modified to reflect the following:

11.1. Kitchen inspections for farm and food products that require a farmers market vendor permit shall be conducted by a Department representative upon the initial application and after renewal of the annual application. Non-compliance violations will result in additional inspections.

Sincerely,

A handwritten signature in cursive script that reads "Kent A. Leonhardt".

Kent A. Leonhardt
Commissioner

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Martin, Jodee

From: Douglas Cooke <dbcm@hotmail.com>
Sent: Friday, July 27, 2018 10:29 AM
To: Bowden, Cassey
Subject: Comment regarding 61-38 "Farmer Markets" rules

Hello,

It is good to see West Virginia recognizing the need for more locally produced foods, and encouraging the production thereof. I do have some comments regarding the new "Farmers Markets" legislation put forth and signed this year.

I hope you will take into consideration my 22+ years of retail food preparation experience in numerous supermarket delicatessen departments when considering the following comments.

61-38-6.3 The same "small producer" permit that currently allows a person to produce, package, and sell shell eggs in West Virginia should suffice to allow sales at farmers markets, provided the eggs are kept at the appropriate temperature of less than 45 degrees F.

61-38-7.2 Need a definition of "farm" kitchen vs "home" kitchen.

61-38-13 Pre-wrapped samples (such as breads wrapped in plastic wrap or in a sample cup with lid) should be exempt from the sample requirements stated in 61-38-13.2

Thank you for the opportunity to comment.

Douglas Cooke
191 Grandview Drive
Wellsburg, WV 26070
304 604 2976

Martin, Jodee

From: Spencer Moss <smoss@wvfoodandfarm.org>
Sent: Thursday, July 26, 2018 8:57 AM
To: Bowden, Cassey
Subject: Farmers Market Vendor Rules
Attachments: admin rules .docx

Good Morning Cassey,

I need to apologize for not going through the proposed rules more thoroughly after the meeting earlier this summer and given comments earlier. The folks at Grow Ohio Valley brought their issues to our attention yesterday, and as I started looking into the rules I noticed there were several spots that I have questions about or recommendations. I have attached the rules with comments in them, it seemed like the easiest way to make comments, though I'm happy to write a formal letter.

I know that you talked to GrowOV yesterday and understand the pickle that they seem to find themselves in — I do think that the definition of a farmers market in section 3.13 could easily cover them, but I don't know how the rule will be applied.

It seems like the only farmers that will need a vendor permit are those producing meat and eggs. It doesn't read as though the potentially hazardous cottage foods producers need a permit?

I think the thing that will get the most backlash are the rules with eggs. It was my understanding that egg permitting wouldn't change with the bill and subsequent rules. From the egg producers that I've talked with, they only get the egg permit from the WVDA. Will they need to get a vendor permit, food establishment permit, and an additional egg permit from the WVDA? Will the vendor permit replace the WVDA egg permit? They didn't previously have to get a food establishment permit — that will cause producers to be the most upset. Do we have to require egg producers to get a food establishment permit?

I apologize for the last minute comments, but I am available, if you need anything today.

Spencer Moss
Executive Director
West Virginia Food & Farm Coalition
(O): 304.926.0567 (C): 816-248-6501
3820 MacCorkle Ave SE Charleston, WV 25304
Email: SMoss@wvfoodandfarm.org
Web: wvfoodandfarm.org

[Connect with your local farmer at FarmFreshWV.com](http://FarmFreshWV.com)

Martin, Jodee

From: Karen Cox <Karen.Cox@mail.wvu.edu>
Sent: Monday, July 23, 2018 6:02 PM
To: Gantzer, Kacey; Bowden, Cassey
Subject: Re: CSR title 61 series 38 farmers markets comments
Attachments: wv farmers market vendor guide 2018 comments from Karen Cox.pdf

I hope these comments come through ok. Please let me know if you have trouble opening the document or reading my comments.

Thanks
karen

From: Karen Cox
Sent: Monday, July 23, 2018 5:44 PM
To: Kacey Gantzer; Bowden, Cassey
Subject: CSR title 61 series 38 farmers markets comments

Please see the attached document with my comments regarding this rule. I have comments on the farmers market vendor guide as well. Are they due today as well or can I send them tomorrow?

Thanks!
Karen

Karen Cox, M.S.
WVU Extension Agent - ANR
Extension Service
Ohio County

304-234-3673
karen.cox@mail.wvu.edu
51 16th St., Wheeling, WV 26003

Martin, Jodee

From: Danny Swan <danny@growov.org>
Sent: Thursday, July 26, 2018 2:24 PM
To: Bowden, Cassey
Subject: comment on farmers market rule: "Mobile Farmers Market"

Hi Cassey,

I am writing on behalf of Grow Ohio Valley to request an additional and express definition of "Mobile Farmers Market" in the proposed Farmers Market rule. We urge the Department of Agriculture to include the following definition:

"Mobile Farm Market" is a farmers market that moves to multiple retail locations, where products from multiple farms are sold by a third-party vendor. The sale of cottage foods is permitted at this location and still requires farmers' market permitting.

This clarification is essential to properly clarifying that Mobile Farm Markets" are indeed farmers markets under single jurisdiction without interference from the Health Department. Without this clarification, local health departments will be able to continue to disqualify mobile farmers markets from carrying cottage foods, to the detriment of economic development for West Virginia farmers.

Please contact us if you have any further questions regarding our proposed amendment.

Many thanks for your consideration,

Danny Swan
Executive Director, Grow Ohio Valley
304.620.9181

Martin, Jodee

From: Eleanor Marshall <publicmarket@growov.org>
Sent: Wednesday, July 25, 2018 5:33 PM
To: Bowden, Cassey
Cc: Ken Peralta; Daniel Swan; Sam Amberg; Gantzer, Kacey
Subject: Amendment to Farmers Market rule: "Consignment farmers market" Definition
Attachments: GOV Consignment farmers market proposed amendment .pdf

Hi Cassey,

I am writing on behalf of Grow Ohio Valley to request an amendment to the definition of a "consignment farmers market" in the proposed Farmers Market rule. We urge the Department of Agriculture to update the definition to include the following stipulation: **"A consignment farmers market may include additional inventory sold through a producer cooperative, or on a retail or other basis."**

This clarification is essential to properly classifying a consignment farmers market under single jurisdiction without interference from the Health Department, and is important to ensuring our ability to operate a financially viable market.

Please find a letter requesting such change attached, and contact us if you have any further questions regarding our proposed amendment.

Many thanks for your consideration,
Eleanor Marshall
Public Market Project Coordinator
319.930.1994

Martin, Jodee

From: Karen Cox <Karen.Cox@mail.wvu.edu>
Sent: Wednesday, July 25, 2018 2:36 PM
To: Gantzer, Kacey; Bowden, Cassey
Cc: Lisa Jones
Subject: Fw: Small producer labeling requirements
Attachments: Food Labeling Guide 2013.pdf

FYI: Following and attached are the small producer food labeling requirements as required by the Preventive Controls for human foods.

From: Eifert, Joell <joell.eifert@vt.edu>
Sent: Wednesday, July 25, 2018 11:32 AM
To: Karen Cox; Williams, Robert
Subject: RE: Small producer labeling requirements

Hi Karen,

Good to hear from you. The basic label information is as follows:

Statement of Identity

Located on Principal Display Panel (front panel)
In bold print and largest type on panel

Ingredient Statement

Listed in descending order from most to least used ingredient
Sub-ingredients for each ingredient are also included (usually done parenthetically after ingredient)
Allergens listed properly
Minimum font size of 1/16th of an inch

Declared Weight in US and Metric equivalents

Address of Manufacturer, Distributor or Packer

Full street address listed on label (No P.O. Boxes)
City, state and zip code listed (Facility's full address is listed in local phone directory)

Product Code

Refrigerate after opening (not required but recommend on shelf stable products); KEEP REFRIGERATED (or frozen) is required on all products considered temperature control for safety (TCS) foods

Other information can be found in the FDA Food Labeling Guide which I have attached.

Please contact me with further questions if I have not answered your question fully.

Thanks,
Joell

Joell Eifert

Director, Food Innovations Program
Department of Food Science and Technology (0924)
402-C Human and Agricultural Biosciences Building I, Virginia Tech
1230 Washington Street, SW
Blacksburg, VA. 24061
Office Phone: (540) 231-2483
joell.eifert@vt.edu
Website: <https://ext.vt.edu/food-health/food-innovations.html>

From: Karen Cox <Karen.Cox@mail.wvu.edu>
Sent: Tuesday, July 24, 2018 9:59 AM
To: Eifert, Joell <joell.eifert@vt.edu>; Williams, Robert <rowilll3@vt.edu>
Subject: Small producer labeling requirements

Hi Joell and Rob,

I am putting your training into action and working to recall the overload of information we obtained while you were here. Specifically, I'm trying to find the reference you gave us regarding labeling requirements for small producers and can't seem to find the notes I took on this subject nor the listing of the subject in our handy dandy code book. I am hoping you know off the top of your head where I can find this info.

Many thanks,

Karen G. Cox
Ohio County Agent, Agriculture and Natural Resources
WVU Extension Service
51 Sixteenth St., Room 301
Wheeling, WV 26003
304-234-3673 office
karen.cox@mail.wvu.edu
<http://extension.wvu.edu/ohio>
Facebook: WVU Extension Service-Ohio County

Martin, Jodee

From: Taketa, Denny S <Denny.S.Taketa@wv.gov>
Sent: Thursday, July 26, 2018 11:47 AM
To: cboden@wvda.us
Cc: Taketa, Denny S; Root, Andrew J; DelSignore, John E
Subject: Farmers Markets/Cottage Ind.

Hi Cassey,

Here are some of our inputs to the new Farmers Market/Cottage Ind. Guide:

- Does this rule also apply to non-profits
- Do non potentially hazardous foods that are not required to have a vendor permit, still have to have the labeling requirements
- Why does a resident who chooses to have commercial equipment have to demonstrate that they can properly clean and sanitize their equipment when they should be able to do so in either case (non-commercial or commercial)?
- Nothing said about co-mingling of residential foods with Farmers Market foods in a refrigerator. Should have separate refrigerator/freezer
- It will be virtually impossible to keep prep activities and routine home activities separated by time, especially if there are small children and juveniles. That is why when people want to open a food business in their homes we require them to have a completely separate room or building.
- What do you do with people who live in an area with no public sewage. Currently, a home cannot share a septic system with a food business
- Why are farmers market kitchens inspected at a minimum of once every two years and restaurants a minimum of once every six months!
- Also sounds like the kitchen sink will be used for both residential and food business hand washing, as well as a mop sink, animal bathing, baby bathing and mechanics hand washing, etc.!
- **Why doesn't the DOA permit and inspect all aspects of the Farmers Market/Cottage Ind. business. No jurisdictional confusion!**
- Complaints from consumers about farmers market, cottage kitchens, etc. must be in writing.
- To what level are the inspections of said kitchens to be conducted. Obviously, these home kitchens do not meet FDA/Health Dept. code in the first place.
- All equipment and utensils must be **WASHED-RINSED- and SANITIZED**. Since there is no requirement for a three compartment sink, how does one meet this requirement with a two bowel sink, or even a single bowel sink!
- Will the cottage kitchen be required to maintain pest control contracts.
- Clarify "near" for a handwashing site at a farmers market
- Statewide food handlers card is not just a piece of paper, it is a **permit** that shows an individual has the basic knowledge to handle and prep foods.

Thank you

AJ Root (Administrator)
Denny Taketa RS
John DelSignore RS

Martin, Jodee

From: Karen Cox <Karen.Cox@mail.wvu.edu>
Sent: Monday, July 23, 2018 5:45 PM
To: Gantzer, Kacey; Bowden, Cassey
Subject: CSR title 61 series 38 farmers markets comments
Attachments: 61csr 38 farmers market comments from Karen Cox.docx

Please see the attached document with my comments regarding this rule. I have comments on the farmers market vendor guide as well. Are they due today as well or can I send them tomorrow?

Thanks!

Karen

Karen Cox, M.S.
WVU Extension Agent - ANR
Extension Service
Ohio County

304-234-3673
karen.cox@mail.wvu.edu
51 16th St., Wheeling, WV 26003

The Blended Homestead

Eric and Brianna Blend

4145 Oglebay Drive

Wheeling, WV 26003

To Whom This May Concern:

I have some concerns regarding the new handbook regulating farmers markets in West Virginia. This is our second year selling our products and we believe some of these rules should be amended to encourage new business and agriculture production in our wonderful state.

-Weight or number on label

We sell cookies that are packaged in sealed bags. A sticker is placed on each bag of cookies. I do not believe it is necessary for us to say three cookies, when it is obvious there are three cookies.

We also sell sweet breads, such as zucchini and banana. Our weights of our breads vary slightly. They all have the same amount of raw dough in each pan before they are cooked, but some are smaller and some are larger. With this rule, we would have to weigh each individually.

-Prewrapped baked goods

Does this mean it is illegal to have a jar of cookies and sell the cookies individually using tongues and placing them into bags when they are purchased?

It says baked goods are not regulated by the health department. Why do I still have to register with the health department then?

-Major allergens on all baked goods

We are already required to label all ingredients on our label. Is there a way that instead of putting this on each product, each vendor would have a sheet of paper in a stand that says which allergens are in their products. Already we have customers looking at the ingredients if they have a nut allergy. It is repetitive to have these ingredients twice.

-Approved dairy processing plant

What is considered an approved dairy processing plant?

Food Establishment Permits

I believe it is unnecessary to have vendors be required to get the same permit as a large food establishment to sell frozen meats or cheeses at a farmers market. When vendors attain their farmers market vendor permit, they are already informing what they are going to be selling. Paying \$100 to your local health department doesn't make your food any more safe for public consumption.

-Eggs

A food establishment permit is required to sell eggs at a farmers market. This is unnecessary. We are already registering with the WVDA as an egg producer, and with the WVDA as a farmers market vendor. How can the same permit apply for someone selling eggs at a farmers market and Bob Evans preparing meals? This doesn't make sense.

Eggs shall be washed. Of all the rules, this one **ABSOLUTELY** needs to be changed. The current egg rule states:

19-10A-6

{h} No person may offer for sale or expose for sale shell eggs that are in containers that are dirty, broken, or not free from foreign odor.

It should be the responsibility of the person packaging the eggs to wash eggs if they have some debris on them, but washing eggs that are free of debris is bad for the egg. This shortens the life of the egg because eggs have a membrane surrounding them. Once this membrane washed off, the shelf life of the eggs shortens drastically because air can penetrate through the shell. The rule should state,

Eggs should be free of debris.

This will require people to wash their eggs if there is anything on them, but if my eggs are clean, it is absurd to be required to wash them.

-Jams or Jellies

"While these foods do not present a hazard from a bacteriological standpoint, the food may be contaminated with filth or other extraneous matter." All produce that is grown outside has the 'potential' to be contaminated with 'filth or other extraneous matter'. It currently says the health department reserves the right to inspect the home kitchens if conditions warrant. The potential for 'filth or other extraneous matter' to get into jams and jellies is just as high as it getting into sweet breads that require vegetables such as zucchini bread. It is unnecessary to have this in here because you are being too stringent to people making jams or jellies being subject to health department inspection. If there is 'filth or other extraneous matter' in

someone's jellies or jams, people will not buy their product and they will not make more product. Free markets already regulate this and people do not want to buy product that is packaged like this.

-Meats

This section title should be changed to beef, pork, etc. If someone is reading this section, they may mistake this for poultry. If they read, 'All products must be commercially slaughtered under USDA or WVDA inspection, passed, and labeled,' they may be immediately discouraged, even though the poultry and rabbit exemptions below.

-Poultry

'As part of the routine inspection,(you should have a comma at this point), the local health department may coordinate.....

You missed a comma in that sentence. Also, under this section, under labeling, you should say what is required for labeling, rather than sending vendors somewhere else to find what they are required to put on their label (Other information as required by WVDA and USDA-safe-handling instructions).

I have to get a food establishment permit to sell chickens/rabbits if I have them processed USDA, but I don't have to get one if I process them myself?

-Fish

'Fish must be gutted at an approved facility.' What is the definition of an approved facility?

-Sampling

It states that sampling is allowed given that adequate trash receptacles are available. It is already illegal to throw garbage on the ground. It is unnecessary to be repetitive telling people that they have to have a trash receptacle. If they do not, they are littering.

It also states that a handwash station shall be located in close proximity to each vendor that is providing samples. Every vendor needs to have their own handwashing station? Close proximity is very vague and leaves up for bureaucratic interpretation. Say each market should have at least one handwashing station if samples are being provided.

It states the handwash station shall be equipped with an 'adequate supply of warm water'. Warm water is difficult. Our farmers market uses a container of water and it works great. It doesn't have to state warm water. We don't have running water at our market. Also,

during the end of the guidebook you have a picture of a water jug and it says should have warm water. If you start your market, four hours later, your water won't be warm. It will be close to ambient temperature.

Cottage Food Rules

'At least 51% of the produce in canned acidified foods must be sourced from the vendor's West Virginia farm or garden.' I do not agree that you should have to grow your own produce. I do not agree that people should be allowed to go to the store and make salsa, for example. I would like to make salsa from tomatoes that a friend has grown. This creates value for his/her tomatoes that I can make products from them, where they would be thrown away if I couldn't make products from them.

-WV 20,000 rabbits per year exemption

It states that you are required to have the slaughter date on the package. Processors should keep records of when they slaughter and practices they use to keep the fresh ones being sold first. If batch numbers are used, processors can find out when their rabbits were slaughtered. If customers or regulators ask, processors can tell when they were processed, but it is unnecessary to have the dates on each rabbit.

-Handwashing station

You have a spelling error. It currently says, 'WVDA equires.' I would assume that should be 'requires.'

-The final page ends abruptly in the middle of a sentence in the end.

I hope with these changes, many more businesses can start from the ground up using our farmers markets to establish their market. Using farmers markets, businesses can try out their products without the large investment into a store front. Customers come to farmers markets to speak with the producers of their food and for the community atmosphere. With these changes, it encourages more community involvement. Thank you for your time and feel free to reach out to me if you have any questions.

Sincerely,

Eric Blend