RULES
OF THE
MISSISSIPPI DEPARTMENT OF AGRICULTURE AND COMMERCE

P.O. Box 1609
Jackson, MS 39215-1609
601-359-1100
www.mdac.state.ms.us

SUBPART 2-ADMINISTRATIVE RULES
Chapter 07 - Farmers Market Nutrition Program

Criteria for Participation

100 To be eligible as a farmer participant in the Mississippi FMNP:

1. Be a bona fide farmer who grows and harvests fresh produce on property owned, rented or leased in Mississippi by the farmer; produce grown on land leased or contracted through Extension projects (or experiments) by the farmer. If necessary to supply a market, produce grown or harvested on property in a state that borders counties with authorized market sites may be permitted. (*Proof of the above by the farmer may be requested by MDAC and may include tax receipts for the previous year and/or notarized signed leases between the farmer and owner.)
2. Produce a variety of fruits and vegetables to be sold at the farmers' market on all market days during the program cycle.
3. Not be a wholesaler, unless proof can be shown that vendor also grows and harvests produce. In such a case, the vendor must submit a crop plan and sell only eligible products grown and harvested.
4. Prior to certification for this Mississippi FMNP, submit a crop plan outlining products he/she intends to sell at the market. (The farmer may revise his/her crop plan to reflect increased or decreased planting of different fruits and vegetables.)
5. Must be the person selling the produce or designate an authorized employee or family member to sell produce at market sites during the program period. The farmer certified as a participant in the FMNP shall be accountable for actions of employees or relatives who are either present at the market or performing transactions on behalf of the certified farmers.
6. Agree to abide by the Rules and Procedures for Farmers and sign the Mississippi FMNP Farmer's Participation Agreement.

Source: *Miss. Code Ann*. §69-1-13.

Policy & Procedures for Participating Farmers

101 In order to begin accepting checks at farmers' markets, participating farmers must have received, a certification card, a display poster with the Mississippi Farmers' Market Nutrition Program Participant logo (must be displayed at all times at the Market) and a certification stamp (a stamp containing the farmer's certification number to be utilized when accepting checks).

102 Certified participating farmers are issued a 5-character certification number upon the completion of training and certification. This 5-character number must to be stamped on the check at the prior to redemption at a financial institution.

103 Participating farmers may only accept checks for eligible food items as in the Program Guide for Farmers and as agreed to by signing the Farmer Participation Agreement. Purchases for other items not listed must be made with cash or food stamps. (To become authorized to accept food stamps, contact the USDA Food and Nutrition Service at 1-877-823-4369)

104 Participating farmers may accept checks **ONLY** at authorized farmers' markets. Farmers ***CANNOT RETURN CHANGE*** for purchases made with checks.

105 A certified farmer cannot supplement his/ her produce with that of a neighbor or other means unless the other person or entity registers for the program as well and authorizes their location to be inspected for verification of crop plan. Also, that farmer must authorize the certified farmer to sell their produce. (No money may exchange between farmers for produce, or farmers may not buy from other farmers.)

106 Farmers must post prices of produce items when accepting WIC/Senior FMNP checks.

107 Farmers must not collect sales tax on FMNP check purchases.

108 Farmers shall not seek restitution from FMNP recipients for checks not paid by the FMNP/SFMNP.

109 When accepting checks from WIC or senior participants, farmers **MUST** require the participant to **sign** the check. (If FMNP recipient is unable to sign his/her name, a farmer may assist).

110 Farmers should not accept checks that have been mutilated or damaged.

111 Farmers **may not accept checks for credit** to buy fruits and vegetables at a later market day or for the next year.

112 Farmers must accept checks printed and intended for use during the **current year's** program cycle.

113 Farmers must not discriminate against WIC/Senior recipients in price, quality, or service, or establish separate produce displays designated solely for WIC/Senior check recipients. Farmers must offer fresh produce to WIC/Senior recipients at no more than the price charged to other customers, and offer the same courtesies extended to other customers.

114 The last day farmers may **accept and deposit** checks from WIC and senior recipients will be set by the FMNP Coordinator prior to the start of the program. Refer to the check printed for the program year.

Source: *Miss. Code Ann*. §69-1-13.

<u>Program Violations</u>

115 Actions of a farmer and/or farmers' market which constitute violations of the Rules and Procedures governing the FMNP are divided into Class I and Class II violations.

1. **Class I** violations include:
   a. Failure to display the Mississippi Farmers' Market Nutrition Program Poster.
   a. Knowingly provide false information about the program to check recipients or others.
   b. Accept checks for foods not solely grown by the farmer.
   c. Abuse of WIC/Senior recipients and preventing any FMNP representative from conducting any monitoring visits (market or farm).
2. **Class I** violations will result in a verbal warning from MDAC to the violating farmer and applicable market manager and will be documented in the MDAC's file for that farmer and market. The farmer will be invited to explain the alleged violation; that response and/or any corrective actions taken will also be recorded. The second substantiated instance of a **Class I** violation during a season will constitute a **Class II** violation.
3. **Class II** violations will include the following:
   a. Giving program participants cash change when the value of the participant's purchase is less than the value of the check(s) presented.
   b. Cashing checks for customers or cashing checks under any circumstances, including checks accepted by an unauthorized, suspended or disqualified vendor at the market.
   c. Accepting checks for non-food items or for any purchase other than eligible foods.
   d. Accepting checks, or indicating willingness to accept checks by posting an authorized Mississippi FMNP poster at any site that is not authorized to accept checks or at a farmers' market or related site where the farmer is not currently authorized to participate.
   e. Accepting checks after the expiration date.
   f. Participating in the program while selling fruits or vegetables ***solely*** grown by someone other than the participating farmer.

g. Charging higher prices for check sales than for cash sales.
h. Discriminating against a recipient on the basis of race, color, national origin, gender, religion, age, or disability.
i. Continuing to participate in the program during a period of suspension or disqualification, including acceptance or evidence of intent to accept checks.
j. The second substantiated instance of a Class I violation during a season will constitute a Class II violation.

4. **Class II** violations by a farmer/ farmers' market shall result in suspension and/or probation for the remainder of the market period from the Miss. Farmers' Market Nutrition Program.

116 Suspensions may be invoked under the following circumstances:
1.The second instance of any Class I violation during the program cycle.
2.The first instance of any Class II violation during the program cycle.

117 A second Class II violation within the same market season and/or the following market season will result in disqualification from the FMNP program for up to 5 years. The farmer's certification stamp and participating program poster will be collected immediately by MDAC.

118 In the event a farmer in violation of the "Rules and Procedures" redeems checks, the farmer may be required to pay the state agency for the total amount of the transactions in violation. MDAC will send a letter demanding payment. If there is no response after thirty (30) days, the matter will be referred to legal staff.

119 Certain violations may constitute a criminal offense, subjecting the recipient, local agency or farmer/farmers' market to prosecution under applicable state or federal laws. Following the investigation of and a finding resulting in an adverse action, MDAC will notify the farmer or farmers' market of the adverse action to be taken. The farmer or farmers' market will have an opportunity to appeal the adverse action.

Source: *Miss. Code Ann*. §69-1-13.

<u>Administrative Procedure</u>

120 A recipient, local agency or farmer/farmers' market may appeal an adverse action of the Farmers' Market Nutrition Program Division of the Mississippi Department of Agriculture and Commerce (Department), including the denial of its application to participate, imposition of a sanction, or disqualification from participating in the Farmers' Market Nutrition Program (FMNP).

121 The Department shall provide the recipient, local agency or farmer/farmers' market with written notification of the adverse action, the causes for the action, and the effective date of the action, including the agency's determination of whether the action shall be postponed if it is appealed. The notification of an adverse action shall be provided by certified mail, return receipt requested, at least fifteen days before the effective date of the action. An adverse action may be postponed, at the Department's option, if the Department finds that recipients would be unduly inconvenienced by the adverse action. In a case where a recipient appeals the termination of benefits, the recipient shall continue to receive FMNP benefits until a final decision is reached by the Department or the expiration of the current FMNP season, whichever occurs first. Applicants who are denied benefits may appeal the denial, but shall not receive benefits while awaiting the decision.

122 The recipient, local agency or farmer/farmers' market may appeal the adverse action and request an administrative hearing within thirty (30) days from the date of the notification. The Commissioner of the Department shall appoint an impartial hearing officer, who shall conduct a hearing after giving written notice of the date, time and place of such hearing to the farmer or farmers' market not less than fourteen (14) days prior to commencing the hearing. Failure to request a hearing within the allotted time period shall constitute a waiver of the right to a hearing. Any party may participate in the hearing in person or by duly authorized representative.

123 The Department shall cause the hearing to be recorded by a court reporter. Any party may, at its own expense, request the court reporter to prepare a transcript of the hearing. The Mississippi Rules of Evidence shall not apply to there proceedings, but the Hearing Officer may use them as a guide in the proceedings. The parties will have an opportunity to confront and cross examine adverse witnesses.

124 At the conclusion of the hearing, the Hearing Officer shall prepare a written recommendation. The Commissioner may adopt or reject the recommendation as the final order of the Department ore remand the matter for further proceedings. The final order shall be issued within sixty (60) days from the date of receipt of the request for a hearing by the Department. The recipient, local agency or farmer/farmers' market shall have thirty (30) days from the date of entry of the final order to pay any penalties that may be imposed. The decision of the Department may be appealed to the Circuit Court of the First Judicial District of Hinds County. The appealing party shall be responsible for the costs of preparing the record on appeal, including the costs of the transcript.

125 In addition, all fair hearing procedures are pursuant to **7 CFR §248.16** of th*e WIC Farmers' Market Nutrition Program Consolidated Regulations*

Source: *Miss. Code Ann*. §69-1-13.

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2. Produce a variety of fruits and vegetables to be sold at the farmers' market on all market days during the program cycle.
3. Not be a wholesaler, unless proof can be shown that vendor also grows and harvests produce. In such a case, the vendor must submit a crop plan and sell only eligible products grown and harvested.
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112 Farmers must accept checks printed and intended for use during the **current year's** program cycle.

113 Farmers must not discriminate against WIC/Senior recipients in price, quality, or service, or establish separate produce displays designated solely for WIC/Senior check recipients. Farmers must offer fresh produce to WIC/Senior recipients at no more than the price charged to other customers, and offer the same courtesies extended to other customers.

114 The last day farmers may **accept and deposit** checks from WIC and senior recipients will be set by the FMNP Coordinator prior to the start of the program. Refer to the check printed for the program year.

~~115 The last day farmers may **deposit** checks redeemed by WIC and senior FMNP recipients will also be set prior to the start of the program.~~

Source: *Miss. Code Ann*. §69-1-13.

Program Violations

~~116~~ 115 Actions of a farmer and/or farmers' market which constitute violations of the Rules and Procedures governing the FMNP are divided into Class I and Class II violations.

1. **Class I** violations include:
   a. Failure to display the Mississippi Farmers' Market Nutrition Program Poster.
   a. Knowingly provide false information about the program to check recipients or others.
   b. Accept checks for foods not solely grown by the farmer.
   c. Abuse of WIC/Senior recipients~~, program monitors, staff or other individuals associated with local WIC/Senior check distribution agencies~~ and preventing any FMNP representative from conducting any monitoring visits (market or farm).
   ~~d. Violation of any other policy in the "Rules and Procedures" that is not specified in this section as being either a *Class I* or *Class II* violation.~~

2. **Class I** violations will result in a verbal warning from MDAC to the violating farmer and applicable market manager and will be documented in the MDAC's file for that farmer and market. The farmer will be invited to explain the alleged violation; that response and/or any corrective actions taken will also be recorded. The second substantiated instance of a **Class I** violation during a season will constitute a **Class II** violation.

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   a. Giving program participants cash change when the value of the participant's purchase is less than the value of the check(s) presented.

b. Cashing checks for customers, or cashing checks under any circumstances, including checks accepted by an unauthorized, suspended or disqualified vendor at the market.

c. Accepting checks for non-food items or for any purchase other than eligible foods.

d. Accepting checks, or indicating willingness to accept checks by posting an authorized Mississippi FMNP poster at any site that is not authorized to accept checks or at a farmers' market or related site where the farmer is not currently authorized to participate.

d. Accepting checks after the expiration date.

e. Participating in the program while selling fruits or vegetables ***solely*** grown by someone other than the participating farmer.

f. Charging higher prices for check sales than for cash sales.

g. Discriminating against a recipient on the basis of race, color, national origin, gender, religion, age, or disability.

h. Continuing to participate in the program during a period of suspension or disqualification, including acceptance or evidence of intent to accept checks.

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~~120~~ 119 Certain ~~abuses~~ violations may constitute a criminal offense, subjecting the ~~vendor~~ recipient, local agency or farmer/farmers' market to prosecution under applicable state or federal laws. Following the investigation of and a finding resulting in an adverse action, MDAC will notify the farmer or farmers' market of

the adverse action to be taken. The farmer or farmers' market will have an opportunity to appeal the adverse action.

Source: *Miss. Code Ann*. §69-1-13.

Administrative Procedure

~~121~~ 120 A recipient, local agency or farmer/farmers' market may appeal an adverse action of the Farmers' Market Nutrition Program Division of the Mississippi Department of Agriculture and Commerce (Department), including the denial of its application to participate, ~~imposing~~ imposition of a sanction, or ~~disqualifying it from~~ disqualification from participating in the Farmers' Market Nutrition Program (FMNP).

~~122~~121 The Department shall provide the recipient, local agency or farmer/farmers' market with written notification of the adverse action, the causes for the action, and the effective date of the action, including the agency's determination of whether the action shall be postponed if it is appealed. The notification of an adverse action shall be provided by certified mail, return receipt requested, at least fifteen days before the effective date of the action. An adverse action may be postponed, at the Department's option, if the Department finds that recipients would be unduly inconvenienced by the adverse action. In a case where a recipient appeals the termination of benefits, the recipient shall continue to receive FMNP benefits until a final decision is reached by the Department or the expiration of the current FMNP season, whichever occurs first. Applicants who are denied benefits may appeal the denial, but shall not receive benefits while awaiting the decision. ~~In addition, the Department may determine other relevant criteria to be considered in deciding whether or not to postpone an adverse action. However, a disqualification from the FMNP shall take effect on the effective date specified by the Department in the notification regardless of the pendency of a hearing.~~

~~123~~ 122 ~~The notification shall be provided at least fifteen days before the effective date of the action. This notification will be made by certified mail, return receipt requested, or by hand delivery. The notification will also outline the farmer's/farmers' market's opportunity to appeal the action and to request a hearing within fifteen days of the date of the notification letter.~~ The recipient, local agency or farmer/farmers' market may appeal the adverse action and request an administrative hearing within thirty (30) days from the date of the notification. The Commissioner of the Department shall appoint an impartial hearing officer, who shall conduct a hearing after giving written notice of the date, time and place of such hearing to the farmer or farmers' market not less than fourteen (14) days prior to commencing the hearing. Failure to request a hearing within the allotted time period shall constitute a waiver of the right to a hearing. Any party may participate in the hearing in person or by duly authorized representative.

~~124~~ 123 ~~Upon receipt of a request for a hearing,~~ ~~**the Department shall schedule a hearing before an impartial hearing officer designated by the Commissioner of Agriculture**~~. ~~The Department shall mail or deliver notice of the date, time and place of the hearing no less than 10 days before the scheduled date. The appealing party and the Department each have one opportunity to reschedule the hearing date upon written request to the Department of Agriculture and Commerce. If the postponement will prevent the decision from being rendered within sixty days of the date of the receipt of the request for a hearing, the designated hearing officer shall deny the postponement unless the party waives the right to a decision within that period.~~ The Department shall cause the hearing to be recorded by a court reporter. Any party may, at its own expense, may request the court reporter to prepare a transcript of the hearing. The Mississippi Rules of Evidence shall not apply to there proceedings, but the Hearing Officer may use them as a guide in the proceedings. The parties will have an opportunity to confront and cross examine adverse witnesses.

~~125~~ 124 ~~At the hearing before the~~ ~~**hearing officer**~~, ~~the Department shall have subpoena power and the testimony shall be recorded. The appealing party shall have the opportunity to present his or her case orally or in writing and may present witnesses. The witnesses shall be placed under oath and shall be subject to examination. The appealing party shall have the opportunity to be represented by counsel, if desired, and shall have the opportunity to review the case record before the hearing.~~ At the conclusion of the hearing, the Hearing Officer shall prepare a written recommendation. The Commissioner may adopt or reject the recommendation as the final order of the Department or remand the matter for further proceedings. The final order shall be issued within sixty (60) days from the date of receipt of the request for a hearing by the Department. The recipient, local agency or farmer/farmers' market shall have thirty (30) days from the date of entry of the final order to pay any penalties that may be imposed. The decision of the Department may be appealed to the Circuit Court of the First Judicial District of Hinds County. The appealing party shall be responsible for the costs of preparing the record on appeal, including the costs of the transcript.

~~126 The~~ ~~**hearing officer**~~ ~~shall prepare a written decision as to the validity of the Department's action, which shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the FMNP. This written decision shall be mailed by certified mail, return receipt requested, or hand-delivered to the appealing party within sixty days from the date of receipt of the request for a hearing, unless the appealing party has waived the right to receive a decision within sixty days.~~

~~127 If either party is aggrieved by the findings of~~ ~~**the hearing officer**~~, ~~he may appeal to the Circuit Court of the county of residence of the farmer/farmers' market. The appellant shall have the obligation of having the record transcribed and filing~~

~~same with the Circuit Court. If the appeal is not perfected within the required time, the decision of the hearing officer will then become final.~~

~~128 The decision of the Circuit Court may then be appealed by either party to the Mississippi Supreme Court in accordance with the existing law and rules affecting such appeals.~~

~~129~~ 125 In addition, all fair hearing procedures are pursuant to **7 CFR §248.16** of th*e WIC Farmers' Market Nutrition Program Consolidated Regulations*.

Source: *Miss. Code Ann*. §69-1-13.