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An Agricultural Law Research Article

Farmers' Markets Rules, Regulations and Opportunities

by

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Neil D. Hamilton*

Introduction – Why Farmers' Markets Are Important

Farmers' markets are one of the most exciting trends in America's food system. Go downtown in almost any town or city in America during the summer, and you will see signs for the local farmers' market. Read any farm publication examining new marketing opportunities for farmers, and farmers' markets will be addressed. Talk with any public official interested in providing fresh nutritious food to inner city residents, and farmers' markets will be mentioned. Farmers' markets are important because they give local farmers the chance to sell food they raise directly to customers; they allow consumers to buy fresh food from the farmers who raise it; they help create new farms and food businesses; they provide communities ways to create excitement and activity in downtowns and neighborhoods; and most importantly, they give us all the opportunity to think about what goes into producing our food supply. These reasons explain why farmers' markets are one of the fastest growing forms of farm marketing in our nation.

Farmers' markets can range from small markets held once a week with a few vendors to large weekend events with hundreds of vendors and crowds in the thousands. Because farmers' markets are increasingly popular for consumers and communities, they are becoming important economic outlets for many farmers. It is important to understand what rules might apply to determine who can join a market and what products can be sold. Regardless of their size or complexity, there are fundamental issues all farmers' markets must address, such as who administers the market, who determines who can sell what, and how the market will operate. As markets become more important – both for farmers and consumers – the operational issues can become complicated. Although farmers' market are based on relatively simple and straightforward transactions between farmers and consumers, concerns such as food safety, liability, competition with local businesses, and selection of vendors can pose difficult issues. It is important to understand how farmers' markets operate and the types of issues they may face.

Number of Farmers' Markets Keeps Growing

The 2000 USDA survey of farmers' markets shows there were over 2,800 farmers' markets in the U.S., and the number is probably well over 3,000 now. USDA surveys show that as many as 19,000 farmers use the markets as their main source of marketing. It is estimated that over \$1 billion of food and farm products are sold annually at farmers' markets. For more information about the USDA and its efforts to promote direct farm marketing, see the website:

www.ams.usda.gov/farmersmarkets.

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The purpose of this study is to examine the structure and operation of farmers' markets in the United States, giving special attention to the legal and regulatory issues that may shape their operation. By looking at the rules and regulations markets use and by considering issues markets experience, it is possible to identify the most important challenges vendors and managers of markets may face. It is also possible to make some common sense suggestions on how markets can best address and resolve issues while maintaining their friendly and relatively informal nature. The goal of this article is to provide a resource that will be valuable for farmers considering a farmers' market, to vendors now selling at them, to the organizers and managers who run markets, and to those thinking about creating new markets.

Farmers' Markets and Food Safety

In today's world there is much attention given to "food security," a term that can have several meanings. To some, it means making sure people living on fixed incomes have access to adequate amounts of nutritious food. To others, the term relates to threats to our food supply such as contamination, disease, or acts of terrorism. Still to others the term, food security, means considering where a town or region obtains its food supply and taking actions to increase the amount of food grown locally to decrease reliance on food imported or shipped from long distances. Regardless of which view of food security is in issue, farmers' markets are playing critical roles in addressing the concerns.

Farmers' markets play a leading role in making fresh nutritious food available at affordable prices to people with limited incomes. The number of markets operating in neighborhoods where residents live on fixed incomes is proof of this role. In fact, in many major cities farmers' markets operate in neighborhoods where no grocery stores remain, making them critical sources of fresh food. In this age of new concerns about intentional threats to food safety and security, farmers' markets offer a very local and widespread alternative to our nation's increasingly concentrated – and vulnerable – food and grocery distribution system. Because food sold at farmers' markets is locally grown and usually sold unprocessed, the food is safer because fewer hands have touched it, and it is fresh so there are fewer concerns about storage and handling.

By connecting local farmers with consumers, farmers' markets can help increase the security and ability of communities and regions to produce their own food supplies. By putting consumers into direct contact with local farmers, the markets are an important source of education and communication about farming and food safety issues.

For this study, rules from more than thirty farmers' markets currently operating in fifteen states were examined in order to determine the most common provisions, to identify important legal and operational issues, and to understand how markets are typically administered. Farmers' market rules are as varied as the types of markets found in the United States. Market rules may be referred to as regulations, guidelines, or policies and can range from simple one-page lists of guidelines to 24-page books of policies. In addition to the rules and regulations, there will also be an application a farmer must complete and a fee to pay to become a vendor. Once the application is approved by the market organizer, all the documents become part of the binding legal agreement between the parties.

The rules used at any market will depend on the type of market, the nature of its management, the market's history and purpose, and the organizer's experience. The various rules examined for this study provide valuable examples of the most important issues in the operation of farmers' markets and show how the different issues are commonly addressed. A resource section at the end of this article provides addresses for many organizations involved in promoting and managing farmers' markets and provides information on how to contact many of the markets discussed. These groups and markets can offer valuable advice on market issues, as well as copies of rules and regulations.

Defining a Farmers' Market

The term, "farmers' market," brings a certain image to mind – local farmers selling what they raise to shoppers. But when various types of farmers' markets are more closely examined, a common image is not so simple. That is why it is important to have a working definition of what is meant by the term, "farmers' market." For this study – and for most people involved with promoting farmers' markets – these common factors define the term:

- 1) Farmers selling produce and food they raise or create
- 2) To individual customers
- 3) At a temporary location, often on public property, such as a street or parking lot,
- 4) On a periodic basis, typically once or twice a week,
- 5) For a set period of time, usually 3 or 4 hours,
- 6) During the local growing season, usually 5 or 6 months,
- 7) Operated by a government or non-profit organization.

These factors are what distinguish farmers' markets from grocery stores, from road-side stands, and from other types of food marketing outlets. The critical issue is that farmers are selling food they produce directly to consumers on a seasonal basis.

This simple picture is typical, but as you travel across the country, you will discover the term, farmers' market, may mean different things in different places. In the south, there are many state-run "farmers' markets," where farmers sell to customers but which also function as terminal markets where farmers can sell large quantities of produce at wholesale. These markets are publicly owned and run by state employees. In the northeast, it is not

Rules Examined for This Study

To complete this study, the rules of farmers' markets from across the country were collected and examined. The cities for which market rules were reviewed and which are on file with the Drake Agricultural Law Center, include:

Fayetteville, Arkansas
Davis, California
Marin County Markets, California
San Francisco, California
DownTown Market, Des Moines, Iowa
Drake Neighborhood Market, Des Moines, Iowa
Crescent City Market, New Orleans
Camden, Maine
Fairfield, Maine
Orono, Maine
Takoma Park, Maryland
St. Paul, Minnesota
Kansas City, Missouri
Las Vegas, Nevada
Santa Fe, New Mexico
New York City Green Markets
Athens, Ohio
The Food Trust, Philadelphia
Quakertown, Pennsylvania
Tacoma, Washington
Neighborhood Markets, Seattle
Dane County, Madison, Wisconsin
Dupont Circle Market, Washington DC
USDA Market, Washington DC
London, Ontario

In many cities the rules developed by the farmers' market association are used at multiple market sites.

uncommon to find produce markets and grocery stores using the term “farmers’ market” in their name even though no farmer can be found. In many large cities, there are year-round public markets where farm goods are sold along with local foods, crafts and other products. The world famous Pike’s Place Farmers’ market in Seattle is a good example.

In many public markets the number of farmer vendors may be limited, with most vendors being wholesalers or peddlers, not farmers who raise the produce. In California a law designates “certified farmers’ markets,” regulating which farmers can sell what products at “certified” markets and requiring the inspection and certification of farmers to become vendors. These different regional uses of the term “farmers’ market” can create important local variations in the nature of the market experience.

Maine Defines Term, “Farmers’ Market”

Maine is one of the only states to define, by state law, what it means to be a farmers’ market. Under Maine law (Maine Stat. Ann. 7 §415) a farmers’ market is defined as “a building, structure or place used by 2 or more farmers for the direct sale of farm and food products to consumers, at which all sellers meet the requirements of subsection 2, paragraph B.” Subsection 2 of the law provides:

2. Prohibitions. The following acts are prohibited.

A. A person may not use the term “farmers market” to describe a market or other sales location that does not meet the terms of the definition set forth in subsection 1.

B. A person may not sell farm and food products at a market labeled a “farmers market” unless at least 75% of the product offered by that person was grown or processed by that person or under that person’s direction. A product not grown or processed by that person must have been purchased directly from another farmer.

Maine’s law makes it a civil violation, subject to a fine of \$100 to \$200, to violate the prohibitions. The law does not “prohibit a market from imposing more stringent requirements on its sellers than those imposed” by the law. The purpose of Maine’s law is to preserve the ability of true farmers’ markets to use the term

In contrast to the situation in Maine where use of the term “farmers’ market” is defined by law, in other states such as Pennsylvania, the term can be used by anyone. For example, the Quakertown Farmers’ Market and Flea Market uses the name, but the rules show the market is largely a flea market with no emphasis placed on farmers actually being vendors or locally grown food being a main attraction. [www.quakertownfarmersmkt.com] Whether consumers are confused by the possible misuse of the term “farmers’ market” and whether its use should be controlled is a policy question for states to address.

Evolving Nature of Farmers' Markets

Farmers' markets in the United States are dynamic social and economic forces. In addition to creating new opportunities for farmers and consumers, they are important economic and social development tools for communities. In many cities, markets started twenty years ago at one location may now have a dozen or more locations with neighborhood markets every night of the week. For example, in New York City the Council for the Environment operates the Green Markets, that sponsor farmers' markets in 27 locations around the city. [www.ny.com/dining/green.html]

In some communities successful downtown farmers' markets have helped revitalize whole neighborhoods and led to critical economic and social transformations in communities. The success of some downtown weekend markets have been the catalyst sparking interest in creating – or recreating in many cases – permanent year-round public market spaces. Efforts are now underway in St. Paul and Des Moines to expand existing farmers' markets into year-round public marketplaces.

While there is a common image of a farmers' market, visiting markets in different parts of the nation shows each has its own personality. This may be due to the foods that are regional specialties and is definitely a function of the time of the year. In the spring, when many markets open for the season, vendors' may feature bedding plants and other growing things for shoppers to take home and plant. During the summer, the focus is on the bountiful fresh produce coming from the fields. In the fall, fruits, pumpkins and items for seasonal decorating may become the focus. Fresh flowers are increasingly important for many farmers because of their popular appeal with shoppers. The same is true with meat, poultry, eggs, cheese and dairy products where these can sold in farmers' markets.

One of the beauties of farmers' markets is how they let farmers experiment with new items to respond to shoppers demands. If a farmer isn't raising a particular product, requests from enough shoppers will often add it to the farmers' inventory of production. The same can be said for developing "value-added" products such as processed foods like jams and salsa that can be made on the farm. If there is demand for it, some vendor will determine whether it can be made and sold at the market. This is one reason why farmers' markets are playing such an important role as incubators of new farm- and food-based businesses. Many companies now marketing foods commercially got their start at tables in farmers' markets. Special concerns in dealing with processed foods – such as licensing, labeling, and handling – are addressed in more detail in the discussion of markets rules.

Creating a Farmers' Market: Sponsors, Managers and Market Philosophy

To understand how farmers' markets operate, it is important to look at three basic issues: who creates the markets, why they are created, and how the markets actually function. These three issues – sponsors, managers, and market purpose – are addressed in this section. The questions of who can sell what products at farmers' markets and how markets operate are addressed in the next section on market rules. All these issues are best understood by examining the rules and regulations used to manage existing markets.

Sponsors

The purpose of the market is often directly related to who sponsors or creates it. Some markets are created by farmers who see them as a way to develop new outlets for products and to increase their incomes. In many cities, farmers' markets are sponsored by local governments or community development affiliates, such as a chamber of commerce, or by other interested non-profit organizations, such as churches or neighborhood associations. In these situations the markets are a way to increase the entertainment and social activities available for local residents. Markets are also used frequently to help revitalize downtowns or neighborhoods going through economic rehabilitation. By bringing people and economic activity to an area, it can be made more stable, stronger, safer and more vibrant. In some situations market sponsors may be non-profit organizations with specific social goals – such as creating markets for new and small farmers, some of whom may be minorities – or increasing the availability of fresh nutritious food for inner city residents or seniors on fixed incomes.

Often all these goals come together and are served at the same time. This combination of advantages and social utility helps explain the increasing popularity of farmers' markets. But it is easy to see how it may not be possible to promote all these goals at the same time and how some goals might conflict. For example, communities interested in creating social attractions for residents may not be committed to creating markets for local farmers and may open them to wholesale peddlers. Markets designed to increase food supplies for low income residents may not be profitable markets for all vendors, and farmers may not want to continue to participate if sales are low.

Trying to balance the combination of goals and benefits from farmers' markets can present challenges to the market organizers. That is why it is important to keep in mind the farmer's income. Even with all their other purposes and values, a farmers' market will not survive unless it is profitable for farmers to take the time and effort to sell there. In large part, the nature of the market will determine the rules that control what products can be sold and determine who is eligible to be a vendor. It is not uncommon for market rules to include provisions setting out the purpose or philosophy of the market and explaining why it was created.

Statements of Market Purpose and Philosophy

It may be easy for a shopper at a farmers' market to take its existence for granted, giving little thought to why the market exists. But those involved in creating and operating farmers' markets know the economic and political issues behind any market may be much more complex. The most important political or philosophical issues related to farmers' markets are why they exist and whom they are intended to benefit.

The simplest answer to the question is that the markets are typically created to serve the needs of local farmers and consumers. The most common and direct manner in which this purpose is reflected is the "producer-only" feature that informs consumers the market is designed primarily as an outlet for local farmers selling only products they raise on their farms. The purpose of a market is often set out in the market rules or application as a statement of purpose or market philosophy. The following three examples are provisions taken from current market rules.

A) Dane County – Madison, Wisconsin – The farmers' market in Madison, Wisconsin, is widely considered to be one of the premier markets in the nation. Every Saturday over 150 vendors line eight city blocks around the state capitol, offering a wide array of Wisconsin grown and produced

foods. The introduction to the market's rules provides a clear statement of the goals and purpose for its operation:

- To give growers and producers of Wisconsin agricultural commodities and other farm-related products alternative marketing opportunities;
- To promote the sale of Wisconsin-grown farm products;
- To improve the variety, freshness, taste and nutritional value of produce available in the Madison area;
- To provide an opportunity for farmers and people from urban communities to deal directly with each other, rather than through third parties, and to thereby get to know and learn from one another;
- To provide an educational forum for consumers to learn the uses and benefits of quality, locally grown or prepared food products;
- To provide educational opportunities for producers to test and refine their products and marketing skills;
- To enhance the quality of life in the Greater Madison Area by providing a community activity which fosters social gathering and interaction; and
- To preserve Wisconsin's unique agricultural heritage and the historical role which farmers' markets have played in it.

B) Washington DC – Dupont Circle – The Dupont Circle farmers market was formed six years ago to create a marketing opportunity for the many small farms that surround the Washington D.C. area. The market was originally sponsored by the American Farmland Trust as an education and economic development project, but it is now under separate non-profit management. Given its location and the residents who shop there, the Sunday market provides a valuable connection between political leaders and the food system. This statement of purpose is from the introduction to the market rules:

Statement of Purpose: the FRESHFARM Markets at Dupont Circle in Washington, D.C. and St. Michaels, Maryland are public education projects and were created as a showcase for regional food drawn from the farms, fields and waters of the Mid-Atlantic region. They were created to demonstrate that there is a direct connection between eating seasonally and locally and the quality of our environment and our daily lives. The market addresses farm economics by providing regional farmers/producers with a direct market for their products and enhances the quality of life in the community by providing residents with direct access to farmers and their farm fresh products. The market provides an opportunity for educating both the farmers/producers and market customers about the connection between preserving local agriculture and buying fresh, seasonal products direct from the farm.

C) San Francisco – Ferry Plaza Farmers' Market (FPFM) – San Francisco and Northern California are known for high quality food and wine and for the strong network of thriving family farms. There are numerous farmers' markets which operate in the Bay area, providing shoppers with a wide-array of some of the best food in America. The Ferry Plaza Farmers' market in San Francisco, held on Saturday mornings on the Embarcadero, presents American farmers' markets at the highest level of quality and variety. As the following statement from the introduction to the market's rules makes clear, the organizers had many goals in mind for the market.

Introduction - The Ferry Plaza Farmers' Market (FPFM) is a certified farmers' market operated by the Center for Urban Education About Sustainable Agriculture (CUESA) in accordance with state, county and local laws, for the benefit of farmers and consumers alike. Its fundamental purpose is to provide the community with a place to buy fresh produce direct from producers in a congenial atmosphere and to provide producers with a direct market for their goods. Further objectives derived from CUESA's mission include education about and support of regional sustainable agriculture. Sustainable agriculture is a commitment to both growing and distributing food to meet the needs of current and future generations in a manner that is environmentally sound, economically viable, and socially just. CUESA believes that small family farms are essential to the sustainable agricultural economy, and is committed to making economic and educational connections between urban dwellers and sustainable farmers.

The purpose of these rules is to govern the operation, administration and management of any Certified Farmers' Market under the control of CUESA. In issuing rules, it is not our intent to burden participants, but to ensure the smooth operation of the market. CUESA management and its designated agents will implement and enforce all rules and regulations pertaining to the operation of any CUESA certified market in a fair and equitable manner. We welcome suggestions for ways to improve the market.

All three of these statements of market purpose demonstrate how these farmers' markets are more than just places for farmers to sell fresh food to people. The markets all have additional goals relating to education, social interaction, community building, and promotion of sustainable food systems. Promoting these goals, while creating a friendly convenient place for farmers and shoppers to meet, is one of the key challenges to operating a farmers' market.

Market Managers

A key ingredient in the operation of a market – assuming the farmer vendors have been identified – is the person who runs the market on a day-to-day basis. This job is the responsibility of the “market manager,” a person designated or employed by the market organizers to be responsible for making the operational decisions. Decisions such as the selection of vendors and set-up sites for their booths must be made, and weekly stall fees must be collected for a market to exist and succeed.

From the perspective of participating vendors the market manager plays a critical role by running the market, enforcing the rules, resolving disputes, and providing answers to questions. The responsibilities of the manager are often set out in the market's rules, but even if they are not, the job of market manager typically includes:

1. Selecting and registering both seasonal and daily vendors;
2. Assigning spaces at the market so vendors know where to set up and consumers know where to find their favorite farmers;
3. Collecting the seasonal and weekly fees for market spaces;
4. Handling day-to-day administrative issues which arise, such as

- “someone is illegally parked in my space!”;
5. Enforcing market regulations and administering penalties, which may mean imposing fines on vendors;
 6. Answering inquiries and responding to complaints from customers and vendors;
 7. Working with local media and promoting the market by advertising what it has to offer;
 8. Making sure the market complies with applicable local, state and federal regulations;
 9. Administering the financial and business affairs of the market; and
 10. Dealing with local officials, other businesses, and the organizers of the market.

Some tasks on this list, such as allocating spaces and collecting fees, may be done early in the season before the market begins, but other duties must be performed as the market operates. The market manager's responsibilities will vary a great deal depending on the size and nature of the market. If the farmers' market is a relatively small and informal one (such as six farmers in the church parking lot one afternoon a week), the market manager's job is not large. On the other hand, managing a farmers' market with hundreds of vendors and thousands of customers may be a full-time responsibility. Regardless of the market's size, the rules generally give the manager great discretion and power to take needed action.

Here is the rule from the Dupont Circle market concerning the role of the manager:

C. Market Operations and Procedures – The market management is responsible for enforcing all FRESHFARM market and public safety regulations including space assignments, market fee collection, and market data collection. The market management has final authority in resolving issues in a civil and efficient manner.

The following rules from the Kansas City, Missouri municipal farmers' market provide more detail on the powers given to market managers:

29. The Market Manager has the authority to deny any person the privilege of operation on the market who, in his judgment, is using methods that are detrimental to attendance at the Market or contrary to the Market policies or standards. The Market Manager has the right to deny any person the privilege of selling a particular item that, in his judgment, is detrimental to the attendance at the market, or contrary to Market policies.
30. The Market Manager has the authority to order and remove any person or Vendor from the Market who is guilty of any violation of these Market regulations, or who may be guilty of violation of any ordinances of the City, county, state laws, or who fails to obey any lawful order of the Market Manager.

Rules and Regulations – How Farmers’ Markets Operate

It might be possible to operate farmers’ markets without any form of written rules or policies for the vendors, but it would not be long before a market would face difficult issues – such as someone wanting to sell things other than farm products, or someone deciding to come an hour early to get more sales. The reason farmers’ markets use rules and policies is to prevent problems like these from arising.

Defining Key Terms in Market Rules

To help understand the discussion of market rules, there are several terms which need to be defined. They include:

Carrying	Allowing farmers to sell products raised by other farmers.
Crafts	Non-food items made by vendors, if allowed, may be subject to special procedures for selection and approval.
Farm Visit	Process where the market manager visits the vendor’s farm to determine whether produce sold at the market is “farm-raised.”
Hold Harmless and Indemnification Clause	Agreement by vendor to financially protect market organizers from liability arising at the market.
Market Manager	Person designated to run the market on a day-to-day basis.
Peddlers	Vendors who buy products at wholesale for reselling at the market.
Producer-Only	Market selling only items raised by farmers who sell them.
Proof of Insurance	A form a vendor obtains from an insurance carrier indicating the type of insurance coverage and listing the market as a covered party.
Product List	List of the products the farmer plans to sell which may be used to allocate spaces and limit vendors from adding unapproved products.
Prepared Food	Ready-to-eat food, such as take-away meals and snacks.
Processed Food	Products such as jam, cider, vinegar, and baked goods.
Sponsor	The group or organization legally responsible for creating and operating the market.
Vendor	A farmer or other person designated by the management as having the right to participate in the market.

Many farmers’ market rules will include specific definitions for important terms, especially for various categories of products or vendors.

The rules established for a market are critical to its operation. The rules determine who can be a vendor, what products can be sold, when and where the market will operate, how much it will cost to be a vendor, and what the market experience will be like for shoppers. The rules are also important from a legal perspective because they become part of the agreement between the vendor and the market, establishing each party’s rights and obligations.

To really understand any farmers' market, it is necessary to understand its rules. In preparing this study, rules from more than 30 current farmers' markets of all types and sizes, operating in 15 states, were collected and examined. The following discussion makes use of those rules to provide actual examples of the provisions used to address common issues. By reviewing those rules, it was possible to identify a list of the issues most commonly addressed in market regulations and policies.

Regardless of the type of market or the rules being used, there are certain common issues market organizers must address. The following list sets out the twenty provisions or issues most commonly addressed in farmers' market rules. For several of the topics on the list, such as vendor conduct at the market, the rules may have multiple sections addressing a series of issues. It is important to recognize that some markets may have additional rules or provisions not listed here, and other markets may not address all of the issues listed. In the next section, the actual sets of rules and policies used by several farmer's markets are presented so readers can see how the issues are actually addressed.

The key point for farmers' market rules is not how many rules there are or how detailed they are, but how well the rules address issues arising in the market. It is just as possible to have too many rules as it is to have too few – the key is having a process to resolve the questions and disputes which inevitably may arise. In situations when the rules don't provide an answer, the market manager will have to decide.

Twenty Provisions Commonly Found in Farmers' Market Rules

1. Organizer or sponsor – identifies who runs the market and sets out the philosophy and purpose of the market.
2. Market manager - identifies who makes the decisions on day-to-day operation.
3. Statement of the rules – makes the rules part of the agreement between the vendor and the market.
4. Defining key terms – explains what key phrases, such as vendor, allowable goods, categories of products, etc., will mean in context.
5. Approval of vendors and products - defines who can sell (farmer/non-farmer distinction), and what can be sold (produce-craft-food distinctions).
6. Criteria for selecting vendors – establishes any priorities or preferences, and the basis for them, and allocates market spaces.
7. Categories of products – rules for items such as baked goods, nursery plants, eggs, cheeses, meat, and processed foods, commonly related to inspections and handling.
8. Changes in ownership and vendors' rights – addresses issues such as transfer or change of business and seniority for market spaces.
9. Carrying rules – may allow farm vendors to sell products raised by other farmers.
10. Application process and fees – provides for the timing of application, selection and notification of vendors, sets the amount and payment of fees, and allocates market spaces and locations.
11. Types of vendors and length of market – creates categories of seasonal and daily vendors and may include the actual contract or application to participate.
12. Membership and market organization – creates operational structure for market and may require a separate payment for membership in sponsoring organization.
13. Necessary documents and permits – lists the various documents and licenses required to participate, including proof of insurance, tax permits, health inspection and other licenses. A

market may require information such as farm plan, load lists for products raised, and organic certification.

14. Market operation – detailed guidelines on issues such as set-up, clean-up, selling times, notification for non-attendance, pets, parking, samples, sanitation, signage, hawking, smoking, food safety and food handling. Many provisions may be very detailed, making the operational rules the main part of a market's regulations.
15. Enforcement process – sets the procedures for rule enforcement, including reporting violations, notice, penalties, suspension or removal, and appeals.
16. Rule and law compliance - incorporates applicable state and local requirements into market rules, with agreement that it is vendor's responsibility to comply.
17. Hold harmless and indemnification – vendor agrees to protect market organizers from any legal or financial liability in case of accidents or incidents at market.
18. Food safety and sampling – specific rules for handling and storing different types of foods, with guidelines for sampling if allowed.
19. Other provisions – labeling, posting farm name, using legal scales, accepting nutrition checks and food stamps, pricing guidelines, farm visits, and gleaning excess food.
20. Signature line – creates a binding agreement between vendor and market.

Farmers' Market Rules: Considering Some Examples

The best way to understand the different types of market rules is to consider actual rules used by farmers' markets. In this section, the complete rules are reprinted for three markets from diverse parts of the country: Athens, Ohio; Tacoma, Washington, and New Orleans, Louisiana. The rules are not presented as models but as valuable working examples of different ways markets address important issues.

The following rules from the Athens, Ohio farmers' market illustrate a simple straightforward approach to market rules:

ATHENS FARMERS MARKET RULES **(REVISED 2002)**

1. Producers at the Athens Farmers Market (AFM) are to park only in the specified area.
2. Producers may sell at the AFM only on the announced days of the market: Wednesday at 10:00 a.m. and Saturday at 10:00 a.m.
3. Stall holders are to pay an annual fee no later than two weeks after the annual spring meeting. Annual fees are \$80/1 stall, \$130/1.5 stalls, \$200/2 stalls, \$300/3 stalls. [Note: Members may secure a maximum of *two* stalls, with a third stall on a space available basis and with the manager's approval.]
4. Producers who wish to sell at the market but have not paid the annual fee shall be allowed to pay \$20 at the beginning of their first day only and must pay the remainder of the annual fee at the beginning of their second day at the market.
5. Vendors shall sell only agricultural, horticultural, or food items that they themselves have grown, produced, or processed.
6. Dairy products, canned goods, baked goods and other processed foods must be made in a licensed kitchen. Licenses shall be displayed at the market.

7. There will be no sales of produce prior to the opening of the market, except the manager, officers, and producers of the market may buy from each other before the opening time.
8. Sellers should have their prices displayed.
9. Each producer shall display a sign which states the producer's name and address.
10. Radical price cutting of top quality produce is prohibited. Poor quality or overripe produce must be labeled as such and can be sold for a discounted price.
11. Producers must remove unsold produce and clean up their stalls before leaving the market.
12. Producers must comply with all laws, ordinances, and regulations of the United States, State of Ohio and City of Athens.
13. Violations of any market regulations will be dealt with by the market manager or president. The manager or president may give a verbal warning notice to a producer for an infraction of the rules. If a producer receives two verbal warning notices, the president shall call a meeting of the officers. The officers will then take a formal vote giving the manager or president the power to expel the seller if a third violation of rules occurs. If the violator is a seasonal member, a refund will be given for a prorated amount if the producer has not attended enough market dates to use up his or her season dues. An expelled producer can be reinstated the next market season at the annual meeting by receiving a 2/3 vote of the voting members present. The producer, if a seasonal member, forfeits his or her stall upon their expulsion. They may apply for a new season stall as a new producer.

Not all twenty of the issues on the list are addressed. For example, there is no mention of liability. Some of the issues may not be important or have not yet been an issue. The Athens rules cover the basics and are sufficient to make the market possible. Also, it is important to recognize there are two other documents from the Athens market which may contain rules. First, the vendor application form must be completed, and second, because the market is administered by an organization of vendors, the by-laws for members may address some issues as well. The point to remember is market rules and policies may arise from a number of different sources.

A second set of market rules which illustrate many of the issues on the list are from the Tacoma, Washington Farmers' Market:

POLICIES OF THE TACOMA FARMERS' MARKET 2002

In order to promote the Market as a whole to the community of Pierce County all members of the Tacoma Farmers Market Association will behave towards Market customers, association members, staff and volunteers, in a professional manner which fosters a sense of Market community, camaraderie, and a spirit of cooperative involvement:

PUNCTUALITY: All vendors with assigned stalls must be at their stall by 8:30a.m. or have made prior arrangements by Monday of the week to be gone with the Market Manager by calling (253) 272-7077. Violations of this policy will result in loss of assigned stall on the day of the violation.

QUALITY: The Tacoma Farmers Market strives to provide a market place where fresh and wholesome products are sold. The Market Manager shall have the responsibility for maintaining quality control at the Market. The producer should be the seller of their product at the Market. (Exceptions may be discussed with the Market Manager.) All craft products must be handcrafted by applying vendor and pre-approved by the Market Manager and the Market Vendor Committee, including items not sold last year.

STALL ASSIGNMENTS: The Market Manager will make Stall assignments. Your space is assigned to you, and it is not transferable. Space fee prepayment is available. This will guarantee the same location but vendor must adhere to Punctuality Policy (see above). The stall fee is nonrefundable and vendor forfeits the fee if not at the market without prior notification to Market Manager.

SET-UP: Set-up will begin between 7:00am to 8:30am on Market day. During that period vendors may enter the Market area for the purpose of readying their stall space for the day's sales. Due to insurance liability, vendors will be required to remain until closing at 2:00pm even if they have sold all their goods. Exceptions to this policy must be approved in advance by the Market Manager. Temporary tables that are put up and taken down daily are the responsibility of the individual vendors.

STALL CLEAN UP: Each vendor is responsible for cleaning his/her stall area to the satisfaction of the Market Manager. NO dumping of oil into garden areas, NO dumping oil into garbage cans, NO oil of any kind can get on the ground, sidewalk, areas in the market location. This is a safety and environmental issue. Any violators will be responsible for costs' incurred for steam cleaning by The Executive Committee. All food vendors must use a covering under any cooking. NO oil is to reach the ground. Vendors will be assessed a fee for cleanup if Market staff has to steam clean

DISPLAY: Displays must be placed within stall area. You must provide your own fire department approved protection from rain/sun. **ALL FOOD VENDORS ARE REQUIRED BY THE HEALTH DEPARTMENT TO PROVIDE OVERHEAD UMBRELLA OR OTHER COVER.** You need to provide your own signage.

PRICING: Pricing of goods sold at the Market is solely the responsibility of the individual vendor.

HEALTH PRACTICES: All vendors must adhere to sanitary procedures as outlined by the Pierce County Health Department (798-6456). Any vendor found selling contaminated foodstuffs or produce, or selling in the Market without proper health precautions, shall be suspended from selling operations until satisfactory clearance has been obtained from the Pierce County Health Department and the Market Manager.

All vendors must dress appropriately and shoes and shirts are required. NO dogs are allowed in vendor stalls.

SMOKING POLICY: There will be NO smoking by vendors in any stall spaces. You are responsible for any cigarette butts around your stall space, please dispose of them properly.

VEHICLES: Only Farmers will be allowed to sell from their vehicles, all others will be required to park their vehicles off site. With the opening of the 2002 season, oil pans are required under all vehicles on site. Failure to do so will result in action by the Operation Committee, Market Manager and the Board of Directors.

STALL FEE AND PAYMENT: A fee schedule for all Farmers Market stalls will be established by the Board of Directors prior to each market season. The Operations Staff will collect payment beginning at 2:00pm. Failure to comply with fee payment on Market day will result in a \$18.00 fine in addition to the regular daily staff fees. Vendors will NOT be allowed to set up until past obligations including steam cleaning charges for clean up have been cleared or risk expulsion from the Market.

ORGANIC LABELING: Vendors advertising as “Organic”, or “Unsprayed”, “Natural”, etc. are not required to be certified by any recognized certification agency. However, state law to those who have in fact been certified by the Department of Agriculture restricts use of the phrase “Certified Organic”. All vendors are required to advertise truthfully and to respond to customer’s questions in a like manner.

GRIEVANCE POLICY: The Market Manager has the right to impose disciplinary action at the Market site. Vendors have the right to a hearing before the Market Executive Committee within two weeks of any disciplinary action. In the event of customer dissatisfaction, the dispute must be resolved to the satisfaction of the customer and Market Manager in a timely manner. Failure to do so will result in the removal from market participation. The Market Manager has the authority to grant exceptions to the market policies on an individual basis for reasons of dire need. Should any vendor, at any time, occupy the premises in a manner contrary to this agreement, upon request of Market Manager, the vendor shall immediately cease such offending conduct. Failure to immediately comply as requested, shall be cause for the revocation of this permit and expulsion from the market. Upon revocation vendor shall promptly vacate premises. Upon failure to vacate, the Market shall have removed all property of vendor from the premises at vendor’s expense. The market is relieved and discharged from any all / loss or damage caused by such removal. The Market shall not be responsible for storage or safekeeping of property so removed.

MARKET MANAGER: The Market Manager’s job on the Market site is to coordinate all of the activities of the weekly functioning of the Market and to implement market policies. This includes oversight of the Market set-up and clean-up, daily assignments, collection of dues, fees and information, assuring vendor compliance with cleanup, display all Tacoma Farmers Market policies,

and answering questions. The Market Manager also acts as a conduit of information from the vendors and customers to the Market Board of Directors. The Market Manager has complete authority to interpret and implement policy on the market site. If you have any questions or concerns you wish the Market Board of Directors to address, please submit your concerns and proposals in writing to the Market Manager.

LOGO USE: Vendors wishing to use the Tacoma Farmers Market logo must adhere to the following procedure: Apply in writing to the board of Directors, explaining how the logo will be used. The Board of Directors will approve or disapprove, and respond in writing.

INDIVIDUAL VENDOR POLICIES

FOOD VENDORS: Prior to selling at the Market, all prepared food processors will show appropriate Health Department certification to the Market Manager. These permits must be displayed in public view during Market hours. All prepared food processor trailers must comply with Pierce County Health Department regulations. The Market Manager and Market Vendor Committee must pre-approve food sold at the Market.

FARM VENDORS: Farm vendors must submit application to the Market Manager. The applicant must grow produce/fruit. Vendors wishing to offer samples must contact the Market Manager for an application and fee schedule. No wholesale brokers will be allowed. Selection is made on the basis of quality and freshness.

CRAFT VENDORS: Craft vendors must make an application to the Market Manager. Vendor must make craft items. Selections will be made on the basis of quality, originality, and space availability. Market Manager and Market Vendor Committee must prescreen all crafts, during our scheduled screening days only.

The Tacoma market rules provide more detail than those for the Athens market, addressing issues such as non-transferability, liability, grievances, and the role of the market manager. But market rules are just one source of policies that may apply to vendors. Another source is the application a vendor must complete to participate. Markets may use different applications for categories of vendors, such as farm vendors and those selling prepared food, and may request different information depending on products being sold. The following application notice, which was sent to vendors by the Tacoma market, provides more detail on some of the market policies, such as the stall fees and when they are due.

Tacoma Farmers' Market Vendor Applications - 2002 Season

Dear Tacoma Farmers Market Applicant:

Opening day of the Tacoma Farmers Market is Thursday June 6th, 2002, and the season will run through October 17th 2002. No market is scheduled for the 4th of July. We are located between 9th and 11th Streets on Broadway in beautiful downtown Tacoma in an urban park setting. Featuring the Theater District, Pantages, Tacoma Children's Museum and Transit Park.

The Tacoma Farmers Market will open at 9:00am and close at 2:00pm for the public. However, vendors set up begins at 7:00am and vendors will not be allowed to move vehicles at the close of market until approximately 2:20pm. This allows for our customers to exit in a safe environment, and time for vendors to dismantle their booths. We have room for approximately 70-80 vendors. In order to provide customers a diverse and interesting selection of well-rounded and wholesome products, stall space allocation will be based upon product quality, originality and availability.

We have enclosed a copy of the Tacoma Farmers Market Site Policies. Please read and sign them and retain a copy for yourself. They will be collected from each participating vendor on the first day of attendance of the Tacoma Farmers Market.

Stall fees for 2002: All vendors will pay \$18.00 per stall space, for each market day. A stall space is approximately a 10 x 10 ft. You will need to keep your display area within these boundaries.

2002 Fee Schedule:

Farm Vendors: pay 5% on sales over \$200.00

Craft Vendors: pay 8% on total sales

Prepared Food Vendors: pay 10 % on total sales

Processor Vendors: pay 6% on total sales.

Processed foods which have been personally prepared; fresh food products (i.e. meats, seafoods, ciders, baked goods, jams, confections, etc.)

Food Vendors: Must include a one-time season fee of \$125.00 at time of application, made payable to the Tacoma Farmers Market. This includes the

Health Department fee for processing the application, two inspections (the first one is during the first market and the second is towards the end of the season), and refuse disposal.

Processors (includes baked goods) and farm vendors offering samples of their product(s) must complete a Health Dept. Temporary Food Service

Application and pay \$75.00, due at time of Market application. No sampling – no charge. Please call (253) 272-7077 if you need an application, speak clearly leave name, business name, phone number, address with zip.

To reserve your space at the 2002 Tacoma Farmers Market please return the enclosed application(s) and stall(s) fee for the first Thursday you plan to attend the market, no later than April 30th, 2002. After April 30th, we will fill unassigned spaces with other vendors, no exceptions! Please call (253) 272-7077 if you have any questions.

Prepayment: You may prepay the stall(s) fee for the first 10 weeks (\$180.00) based on one stall, when you send in your application. However, if you are unable to participate at the Tacoma Farmers Market on a prepaid Thursday, the stall fee is forfeited and is non-refundable. The prepayment does guarantee that your regular space is reserved each week until 8:30am. If you have not prepaid for your space and have circled a date on the application form and are unable to attend that particular day, you are required to notify The Tacoma Farmers Market Manager no later than Monday prior to the Market day you had signed up for by calling the Tacoma Farmers Market voice mail number (253) 272-7077. If you do not let the Market Manager know by this time you will be required to pay the stall fee for that day.

Tacoma Farmers Market Operations Staff will collect your folders with fees at 2:00pm. The Market Manager will be your contact in all financial matters, keeper of the records, and have up-to-date accounting should you have any questions.

Please plan to provide your own canopies, temporary tables & chairs, side covering for hot sun or rain, signage, menus, business cards, etc. for display of merchandise. Also plan on a oil drip pan or protection of some sort each week if you are a vendor who's vehicle will be on site, or if you serve food or cook in any matter, no oil of any type is to get on the grounds. Any clean up by The Market Staff will be billed to the Vendor.

Pre-Screening: Returning Food Vendors from the 2001 season are exempt from the pre-screening process unless you have a new menu item(s) not sold in last season's market, in which case, you will need to schedule a pre-screening appointment. All new Processor, Prepared Food and Craft Vendor applicants are required to pre-screen their items with the Vendor Pre-screening Committee, which will be held on Friday May 3th, 10:00am-2:00pm & Saturday May 4th, 10:00-Noon at "LeRoy Jewelers". Located at 940 Broadway in downtown Tacoma. You may call (253) 272-3377 for directions. There is parking on the street.

Restroom and water facilities are available in the Pantages Theater building or the TAG building, we will keep you posted each week. Two water faucets with hose connections will be located, one at each end of the park area.

A letter will follow outlining vendor stall space assignments, as well as, information regarding unloading and parking procedures on Market day. All Vendors must enter at the 11th Street end of Broadway and exit is only at the 9th end of Broadway. "No entrance on the 9th Street". The street will be closed to all through traffic at 7:00am.

If you have questions, please contact The Tacoma Farmers Market Manager and Board of Directors at (253) 272-7077 and your call will be answered as soon as possible. We are looking forward to this year's Tacoma Farmers Market and we thank you for your interest!

Sincerely yours,
Tacoma Farmers Market Board of Directors
Market Operations Committee and Market Manger.

Enclosed with this letter to vendors was the actual application form asking for detailed information on the vendor, the products to be offered, and listing the other documents the market would need, such as tax permits and health licenses.

A third set of rules, from the Crescent City Farmers' Market in New Orleans, provides another perspective on how markets address key issues of organization and operation. As the rules explain, the market was established as an economic development project by Loyola University and is designed to foster new farms and food businesses. These rules provide even more detail concerning the types of products allowed at the market and the procedures for market operation.

CRESCENT CITY FARMERS' MARKET RULES AND REGULATIONS

I. ELIGIBILITY REQUIREMENTS: All persons who produce food and agricultural products that they intend to sell at the Crescent City Farmers Market are eligible.

II. GENERAL RULES:

A. Definition of Vendor and Farm/Production Facility: All products sold must be grown or produced by the vendor.

"Vendor" shall be defined as the producer of goods sold and shall include the spouse, siblings, children, parents and employees of the applicant who assist in the cultivation of the same property listed in the application under the "name of the farm/production facility." Produce grown or produced at a location not listed on the application is not eligible to be sold. The resale of items purchased by the vendor shall not be permitted. The market's objective is to assist small entrepreneurs to break into the market, therefore vendors who

already maintain retail operations in New Orleans are not invited to participate. Farmers may sell limited amounts of products from neighboring farms on a temporary basis at the discretion of the Market Coordinator.

B. Permitted Items for Sale: Items allowed for sale shall include raw vegetables and fruits; edible plants; eggs; honey; shelled peas and beans; cut, washed and unwashed, bagged vegetables; nuts; garlic; spices; grains; herbs; bedding plants; native wines, herbal vinegars, pastries, cookies, cakes, cheesecakes, chocolates, fruit syrups, jellies, jams, herbal and vegetable spreads, vegetarian focaccias and sandwiches, pies, stuffed breads, fresh pasta, fresh juice and cider; raw and frozen meats (beef, lamb, mutton, pork, goat); raw and frozen small poultry; raw and frozen game bird and rabbit; raw and frozen fin fish and seafood (crustaceans, fish, turtle, alligator); live seafood (shellfish, crustaceans, oysters); fluid milk and fresh dairy products; cheese; canned and pickled products; cured sausage and meat are eligible. Products not permitted: are prepared frozen entrees and appetizers, fresh or frozen soups, fresh or frozen meat pies, canned or frozen meat stews, crafts. Vendors are only permitted to sell the items that the board has approved them for sale.

C. Application and Verification of Extension Agent: All persons intending to sell in the Crescent City Farmers Market must, prior to participation in the Market file an application with the economics institute which verifies that they are the actual grower or producer of the specific items which they intend to sell in the market. All vendors shall allow economics institute representatives to inspect their production facilities at any time, with or without notice, so as to maintain the integrity of a producers' market.

D. Health regulations: All vendors participating in the Crescent City Farmers Market must comply with its Wholesome Food Handling Procedures for Open-Air Farmers' Market.

E. Rent: All approved applicants who sell goods in the market are required to pay rent for the space which they use. This rent shall be paid to Loyola economics institute. Rent due from each approved vendor are tallied on a monthly basis by the Market Coordinator. Invoices are distributed by hand and by mail at the end of each month. The Market Coordinator shall forward all payments to the economics institute treasurer. The Market Coordinator's records of rent due and rent paid shall be open for inspection at all times at the Economics Institute office.

F. Hold Harmless Clause and Insurance: All authorized vendors participating in the Crescent City Farmers Market shall be individually and severally responsible to Loyola University (the fiscal agent) for any loss, personal injury, deaths, and / or any other damage that may occur as a result of the vendors' negligence or that of its servants, agents, and employees, and all vendors hereby agree to indemnify and save Loyola University harmless from any loss, cost, damages, and other expenses, including attorneys' fees, suffered or incurred by Loyola University by

reason of the vendors' negligence or that of its servants, agents and employees; provided that the vendors shall not be responsible nor required to indemnify Loyola University for negligence, its servants, agents and employees. Because no insurance is provided to participants in the Crescent City Farmers Market, each vendor must carry his/ her own product liability insurance and must be prepared to present it in the market.

G. Market Location: The Crescent City Farmers Market will operate Tuesdays: In the Uptown Square parking lot at 200 Broadway; Thursdays: In the American Can Company parking lot at 3700 Orleans Avenue; Saturdays: In the Wm. B. Reilly parking lot at 700 Magazine Street. The designation and allocation of vending spaces shall be the responsibility of the Market Coordinator.

H. Space Assignment: The Market Coordinator shall assign spaces on a rotating basis on or before market day. Vendors can display produce on tables facing the public or on back bar (if needed), but not on the ground. Canopies and umbrellas are allowed. Fees are determined by the number of tables facing the customers.

I. Time for Set-up and Clean up: The set up of the market may begin according to the following schedule: Tuesdays: 8 a.m. Producers are required to be in their assigned space no later than 10 a.m. Since vendors work from the backs of their vehicles, there is no need for off-loading. Thursdays: 3 p.m. Producers are required to be in their assigned space no later than 4 p.m. Since vendors work from the backs of their vehicles, there is no need for off-loading. Saturdays: 6:30 a.m., and no earlier. Producers are required to be in their assigned space no later than 8 a.m. For off-loading, enter open lot at Girod St. and leave at Magazine. Off-loading begins at 6:30 a.m. and finishes at 7 a.m. No vehicles are allowed on the lot after 7 a.m. After 7 a.m., you are required to off-load from the indoor lot. No exceptions. Neither selling shall begin before opening bell. Selling shall cease after the closing bell.

J. Clean up: All vendors shall clean up their areas at the end of each market. All vendors shall load up their vehicles and shall be clear of the parking lot within 30 minutes of the closing bell. Vendors shall be responsible for the cleanliness of their selling areas. All vendors agree to bring a broom and trash can and keep the market area free of any debris generated by the market activity. Vendors shall not use public trash receptacles for disposal of produce boxes and unsold produce.

K. Sales Taxes and Permits: Each vendor is responsible for collecting his / her own sales taxes, where it is applicable. Farmers are exempt from sales taxes. Value-added producers (for example, bakers) are required to collect sales taxes and submit to the City of New Orleans. Seafood vendors are required to have (and display) a current commercial fishermen license.

L. Miscellaneous: No firearms. No alcoholic beverages. No drugs. No pets, with the exception of seeing eye dogs.

III. VIOLATIONS:

A. Any complaint against any vendor regarding the origination of their produce or goods, or any other matter, must be directed to the attention of the Market Coordinator of the economics institute in writing. Complaint resolution of matters of this nature is the responsibility of the Market Coordinator and the Board of Directors. Together they shall determine, in their sole discretion, what type of investigation, if any, shall be conducted in response to written complaints; whether or not the written complaints shall be provided to the vendor against whom the complaint is directed; what type of response (written and oral) a vendor against whom a complaint is made shall be entitled to make; and, the time frame in which such a response shall be made.

B. When the Market Coordinator determines, in his/her sole discretion, that a vendor has violated any provision that undermines the smooth operations of the Market, a vendor may receive the following penalties:

Arriving late: After the opening bell rings (Tuesdays 10 a.m., Thursdays 4 p.m., Saturdays, 8 a.m.) Vendors must be at their table prepared to sell, so as to prevent disruptive carrying of products across the Market. The Market lot opens at 8 a.m. on Tuesdays, 3 p.m. on Thursdays and 6:30 a.m. on Saturdays.

Not Showing up: defined as not notifying the Market Coordinator (at least 24 hours prior to Market) that vendors are not coming to Market. The Market allows for acts of God (flat tire, equipment failure, weather, etc.). In those cases, the office phone's voice mail can be reached at 504-861-5898.

Selling before the opening bell or after the closing bell.

Leaving early: before the closing bell.

Failing to pay for table rent. Vendors cannot return to the Market until payment is made. Rent is paid on a monthly basis on an invoice system maintained by the Market Coordinator.

Selling produce not grown by the vendor.

C. Violations are issued citations in the following manner:

First violation: vendor receives written notification.

Second violation: vendor receives written notification.

Third violation: vendor receives written notification.

Fourth violation: vendor can stay for that Market day but will lose the right to sell the following week;

Fifth violation: vendor can stay for that Market day but will lose the right to sell the following two weeks;

Sixth violation: vendor can stay for that Market day but will lose the right to sell the following month;

Seventh violation: vendor can stay for that Market day but then it's time to say goodbye.

D. The economics institute reserves the right to cancel the approval of any vendor's application at any time if and when the Economics Institute finds said vendor in violation of any of the aforementioned guidelines and eligibility requirements.

IV. RENT SCHEDULE: The Market needs a stable group of farmers to sell each and every week. As a result, the Market has devised a variable rental rate. The Market's variable rent rate is meant to reward vendors who make a greater time commitment to the Market's shoppers.

Rent can be paid in the following allotments:

Yearly (52 weeks) @ \$15/week = \$705 (perks: 5 free weeks, same table prefs.)

Quarterly (13 weeks) @ \$15/week = \$180 (perks: 1 free week, same table prefs.)

Monthly (4 weeks) @ \$15/week = \$60 (perk: same table prefs.)

Bi-Weekly (2 weeks) @ \$17/week = \$34

Weekly (1 week) @ \$20/week = \$20

Cancellation Policy: Vendors must notify Market Coordinator at least 3 days before market (Wednesday) for them to receive credit for a missed Saturday. Otherwise, you will forfeit your money.

V. MODIFICATIONS: The Board (steering committee) of the economics institute of Loyola University reserves the right to revise the Crescent City Farmers' Market Rules and Regulations at any time as they deem appropriate.

Farmers' Market Rules: Fair, Simple, Enforceable and Legal

The list of twenty common categories of market rules and the variations in how similar issues are addressed in the three sets of rules illustrate that establishing rules for farmers' markets may not be a simple task. Instead, the range of issues to be addressed and the unique questions important to individual vendors mean developing rules for a market can be a challenge.

Market rules don't exist just to serve as monuments to legal requirements but to serve the needs of the market and the participating vendors and customers. It is possible to identify some basic guidelines for developing rules for farmers' markets, and in this section five basic goals are discussed. These goals should be helpful to anyone drafting rules for a market, to those considering organizing a new market, and for people involved with farmers' markets.

The Five Keys to Effective Farmers' Market Rules

1. Make the Rules Understandable

The reader (and writer) need to be able to read the rules and know what they mean. Rules that sound good but which have no mechanism to implement or which are illusory, set the stage for future disagreements. This is a simple rule of legal drafting, and it is important to remember that the rules and the vendor agreement are legal contracts that in most situations create enforceable legal rights and obligations for both parties. In addition, because in many markets the sponsors may be municipal or public agencies, there are issues relating to the “public,” including an applicant’s expectation that the rules will be applied fairly.

For example, consider the wording of the Des Moines Downtown farmers’ market on the issue of the preference for local growers. Rule #6 states, “Vendors selling Iowa homegrown or homemade products will receive first preference.” So what exactly does this mean? The rule appears to be a way for the sponsors to try to keep and attract local farmers for the market by giving them a preference over peddlers and food vendors. The most obvious interpretation of the rule is that Iowa growers will have a first preference for availability of seasonal market spots when applications are considered for a new market year. Informal conversations with market officials indicate they agree with this interpretation, but it is not clear the rule has ever been used this way. Once the market spots are allocated for the year, local growers who attempt to enter the market are not given any opportunity to “bump” other vendors or given any preference for the allocation of the reserved daily spots.

2. Use the Rules When Necessary

If a market is going to have rules on particular issues, then the rules need to be implemented and enforced. The purposes of market rules are to create predictability in operation, uniformity in expectation, and consistency in application. Market rules and regulations provide a way to insure that everyone knows their rights and obligations and can have predictable and dependable expectations about the operation of the market. This doesn’t mean the implementation of rules needs to be overly officious. All human relations, especially economic venues as vibrant and individual as farmers’ markets, need some flexibility that usually comes from the judgement and discretion of the market manager or governing body.

There are several dangers in having rules that are never enforced. First, failure to enforce particular rules makes it easier for vendors to argue they can choose to ignore other rules. Second, failure to have enforced a rule in the past may make it difficult to change course and begin to enforce it later. This legal concept is known as waiver and estoppel – meaning people can rely and expect the conduct taken in the past, e.g., not enforcing a rule, to continue.

3. Get Rid of Unnecessary Rules

The corollary of enforcing the rules is removing the rules not used or not needed. Many sets of farmers’ market rules arise from the practice of finding rules from another market and reprinting them, substituting the name of the new market. This can be a good way to get a market going but it also means the market is now infected with both the good and the bad of the markets rules copied. Using rules from another market, especially a market with a good history and reputation, is a good starting point, but every market needs to consider its own unique features and what is needed for rules. A small market of eight vendors in a church parking lot does not need the type of rules necessary for an urban market with hundreds of vendors.

Evaluating a market's rules to determine what is necessary also requires considering several other factors about the creation and evolution of rules. First, a market should have a mechanism for reviewing and amending the rules. The nature of this process relates directly to the organizational structure of the market, *i.e.*, who controls or “owns” it and who determines the rules of operation organization. In many situations, this power will rest with the sponsoring entity, often a municipality or non-profit. In other situations, it will be a board of directors of a farmers or vendors association or a mix of vendors and customers. The process for market management – and rule development and review – goes to the heart of the structure and purpose of the market. The purpose of the market depends on many historical and political factors.

Some markets are dictatorships and some are democracies. There is no reason why the rules that emerge from either of these structures cannot be well designed and workable, although the level of vendor involvement in rule design can reduce resistance to compliance. The key is the process whereby changes are considered, determined and then communicated to interested parties. A vendor at a municipally-controlled market without any vendor involvement in management decisions has little expectation of influencing the rules. The vendor's only decision is whether to participate in the market or not. But if the market is vendor owned or controlled, then responsibility for developing the rules clearly rests with participating vendors who have more ability to shape the rules.

A second factor to remember about changing the rules is to recognize that the type of rules needed may evolve over time. It is unreasonable to expect the market organizers to have predicted everything that might prove important when the market and rules were created. That is why a process for suggesting and considering new rules is important.

A good example of an issue emerging in many markets with long histories is the transferability of the vendor's right to be in the market. Many highly successful markets, especially those with limited physical space, have waiting lists of vendors who want to join. Most rules provide that vendors now in the market have a priority to continue but that market spaces cannot be transferred, assigned or sold. The rules reserve control over allocating the market spaces to the organizers, who want to know who will be a vendor and what products will be sold.

One way some markets address the issue of waiting lists of new vendors is by creating new weekday neighborhood markets and requiring vendors to participate in these markets to be able to obtain a spot at the more lucrative weekend markets. Some markets reserve a certain number of stall spaces for new vendors or for daily vendors, which gives them a way to experiment with new vendors and new products. But important questions can arise concerning issues such as inheritance or passing the market space on, or if there is no heir, being able to sell it.

Market access is a very valuable asset for many vendors, and it is natural some are interested in taking advantage of that value. Similarly, many markets succeed because customers have expectations about the vendors and products they will find. There is no simple or correct answer to dealing with these issues. The interests of the existing vendors who have created the market's success must be considered, as well as any rights or expectations on the part of the vendors applying to participate.

The issue of whether new “applicants” have any legal rights may depend on the wording of the market rules, *e.g.*, do the rules establish priorities in allocating spaces or place restrictions on

transferability. The rights of new market applicants may be influenced by the structure or ownership of the market. If the market operates on a publicly owned location, it may be harder to claim some form of private property right in the market space, as compared to the market that is privately owned, such as by an association of farmers. Markets owned or controlled by farmer associations may use membership as a method to control or limit the entry of new vendors. For markets which are operated by a city or municipality, the issue of which vendors will be admitted to the market may be addressed in city ordinance providing for operation of the market.

A vendor's rights are created by the rules, the marketing agreement, and other documents made part of the marketing relationship. As markets thrive and proliferate, issues of transferability and seniority may need to be addressed. Recent experiences with the neighborhood markets in Seattle and the Takoma Park, Maryland, show that market associations can benefit from talking openly about the issues and obtaining legal advice on how best to address them.

4. Make the Rules Complete

Rules serve a purpose – to communicate expectations and to reduce or avoid potential problems or misunderstandings. As a result, the rules should address the issues which need addressing. If potential problems can be identified – vendors selling unapproved prepared food items, sales starting during set up before advertised times – then rules to address these concerns should be considered. Rules needn't be multiple pages long, but they should cover issues that are important.

Other sources of regulations will apply to most farmers' markets and participating vendors. Many local, state, and federal rules relating to the marketing of food and farm products are applicable to farmers' markets. The content and application of these rules on issues such as packaging, weighing, food licenses, application of business and sales taxes, and health and safety standards, will be a matter of what products are being sold at a market and the legal jurisdiction in which it operates.

Most markets have rules making to the vendor's responsibility to know and comply with all applicable local and state regulations for the foods and products they sell, including obtaining any necessary licenses. For example, the rules for the Takoma Park, Maryland, farmers' market provide:

Montgomery County Health Permit: All vendors participating in the Farmers Market must comply with the sanitary rules and regulations of the Montgomery County Health Department. Vendors shall apply directly to the Montgomery County Health Department's Division of Licensure & Regulatory Services for any necessary temporary permit. Vendors shall be responsible for submitting a copy of the appropriate permit (or proof of filing for same permit) to the Board of Directors with their Farmers Market applications. Vendors required to have licenses must post them every market day.

Standing alone, such a rule doesn't do much to help a vendor know what those local rules or requirements are or to find effective ways to meet them. This is one area where market managers may need to take responsibility. It might not be reasonable to expect every market manager to become an expert on all the food safety rules, but the more the manager knows the better off everyone will be. Potential problems can be identified and resolved, questions can be answered, and

a safe, legal market can be created. Conversely, it is probably not sufficient for the manager to plead ignorance as to the laws or rules and expect the vendors to be at the mercy of the health inspectors.

The market organizers benefit from the vendors' presence and share responsibility for creating the market venue. As a result, the market sponsors are to some extent potentially liable for what happens there. An attorney suing a vendor for something that happens at a market will most likely name the market organizers as a party and let the court sort out who was at fault. Markets can help vendors comply with applicable rules by providing them with information, such as by creating opportunities in the off-season for vendors to meet with the officials and inspectors responsible for enforcing the rules. Getting to know the people who are the regulators, and increasing the communication and understanding between them and vendors, can go a long way toward reducing future problems.

5. Make the Rules Market-Oriented

An important consideration to remember is why the market was created in the first place. If the goal was to create a venue for farmers to sell their products, to give consumers the opportunity to buy fresh local food, to give folks a place to have fun, and to help revitalize the neighborhood, then the rules should help make this possible. It is important to make sure the rules don't get in the way of what the market plans to achieve. For example, if the goal is to create more marketing opportunities for local producers and to attract more customers with a variety of foods, then the market rules shouldn't place unneeded restrictions on what foods can be sold.

Several years ago, the farmers' market in Fayetteville, Arkansas, had a lengthy debate over whether a local goat cheese producer should be allowed to sell her award-winning cheese at the market. If one goal of the market is to create more opportunities for farmers and shoppers, then the market should encourage growers to add new crops to their production. Similarly, if a goal is to help support local farmers, then the market shouldn't allow wholesale peddlers who sell produce shipped in from other states to unfairly compete with local farmers. In other words, a key goal should be to keep the farmer in the farmers' market.

Each market has its own history and its own reasons for existing. The point to remember is that the market rules and regulations should help promote the goals the market organizers have in mind. Some rules are necessary, such as those on insurance and liability, and for complying with applicable laws. Rules may be needed concerning the layout of the market stalls and how prices are communicated. But visiting successful markets shows there is a connection between variety, excitement, color, action and energy – and market success.

Shoppers can always choose to shop at traditional grocery stores. Farmers' markets will remain popular alternatives by remembering what makes the markets different. Markets can use the rules to create diversity and to encourage creativity, just as the rules create expectations and consistency.

Ten Issues That Can Create Problems in Managing a Farmers' Market

The previous discussion of market rules has identified the common provisions and looked at several sets of existing rules. In this section, several of the most important and difficult issues challenging farmers' markets are examined. The discussion uses examples of current market rules to provide examples and suggestions for how these issues can be addressed.

1. Producer Only Markets

The most fundamental issue to be addressed in creating a farmers' market is the decision of whether products to be sold will be limited to only those produced by the farmers selling at the market. There is widespread agreement among public officials, market advocates, and farmers that allowing other products to be sold can be detrimental to both the value of the market for farmers and to the quality of the market experience for shoppers. This is especially true if a market allows vendors, usually referred to as peddlers, to sell products trucked in and purchased at wholesale, while local farmers are selling the same items. The sale of produce by those who did not raise it defeats the idea of a "farmers" market, is deceptive for consumers who may not realize the distinction, and creates unfair competition for local farmers at the market. For this reason, the majority of farmers' markets in the United States are "producer only."

To accomplish the "producer only" goal, markets typically have rules defining what can and cannot be sold at the market and creating extensive processes for determining the eligibility of products and producers to participate in the market. For example, the rules for the farmers' market in Fayetteville, Arkansas, which is run by the Rural Mountain Producers Exchange, Inc., provide:

(c) The following articles, and no others, may be sold at the marketplace established hereby: vegetables, honey, raw juices, molasses, fruit and other produce grown and sold by the vendor thereof, and plants, art work and craft work grown, produced, and sold by the vendor thereof.

The guidelines for the Camden, Maine Farmer's Market provide:

VI. Products: All produce sold at the Farmers' Market must be grown or made by the vendor. Products sold will include, but are not limited to: vegetables, seedlings, herbs, preserves, fresh-cut or dried flowers, meats, poultry, seafood, crafts, etc. Vendor may arrange to sell specific Maine-grown produce with prior approval of the majority of the members, as long as these products do not exceed 50% of the vendor's display. When possible, members should submit their plans with applications, but have approval at least one week in advance.

The 2002 Guidelines and Policies for the Neighborhood Farmers Market Alliance, which operates four farmers' markets in Seattle, provide:

Products sold at the Farmers Market are limited:
Fresh Farm Produce: Includes fresh fruits and vegetables, herbs, nuts, honey, dairy products, eggs, poultry, mushrooms, meats and fish. Also included in this category are fresh flowers, nursery stock and plants.

All fresh farm products must be grown or produced in Washington State. All products must be grown or produced by the seller. Vendor must be an active owner/operator of the farming operation and may not be operating the business under a franchise agreement. Only vendors selling as farmers may sell Fresh Farm Products from this category.

The vendor must propagate all plants and flowers from seed, cuttings, bulbs or plant divisions. The vendor's application for permit to sell shall state which grown by the vendor, and what products the vendor will sell at the Farmers Market.

2. Trade Area and Carrying Rules

Because farmers' markets are essentially designed to create markets for local farmers, one issue that can arise is how to define or limit the trade area – or region – from which producers are eligible. Some markets address this issue by listing the counties from which producers are eligible. For example, the rules for the Santa Fe Market provide:

Vendor Counties – A. Farmers will be allowed to sell only produce grown by themselves in the counties of Santa Fe, Rio Arriba, Los Alamos, Taos, Mora, San Miquel, Sandoval, Torrance, McKinley, San Juan, Guadalupe, Harding, Colfax, Union, and DeBaca.

The rules also provide that products from outside the 15 county area are permitted, but only at the invitation of the market staff and then only for processed products unavailable from vendors within the 15 counties.

The rules for the Dupont Circle market in Washington, D.C., contain this provision:

2. Regional Qualification – Farmers/producers must be from within a three hours' drive of Washington, D.C. to sell at the FRESHFARM market in Washington, D.C. Farmers/producers at the FRESHFARM market in St. Michaels., MD must be from the Eastern Shore. Applications from other areas will be reviewed individually.

One legal issue which can arise in connection with attempts to limit the geographic area of the market concerns challenges or objections from producers who live outside the designated area who want to participate. As long as the market rules – or the other legal instrument creating the market, such as a city ordinance – address the issue, there is little legal basis for such a challenge. However, if the market is in some way a public market, such as being sponsored by a city or being conducted on public property, the question of whether vendors can be excluded based on where they live may become an issue.

In addition to allowing farmers to sell the products they produce, many markets also allow vendors to sell limited amounts of produce raised by other local farmers. This issue is typically referred to as "carrying," and the basic goal is to give vendors the opportunity to expand the range of products they sell and to increase the products available for consumers. The ability to carry also allows additional producers to use the market as a sales outlet, especially producers who may have

only a short run of products, such as those who specialize in one crop, such as strawberries, sweet corn, or other seasonal products. An example of a rule relating to carrying is found in the Santa Fe Farmers' Market rules:

Reselling

1. No reselling is permitted.
2. The only exception to this is that farmers may sell limited amounts of produce from neighboring farms on a temporary basis upon prior approval of the market manager.

3. Rule Violations: Penalties and Market Expulsion

One main purpose of having rules for operating a market is so vendors know the rules and can observe them. When the rules are violated, the market is faced with the difficult issue of how to enforce the rules and how to penalize the vendor who has violated them. Because this issue is so important, it is nearly always addressed in some way in all farmers' market's rules and regulations.

A review of common market rules shows there is considerable variation in both the procedures and the penalties markets may apply when the rules have been violated. Most rules provide a sliding scale of penalties depending on the number of violations the vendor has committed. Typically, first violations are subject to a written warning or a small fine. Subsequent violations may result in larger fines and in many markets three or more violations can result in the vendor being expelled from the market. The type of penalty may relate to the nature of the violation, with some types of violations, such as not paying the market fees or selling unsafe products, being more serious than others, such as parking too many vehicles near the stall.

From the perspective of the vendor one of the most important factors is the procedure provided in the rules for the enforcement. In some markets, enforcement may be left entirely to the market manager, and the vendor has no right to appeal. In other markets, the rules may establish a vendor committee to resolve disputes, and there may be fairly elaborate rules for the hearing and the right to appeal the decision.

The best way to understand how market rules are enforced is to consider several examples of actual rules. Here is the rule relating to violation and enforcement from the Dane County Farmers' Market:

ENFORCEMENT OF MARKET POLICIES AND RULES

All memberships who sell in the Market will complete an "Application For Membership" prior to selling in the Market. This application will constitute an agreement between sellers and the Market to abide by the policies and rules governing the Dane County Farmers' Market. Should any questions arise regarding the observance of Market policies and rules, the procedures outlined below will be followed.

Reporting Violations and Follow-up: A vendor, Market customer, or the Market Manager may submit to the Market Manager or a Board

member a complaint against a vendor where there is reason to believe a violation of Market rules exists. The identity of the complainant will not be revealed by the Market. Vendors are urged to initiate a complaint to the Market Manager when they witness an infraction of Market rules. The Market Manager will conduct an initial investigation of any complaint. The investigation will include an attempt to obtain detailed information from the complainant, the alleged violator and other witnesses before a determination is made that a violation occurred.

Procedural Violations: For violations other than product legitimacy violations, a vendor will be assessed penalty points. If after an assessment of penalty points, there is no assessment of additional penalty points against that same Member in the 12 months following the initial assessment, the initially assessed points will be removed from the Market's record for that Member.

But if additional penalty points are assessed against that same Member in the 12 months following an assessment, both the initial points assessed and the additional points will remain on the Market's record for that Member for 24 months following the date of the second assessment of penalty points. The vending privileges and membership of any Member who has accumulated a total of 6 or more penalty points will be terminated. The termination will be effective upon the Member's receipt of notice of the termination.

Procedural violations include for example, early parking, parking above the first two inlet stalls, violation of maximum stall width, failure to properly license or label, failure to have a Market Member at the stand, using a noncertifiable scale, and other violations of Market rules not pertaining to the "Member Must Produce the Product" rules.

The Market Manager will give warning and written notification of the violation to the vendor upon the first violation. The vendor shall either be sent such letter by certified mail, return receipt requested, or shall be requested to sign a copy of the letter to indicate his/her understanding of the regulations and willingness to comply with them. If the vendor returns the signed copy as requested and thereafter complies with the Market regulations, no further action will be taken.

If the vendor fails to sign and return the letter or the violation occurs a second time within one Market year, second written notification will be given to the vendor and two points will be assessed to the vendor's record. Each subsequent violation of a Market procedural rule within one year of the first assessment will result in two additional points being assessed to the vendor's record. Notification of point assessments will occur in writing.

For an immediately correctable violation, such as exceeding stall width, violators will be given oral warning indicating the offense and requesting compliance with Market rules. The Market Manager shall record the issuance of each warning. If the problem is not corrected in a reasonable time, the Market Manager shall issue a written warning. Continued or repeated non-compliance in the same membership year shall result in the assessment of two points. Further non-compliance after the two points are assessed will result in the issuance of additional points and the expulsion of the vendor from the Market. This process could all happen in a single Market day.

Some procedural violations have been acknowledged as more serious and therefore carry a greater penalty for violation. For such a violation, the vendor will be verbally warned and must immediately correct the violation. The vendor will receive a warning letter and must follow the procedures for a warning letter described above. Should the violation occur again, the vendor will be assessed **three** points. The following violations fall in the three penalty point category: offering for sale processed items that lack labeling or carry improper labeling, offering for sale processed items without obtaining necessary licenses, and selling nursery items without obtaining a nursery license.

The rules used at the San Francisco Ferry Plaza Market contain this provision relating to violations and penalties:

V) Non-Compliance, Penalties, and Appeals

A) Violations and Disciplinary Actions – A Seller may be fined, suspended or removed from any market or have selling privileges in the market conditioned or limited by a market manager for failure to obey or conform to state or local government regulations or market rules or regulations. A seller is responsible for the actions of its employees.

The severity of any penalty or discipline shall be directly related to the gravity of the violation. The market manager will normally give prior warning of possible disciplinary action, but severe and repeated violations of the market rules may lead to fines, suspensions, or expulsion. Depending on the nature and gravity of the violation(s), the typical disciplinary progressions will be:

The rules then provide a chart listing twelve different rule violations and the sliding scale of penalties ranging from a warning to \$50, to loss of the stall fee for first, second, or third offenses. The list of violations includes: not showing up without calling to cancel, excessive cancellations, the farmer or family member not attending the market once every three months, selling products not pre-approved by the manager, not displaying the farm name, failing to tie down shades and shelters, not displaying required permits, not posting prices, not having proper trash cans, failing to clean up the stall, non-compliance with health regulations, and arriving late or leaving early.

4. Liability Concerns: Insurance Requirements and Hold Harmless Clauses

Concerns about liability and who is responsible can pose some of the biggest fears to farmers and others involved in direct marketing, including farmers' markets. Farmers' markets typically address the issue of liability in three ways. First, the rules establish the guidelines for the types of products that can be sold and require that vendors comply with applicable rules, such as having necessary food processing licenses. Second, markets require vendors to provide proof of insurance. Third, the market may also include in the rules an additional provisions referred to as a "hold harmless or indemnification" clause. The purpose of this clause is to provide an additional legal agreement committing the vendor to pay for any costs the market may experience as a result of a problem created by the vendor's conduct.

The following example of a "hold harmless" clause comes from the rules for the Takoma Park, Maryland, Farmer's Market:

H. Hold Harmless Clause and Insurance: All authorized vendors participating in the Farmers Market shall be individually and severally responsible to the City for any loss, personal injury, deaths, and/or any other damage that may occur as a result of the vendor's negligence or that of its servants, agents, and employees, and all vendors hereby agree to indemnify and save the City harmless from any loss, cost, damages, and other expenses, including attorneys' fees, suffered or incurred by the City by reasons of the vendors' negligence or that of its servants, agents and employees; provided that the vendors shall not be responsible nor required to indemnify the City for negligence of the City, its servants, agents or employees. No insurance is provided by the City of Takoma Park to participants in the Farmers Market. All producers shall be required to carry appropriate liability insurance and attach a certificate of insurance along with the market application.

The rule contains both an indemnification clause and the requirement the vendor provide insurance.

The following rule, from the San Francisco Ferry Plaza Market, addresses the relationship between hold harmless provisions and insurance somewhat differently. It provides:

G) Insured/Hold Harmless requirement

CUESA holds substantial general liability and property insurance for its operations. However as a condition of selling, all FPFM sellers are required to either a) name CUESA as an additional insured on their general liability policy or b) sign the attached Hold Harmless Agreement. By applying to sell at FPFM, the seller is agreeing to this condition. The signed and attached form or the certificate of insurance naming CUESA must be returned to CUESA with the FPFM year 2002 application.

Regardless of what the rules may provide, farmers who want to become vendors at a farmers' market need to consider the issue of insurance and how potential liability issues will be addressed. The easy way to answer the question of whether a vendor's current insurance policy covers selling at a market is to ask the insurance agent who sold the policy.

As a general rule, the typical farm liability policy does not provide protection for activities which happen off the farm premises, such as at a nearby market. In addition, the policy may treat these sales as a business activity not covered by the farm liability policy. This means that to be covered for sales at the market, a separate commercial policy may have to be purchased. The same may be true for any general liability or umbrella policies.

The issue of farm insurance coverage can be confusing, especially as it relates to coverage for activities off the farm. One source of confusion can arise from market rules relating to insurance coverage. For example, if the rule simply requires a vendor to show proof of coverage, this may not be difficult to provide because most farms will have a farm liability policy.

The rules for the Camden Maine Farmers' Market provide, "VIII. Liability. All Vendors must provide proof of liability insurance to the market secretary prior to selling at the market." However, rules such as this do not necessarily answer the question of whether the proof of liability coverage actually means the vendor's insurance would apply to something that happened at the market. While that is clearly the assumption of the rules, the insurance coverage would not be certain unless the vendor obtained a policy for that purpose and the market asked for proof of liability coverage for market activities. Some market rules specify that the insurance coverage must be a commercial policy or that the market must be listed as an additional insured.

5. Labeling

Most markets have some form of rule on labeling what is being sold. Labeling rules may be as simple as requiring the vendors to post the name of the farm operation and to post prices. But rules may also set guidelines for how products can be advertised, with the main concern being that the information be truthful and valuable to shoppers. If the market is a producer only market, then there is no need for a rule on whether it was farm raised. But if the market allows the sale of wholesale items, then rules concerning terms such as "locally grown" or farm raised can be very important to help shoppers distinguish between types of vendors.

One labeling issue which is increasingly important concerns how the foods were produced – "organic" production or other forms of reduced chemical use. Markets allow vendors to label their products as organically grown if the vendor can provide the certification for their farm. The new federal rules on organic production standards and labels, and the increasing importance of state-sponsored certification programs – together with increasing consumer awareness and demand – will make the organic label even more prevalent. At least one major farmers' market, the Ferry Plaza Farmers' Market in San Francisco, has plans to become an all "organic" market in the near future. This shift will require many vendors to make further changes in their production practices and creates a significant challenge to the market's rules and their enforcement.

6. Market Fees and Income Reporting

From the perspective of the farmer vendor, one of the most important questions about a market is how much it will cost to be a vendor. Market fees are always addressed somewhere in the rules or the market agreement. There are two primary methods of market fee payment. The first and most common type is a flat fee, paid either for a seasonal market space or as a day vendor. The amount of the fee will vary by market and the number of weeks it is held, but in most cities, fees are

commonly around \$150 to \$250. The exact amount of the fee may vary depending on the size of the stall and on the volume of sales the vendor experiences. For vendors who do not want to be at the market all season, or if markets have sold out of permanent spaces, day vendor spaces may be available. A typical charge for a day vendor is \$20.

The second form of market fee less commonly used is a percentage charge based on the gross amount of sales. For example, the Fayetteville, Arkansas, market charges vendors "\$5.00 plus 10 per cent of gross proceeds realized by the vendor from sales at the marketplace." Both of these forms of market fees are represented in the three sets of rules set out earlier. The Tacoma market fees use a combination of a flat stall fee per week of \$18 plus an additional fee based on a percent of gross sales that ranges from five percent for farmers to ten percent for prepared food vendors. The Crescent City market uses a flat weekly fee of \$15, with incentives depending on how often it is paid.

A second financial issue concerns vendors' reporting the amount of gross sales. For most markets, the manager can provide good estimates of the value of the transactions which occur at a typical market. However, in most situations these are estimates because very few markets collect data on actual sales. The exceptions are markets which base the fee payment on the gross sales. There is an understandable reluctance on the part of the vendors to report the value of their sales. They may feel the information is personal and, due to the cash nature of most markets, may be concerned about who has access to this information. All vendors have a responsibility to report their market income for tax purposes, but this information is not available to the market authorities. One result of the lack of data about the value of farmers' market sales is that those interested in promoting markets, such as the USDA, lack hard numbers to demonstrate the importance of the markets.

One set of market rules reviewed for this study includes a requirement that vendors provide regular reports of their sales, even though the market fees are not based on a percent of gross sales. The rules for the Las Vegas, Nevada market provide, "Applicant will be responsible for reporting accurately an accounting of all gross sales to Market Management at the end of each market. If not reported vendor will not be permitted to set up at the following markets until received."

7. Tax Collection

Most farmers' market rules make it the responsibility of vendors to obtain any needed business permits or licenses, including such things as state and local tax permits if required. Because many states exempt the sale of food from the application of state sales taxes, vendors may not have to worry about this issue. But if vendors are selling non-food items such as flowers or crafts, or selling food items in a form that is not exempt, such as ready-to-eat meals, then sales taxes may be due.

The distinctions can result in puzzling situations where a food in one form, such as a watermelon, would be tax exempt, but if sliced and served ready to eat would be subject to tax. An issue has come up in some jurisdictions, Iowa for example, where state revenue officials are trying to enlist market managers in the collection of monthly sales reports from participating vendors.

Farmers and vendors at farmers' markets may also need to be aware of other local business taxes and licensing requirements that might apply to temporary market sites. For example, the rules for the Food Trust farmers' markets in Philadelphia provide:

City of Philadelphia Taxes: The City of Philadelphia taxes gross receipts and net income related to farmers' market sales in Philadelphia. The Food Trust handles all the tax reporting and accounting required for these taxes. Farmers are responsible for paying the tax, which equals between 2 and 4 percent of sales.

The ability of local governments to apply taxes on farmers selling their products may be limited by state laws designed to protect farmers. A number of states have enacted such laws. However, the laws may be limited to situations where farmers sell goods directly from the farm, such as with the Missouri law. [Mo. Stat. §150.030]. Washington law contains an exemption protecting the right of farmers to sell what they raise [Wash. Stat. §36.71.090]:

§ 36.71.090 Farmers, gardeners, etc., peddling own produce exempt from license requirements

It shall be lawful for any farmer, gardener, or other person, without license, to sell, deliver, or peddle any fruits, vegetables, berries, eggs, or any farm produce or edibles raised, gathered, produced, or manufactured by such person and no city or town shall pass or enforce any ordinance prohibiting the sale by or requiring license from the producers or manufacturers of farm produce and edibles as herein defined: Provided, that nothing herein authorizes any person to sell, deliver, or peddle, without license, in an city or town, any dairy product, meat, poultry, eel, fish, mollusk, or shellfish where a license is required to engage legally in such activity in such city or town.

The fact Washington has exempted farmer sales from local licenses does not mean these sales are not subject to other taxes. Washington state law specifically provides that farmers who make retail sales of produce they raise, or who sell agricultural products that they have not raised on their own land, are subject to the state's business and occupation tax.

A number of the states have had laws on the books for many years that exempt farmers from local regulations on peddling. The laws were enacted during a period when states and municipalities were trying to address the perceived problem of peddlers who were competing with local businesses. For example, the earliest version of this Louisiana law was first enacted in 1896 [La. Rev. Stat. §33:4833] and now reads:

§4833. Municipal ordinances prohibiting peddling of farm produce forbidden.

It shall be unlawful for any municipality with a population of less than twenty-five thousand to enact an ordinance forbidding farmers or their employees to sell or peddle farm produce on the streets, avenues, alleys, and public places located within the municipality.

Pennsylvania law specifically empowers every city, town, and township to enact ordinances to license and regulate each "transient retail business," including monthly fees of up to \$200. However, the law includes this exemption: "Nothing contained in this act shall be construed to apply to farmers selling their own produce...." While laws such as these may have been enacted long ago, they can have important legal value in preventing local governments from trying to license and tax farmers participating in farmers' markets within a city.

8. Farm Inspection

One feature of market participation that appears to be becoming increasingly common is the requirement that farmer vendors allow market officials to visit and inspect the farm. These farm visits are most commonly found in markets that are serious about enforcing “producer-only” standards. The visits are used as a way for the market to verify the information provided by the farmers about the products and quantities the farmer intends to sell and the production practices being used. The visits can also serve an important educational purpose by giving the market managers the opportunity to learn more about the farmers and their farming operations. These farm inspections and certifications will be in addition to others farmers may need, such as for organic certification.

The following provisions from farmers’ market rules show how farm inspections may operate. The rules for the Santa Fe market provide:

IV. Inspections

- H) All farmers must agree to and assist in the inspection of their farms by representatives of the Farmers’ Market in accordance with the procedures approved by the Board.
- I) Failure to comply with inspection procedures may result in suspension from the Santa Fe Farmers’ Market.
- J) An Inspection fee of \$25 will be charged on farms that are inspected if violation of Rules and Regulations is found.
- K) All farmers agree to comply with the Inspection Procedures (included in this packet).

The vendor packet of market rules and application includes a three-page letter detailing the inspection procedures and addressing issues such as the scheduling of the inspection and its purpose.

The rules from the St. Paul, Minnesota farmers’ market, which is owned and operated by the St. Paul Growers Association, includes this statement on inspections:

- 5. The St. Paul Growers Association, Inc. reserves the right to inspect any member operation as often as needed throughout the season.

9. Selling Meat, Poultry, Eggs, and Other High Value Products

Meat, poultry, eggs and dairy products – all high-value animal-based foods – are the categories of food that seem to raise the most concerns in the operation of many farmers’ markets. The concern relates primarily to issues such as how the animal was processed, was it state or federally inspected, and what food safety and health rules apply for storage, handling and sale. Some markets try to avoid all these issues by not allowing the sale of meat and dairy products, but there are a number of important reasons why markets need to allow them to be sold. First, consumers want them, especially when they can buy them from the farmers who raised the animals and who may have used special production practices, such as “free-range” poultry or natural beef. Second, farmers want to sell the products, especially when direct sales at farmers’ markets provide the opportunity to charge retail prices and receive more of the value of the products than if they were

sold as commodities. Third, the sales are good for markets because they increase the variety of products available and thereby increase the economic value of the markets for vendors.

As a result, most farmers' markets allow for the sale of these products, as long as they were properly processed and handled safely. The rules typically require the vendors to know and comply with any applicable inspection and licensing requirements. For example, the Dupont Circle market rules contain these provisions:

8. **Meat products** – All meat products must be 100% from animals raised from weaning by the farmer by the farmer/producer. Animals may be butchered or processed off-farm. Processing must comply with local or federal health ordinances and the farm/producer must supply documentation of such compliance to the market management.

9. **Milk, Dairy and Cheese** – Milk must be from the farmer/producer's own herd. Cheese and other dairy products must be made by the farmer/producer. Fresh milk must be 100% from the farmer/producer's own herd. At least 60% of milk used for cheese and dairy products must be from farmer/producer's own herd. Milk purchased for dairy products must be from local farmers. Flavoring agents (e.g. fruit or honey) used in dairy products or cheese must be purchased from regional or FRESHFARM Market farmers/producers. Production must comply with state dairy ordinances and licensing , and the farmer/producer must supply the market management with documentation of such compliance.

10. Processed Foods

The category of processed foods is another form of higher value product and one in which an increasing number of farmer vendors have interest. Typical examples of farm-made "processed" foods include jams, jellies, wine, cider, salsa, vinegar, and maple syrup. Some people would add high-value products such as honey and eggs to this list, but they are more likely to be treated separately under state food law or covered by rules similar to those for meat, poultry and dairy.

Farmers' markets can take different approaches with processed foods. Some market rules provide that processed foods cannot be sold. But shopper interest and the desire of vendors to expand the products being sold, especially products with higher unit sales values than most fruits or vegetables, means many markets allow for their sale.

The issues with processed foods involve what licenses are needed to produce them and what type of processing facilities are required in order to obtain a license. Most rules require that in order to sell processed foods, vendors must obtain all needed state or local permits and provide copies of these licenses to the market manager. The rules for the Downtown Des Moines, Iowa, market provide:

5. Individual vendors are responsible for obtaining all licenses and/or permits required by the Polk County Public Health Department and the State of Iowa. Copies of all licenses/permits must be on file with the Downtown Partnership prior to selling at the Downtown Farmers Market.

The Las Vegas, Nevada, farmers' market rules provide even less guidance. The rules contain two provisions relating to "packaged foods". The on-line vendor application states, "Package food vendors please provide a copy of business license and tax ID number." The market rules provide:

4. You must handle your own taxes and health permits. Clark County no longer requires business license only Tax ID number and proof of same. An itinerate permit is required by the Clark County Health Department. It must be sent in with payment two weeks prior to the first market if you are sampling or selling prepared foods. Please check their requirements to see if this applies to you.

Many states have special rules for "home food establishments" which allow individuals, such as farmers' market vendors, to be licensed to process certain types of non-hazardous food products at home. For example, the Maine Department of Agriculture has "Rules on Home Manufactured Foods." Information about the rules for licensing of home food establishments and the types of foods that can be processed without extensive equipment or facilities can be obtained by the state agency responsible for food inspections, such as the Department of Health or Inspections and Appeals. The market manager may also be a good source of information about what rules apply and which officials to contact for applications.

Keeping the Farmer in the Market: What You Should Know About Market Rules

The farmer is the critical element in any successful farmers' market. Without local farmers raising the type of foods customers want to buy – and without farmers willing to load their produce, bring it to the market, and set up a booth to sell it – farmers' markets wouldn't exist. That is why it is important to consider the operation of the markets from the perspective of the farmers who are the vendors. The preceding discussion of market rules and issues arising in the operation of markets is important for producers. In this section, some of the practical issues in participating in a market will be discussed.

Documents to Be Completed by Producers:

Typically there will be several different documents a vendor must complete when applying to participate in the market:

- 1) Application - This will request various types of information, such as name, address, phone numbers. This document will generally require a list of products the vendor intends to sell, which is very important because the market management may limit vendors to sell only those items listed on the application at the beginning of the year. Product lists may be especially important in mature or successful markets, with waiting lists for vendors to join, as the lists may be used by the market manager to decide which vendors to allow into the market or to allocate the right to sell various forms of products. This application will also include the category of permit or space the applicant desires and information concerning the payment of fees. This document will also make reference to the market's rules, regulations or policies (depending on what they are called) and incorporate them as part of the agreement. Once

the application is completed and accepted, a binding contract is created between the vendor and the market and the parties' rights and obligations are established. The application will also list any other permits, licenses or forms which the vendor must include with the application, such as proof of insurance, food processing license, and organic certification.

- 2) Farm Information Sheet – Applicants may also be asked to fill out a more detailed form providing more general information about the nature of the farming operation. This form is not always present, but if it is, it will request information about the size of the operation, its specific location, the nature of the farming practices used (e.g., organic or conventional), the number of employees, the years in farming and other markets the vendor attends.
- 3) Membership – In addition to the vendor application, some markets may require producers to complete a separate “membership” agreement and pay an annual fee – generally no more than \$25, to belong to the market. This is especially common if the market is owned and controlled by a producers association. The membership fee is used to pay the expenses of the organization operating the market. The membership – and in some situations the seniority or length of membership – may be used as a factor to determine the eligibility of a producer to sell at the market or in allocating available spaces. In some situations, the application for membership may be the same document as the application to be a vendor. One legal effect of membership is, as a member of an organization, a producer is bound by the articles and by-laws of the organization. As to the operation of farmers' markets, the articles and by-laws may include additional provisions with more specific language concerning allowable farming or marketing practices.

Questions Farmers Should Consider When Joining a Farmers' Market

To become a vendor, a farmer will be asked to sign an agreement – a market contract – and pay a fee. The agreement creates a binding contract between the vendor and the market sponsors and will set out the rules for selling at the market. A vendor should read the agreement and consider what it provides. Regardless of whether or not the vendor reads or understands it, signing the agreement will make it binding and applicable in the dealings with the market. To help understand what may be involved in deciding whether to join a farmers' market, there are certain questions a vendor should ask. The following twenty questions are examples of the types of issues to consider. While all the questions might not apply in each situation - depending on the type of market and the products being sold - are all worth considering.

20 Questions to Ask (and Answer) About Participating in a Farmers' Market

1. Who sponsors the farmers' market – is it a local government or a non-profit group?
2. Who owns the land where the market is located, and who is responsible in case of accidents or injuries to shoppers?
3. Who runs the farmers' market, and who has authority to make decisions such as deciding who gets to set up in which location?

4. Is the market “producer only,” meaning only farmers who raise the food may sell it, or are other vendors and wholesale peddlers allowed to be vendors?
5. Does the market have “carrying rules” that allow farmers to sell food raised by other farmers?
6. What rules or regulations apply to market participation; for example, can vendors provide samples to customers?
7. What penalties apply for violating market rules, and how are they assessed? Are there fines, or can vendors be expelled from the market for serious violations?
8. If a vendor is forced to leave the market or for some reason is unable to continue to participate, is any portion of the seasonal fee refundable?
9. What happens if a market day is missed? Is there a penalty?
10. What procedure is followed if there is a dispute over a rule violation? Is there a committee of vendors and customers who decide, or is it the market manager?
11. Does the market have all the necessary local business permits or licenses, or do vendors need to obtain business permits for each market?
12. Is the farmers’ market approved to participate in the WIC Farmers’ Market Nutrition Program (FMNP), the Seniors Nutrition program or food stamps?
13. Can vendors sell products such as meat, poultry, eggs or processed foods under the market rules, and what licenses are needed?
14. How does the market manager make sure the vendors do not try to sell the same thing or lower prices?
15. Does the farmers’ market carry its own insurance in case of accidents?
16. What type of insurance does the market expect vendors to have, and what proof of insurance must be provided?
17. Do the market rules require the farmer to actually attend the market or can vendors send employees to do the selling?
18. Does the market require farmers to submit a plan before the market season begins, listing what produce will be sold and the approximate amounts?
19. Can the market officials visit a vendor’s farm to inspect the operation and records?
20. Do the market rules limit how vendors can label or describe products?

Government Support for Farmers' Market

Because they are a simple and natural form of economic activity, farmers' markets have not required significant government investments or support to grow. In fact, many farmers feel the less government involvement the better. But there are valuable programs operated by the state and federal governments helping expand the number and value of farmers' markets. At the federal level, the USDA, through its Agricultural Marketing Service, provides information and support for farmers' markets, including an on-line directory and periodic inventories of all the markets in the country. The USDA has provided valuable financial support to many market programs across the country through the Federal State Market Improvement Program (FSMIP), which provides grants to states to support farm marketing initiatives.

In the new 2002 farm bill, Congress authorized a new Farmers' Market Promotion Program for USDA to award grants to organizations operating and supporting farmer's markets. The goal of the program is to "increase domestic consumption of agricultural commodities by improving and expanding, or assisting in the improvement and expansion of, domestic farmers' market, roadside stands, community-supported agriculture programs, and other direct producer-to-consumer market opportunities." As part of the new initiative, the law requires the Secretary of Agriculture to carry out a program for developing farmers' markets. Under this program, the Secretary is to:

work with the Governor of a State, and a State agency designated by the governor, to develop programs to train managers of farmers' markets;

develop opportunities to share information among managers of farmers' markets;

establish a program to train cooperative extension service employees in the development of direct marketing techniques; and

work with producers to develop farmers' markets.

At the state level, most departments of agriculture have someone on the staff who is responsible for helping advise and support the network of farmers' markets in the state. Some states, such as California, have very extensive programs to support the creation and operation of markets.

Nutrition Programs --No doubt the most important federal programs helping make farmers' markets valuable sources of fresh food for low income citizens and valuable markets for farmers are two nutrition coupon programs Congress has created for USDA to support. The programs are the Women Infants and Children's Farmers' Market Nutrition Program (FMNP), created almost twenty years ago, and the new Seniors' FMNP. Under these programs, eligible participants (low income mothers and their children or seniors), who live in participating states, can apply and receive special coupons that can be used at farmers' markets to buy locally-grown fruits and vegetables. Over 30 states now participate in each program, and tens of thousands of low-income shoppers have the chance to add fresh locally-grown produce to their diets. Close to 15,000 farmers take part in the programs as vendors. For 2002, Congress appropriated over \$40 million to the USDA to provide grants to states and tribal nations to fund these two valuable programs. In addition to being the basis

for these two special farmers' market nutrition coupon programs, vendors at many markets also contribute to the nation's nutrition efforts by participating in the federal food stamp program.

Detailed information about the various farmers' market nutrition programs and contact information for the states participating in the programs is available on the web site for the National Association of Farmers' Market Nutrition Programs: www.nafmnp.org

The Future of Farmers' Markets in the U.S.

In many ways the future looks very bright for farmers' markets in the U.S. A growing number of farmers – new and small farmers, as well as more established farmers – are interested in diversifying production and experimenting with new ways of marketing food. Growing consumer interest in high quality foods, raised in special ways, as well as efforts to support local farmers, are helping increase demand for locally-grown foods. By helping farmers expand the types of food products they raise and market and by helping create safe, inviting, and exciting places for social interaction, farmers' markets should be able to continue to grow and expand in number. By keeping the focus on the farmer, on the food, and on the unique local values, farmers' markets can continue to be important outlets for farmers and shoppers. Farmers markets have many sources of strength and support, two of the strongest being the role of chefs and the existence of "friends of the market" organizations.

The Role of Chefs

Farmers' markets serve many purposes and find valuable support from many places. One group of people with a special affinity for America's farmers markets are the nation's chefs. As more chefs come to appreciate the value of locally-grown food, regional specialties, and seasonal produce, they are finding that farmers' market are an invaluable source of high quality ingredients for their menus. As a result, in many cities local chefs are among the biggest proponents and supporters of the markets.

Some of America's most famous and successful chefs – such as Alice Waters, Nora Pouloun, and Odessa Piper – are vocal advocates of local markets. Many markets have built on the chef-farmer connection by featuring cooking demonstrations where local chefs attend the market and prepare dishes using ingredients purchased at the market. Several cook books are based on the high quality seasonal produce available at farmers markets, including a new book by chef Deborah Madison, Local Flavors.

The important link between chefs and farmers is just one indication of the important social role the markets can play, especially for people concerned with what they eat and those interested in supporting improvements in our nation's food system. A number of social and non-profit organizations involved with food issues, such as the Slow Food movement and the Chefs Collaborative 2000, are important allies for the farmers' market movement.

Friends of the Market

Evidence of the important social role played by farmers' markets can be seen in the creation of local "friends of the market" organizations which exist in many cities. These groups, such as those in Santa Fe and St. Paul, are made up primarily of shoppers and local community leaders interested in the growth and success of the markets. In many cities, the "friends" organizations take the leading role in developing the promotional and educational programs at the markets. Arranging for the entertainment and organizing special market day features and cooking demonstrations are just some of the activities carried on by "friends of the market" groups. The organizations can also provide important political and citizen support for markets, helping insure government leaders appreciate how important the markets are for local residents.

Risks or Threats to the Markets

While the future of farmers' markets in the U.S. is very bright, with the number of new markets and new farmer vendors increasing every year, there are developments which can threaten the future of any individual market. Markets can decline if there are not a sufficient number of farmers willing to be vendors at the location. Due to lack of sales, parking or transportation difficulties, security issues, or even disputes with the management. In some cities, there have been instances where popular farmers' markets lost the support of city officials due to complaints from neighboring businesses about unfair competition or traffic congestion.

Markets can also suffer from their own success – as when the crowds become so large that some shoppers decide it is not worth the effort to try to attend – which is one reason why most markets have a fixed limit on the number of vendors who can attend, and why market managers put a good deal of time into trying to balance the types of products and vendors at the market. One way that many successful large city farmers' markets have addressed the issue of their weekend markets becoming unwieldy is to add new market days and locations during the week. It is not uncommon to find cities where farmers' markets may have multiple market locations and dates during a week. The alternative markets are generally held in the late afternoon and are smaller neighborhood markets. In some cities, vendors may be required to participate in the smaller weekday markets to earn a spot at the more lucrative weekend venue.

Markets can also decline by losing their original focus as a true farmers' market – a place where shoppers can buy fresh produce from farmers –and instead become more focused on entertainment, prepared food and a festival atmosphere. Market managers are faced with an important issue of how to balance the mix of activities at a market – such as ready-to-eat foods, entertainment, and other attractions – with the actual sales by farmers. Markets across the country have added a range of activities, such as cooking demonstrations, music, and children's entertainment, to help attract crowds, but sometimes these additions can detract from the value of the markets for the farmers. Adding too many non-farm vendors can change the dynamic and personality of the market and at some point can become more of a festival than a market. Perhaps the best rule for farmers' markets is to be innovative but to keep the focus on the farmers and locally-grown food.

Resources and Assistance

There are a variety of sources of information available for farmers, market organizers and others interested in learning more about the operation of farmers' markets and the opportunities they present. The internet and the web have created many new marketing outlets for farmers and given people a new way to find information about products and services. Hundreds of farmers' markets, both small and large, maintain web sites that provide information about the market's times of operation, the lists of vendors, and information about special events. Some markets even have on-line applications for vendors and provide access to the rules and regulations. For example, the Las Vegas (Nevada) Farmers' Market application and rules are available at www.lasvegasfarmermarket.com. Information about farmers' markets in most large cities, such as Chicago, Kansas City, Omaha, Minneapolis, and Denver, can be obtained by simply typing in the name of the city followed by "farmers market" in any web search engine.

Several states have state-wide farmers' market organizations that help promote the markets and work to establish common policies and guidelines for members; the two best examples are Maine and Washington. The Maine Federation of Farmers' Markets was established in 1991. Information about it and its members can be found at <http://home.gwi.net/~troberts/mffm/index.html>. The Washington State Farmers Market Association helps promote a network of over 25 participating markets across the state. Information about its policies and member guidelines, a member directory, and available insurance programs can be found at www.wafarmersmarkets.com.

The web provides a valuable way to contact organizations involved in promoting farmers' markets, such as the North American Direct Farm Marketing Association [www.nafdma.com] and USDA [www.ams.usda.gov/directmarketing/index.htm]. By visiting these sites, those interested in creating new farmers' markets can find valuable information about market structure, operation and rules. Many of the rules reviewed in this study were obtained from the web; for example, the rules and application for the Dane County Farmers' Market in Madison, Wisconsin, widely considered to be the premier "producer-only" farmers' market in the nation, are available at <http://64.224.162.148/dcfm/home.htm>.

In addition to the web sites of the various government and private organizations working with farmers' markets, there are some books and materials which can provide helpful advice:

Eric Gibson, *The New Farmers' Market*
Neil D. Hamilton, *The Legal Guide to Direct Farm Marketing*
Jeff Ishee, *Dynamic Farmers' Marketing*

Court Cases and Farmers' Markets

Some of the farmers' market managers contacted for this study have been sued by vendors and many more report having been threatened with legal action. Several have sued vendors to resolve disputes over serious rule violations and report being successful. But a review of reported court cases reveal that very few disputes involving farmers' markets have made it to the state appeals courts. This is good news for direct farm marketers because it indicates that farmers' markets function relatively smoothly with few reported legal disputes. The only recent reported court case involving a farmers' market rule dispute is from Wisconsin.

In *Bowen v. Dane County Farmers' Market*, 555 N.W.2d 409, 1996 WL 515234 (Wis. App. 1996), a vendor of baked goods was suspended from participating in the Dane County farmers' market for selling products banned by the city and for not producing at least 20 percent of what he sold. He brought a suit for damages against the market, the market manager and the board of directors, alleging a series of legal theories ranging from breach of contract to intentional infliction of emotional distress. The defendants won the lawsuit on a summary judgment and then asked the court to award court costs and attorneys fees against the vendor and his attorney for bringing a frivolous lawsuit. The district court granted the request, and the vendor appealed the award of costs against him. The Wisconsin Court of Appeals upheld the ruling that the vendor's legal action was frivolous and ruled the vendor should have known he had no viable claims against the farmers' market. The court noted the vendor "never offered evidence he was innocent of the rule violations which led to his suspension despite opportunities to do so." The court noted the markets' rules concerning the punishment of suspension were clear. The court concluded that as to the vendor "The undisputed material facts are that he violated the rules of the market and was punished as provided in those rules."

The case illustrates several points. First, courts will probably enforce the markets' rules as long as they are clear and are enforced in a fair manner. Second, a market may need to be prepared to expend time and money to defend its action in court. Third, while the case is unusual, because findings of frivolous lawsuits are not that common, it shows that a producer who sues a market when the facts are clear may run the risk of having to pay the market's court costs and attorneys fees.

One of the important legal issues which can arise in the operation of a market concerns the matter of liability in case of injury or accidents to shoppers or vendors. A review of reported court cases indicates there have been very few disputes involving claims of liability against farmers markets. This probably indicates that there are relatively few incidents and that many of those which do arise are settled before they go to court. The one reported court case on this issue, again from Wisconsin, illustrates why it may make a difference who sponsors the market. In *Anderson v. City of Milwaukee*, 559 N.W. 2d 563 (Wis. 1997), a shopper sued the municipality after falling at a farmers' market which was constructed, owned and maintained by the City. The suit alleged that the city was negligent in the design and maintenance of a brick walkway involved in the accident. Efforts to settle the suit were unsuccessful and after a trial the jury found the city negligent and awarded the shopper \$443,000 in damages. The city appealed, alleging it had immunity from the liability due to a law which limited damages against governmental subdivisions to \$50,000. The issue in the court case concerned whether or not the city had waived this limitation by how it handled the trial. The Wisconsin Appeals Court reversed the lower courts, ruled the city had not waived the damage limitation, and ordered the case remanded to the circuit for awarding damages of only \$50,000.

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