

Mississippi Farmers Markets

A Legal and Business Guide

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Introduction

In September 2008, in collaboration with Delta State University and the Center for Community and Economic Development, the Delta State Institute for Community-Based Research (ICBR) engaged in an assessment of alternative food systems operating in the Mississippi Delta. Farmers markets were identified as the primary alternative to large-scale agricultural productions. In the fertile soils of the Delta's eleven "core" counties, six farmers markets were identified. Over an eight-week period, interviews were conducted with the managers of these markets as well as restaurant managers, farmers market vendors, and institutional providers of produce. The goal of this assessment was to achieve a greater understanding of the issues facing farmers markets. In December 2008, findings from the interviews were compiled into a working paper and shared with participants. From this initial gathering emerged a group of farmers market managers and farmers/vendors interested in addressing the opportunities and challenges the working paper identified.

Throughout 2009, this group of market managers and farmers/vendors worked to make information and resource sharing more effective in an effort to strengthen farmers markets throughout the Delta. During the first quarter of 2009, three meetings took place revealing the overwhelming need for consistent, localized legal and organizational guidance. From these meetings, a need for legal and technical assistance emerged, and this guide was produced in April 2009 as a result of that need.

As a result of this guide and the organizing efforts of ICBR and Delta Directions Consortium, the Delta markets organized into the "Delta Regional Farmers Market Alliance" (DRFMA). This group has stayed in touch and has met on a periodic basis for the past several years in order to share best practices, disseminate legal and technical assistance, and stay abreast of policy and legal changes at the state level that could benefit farmers markets and farmers/vendors in the state. This guide was updated in April 2011 to reflect some legal and regulatory changes in the state as well as new programs available for farmers markets in Mississippi. Over time, more markets have sprung up in the Delta and membership in DRFMA has grown to include the markets in Clarksdale, Cleveland, Greenwood, Greenville, Hernando, Indianola, and Leland.

About This Guide

This guide is meant to provide farmers market managers, farmers/vendors, and other interested parties with an overview of legal and business issues that arise in the course of running a farmers market. The topics covered are the product of interviews conducted in spring 2009 with markets in Bolivar, Coahoma, Leflore, Sunflower, and Washington Counties, but the information will apply more broadly to markets throughout Mississippi. We have not attempted to catalog all the issues that a market may face; instead, this guide focuses on major issues common to many farmers markets.

Although we have made an effort to provide as much information as possible, every situation is unique and requires a tailored approach. This guide is not legal advice and you should not rely on it alone to make decisions. Whenever possible, you should consult with an attorney or accountant.

We hope that this guide will help generate ideas and describe some of the questions that market managers should be asking as their market develops. At the end of this guide, there is a list of national and state resources that may be able to provide additional advice. Also, in each section of this guide, there are websites, phone numbers and contact information for state agencies, non-profit organizations and individuals who may be able to help with those specific issues. We strongly urge you to do additional research and speak with some of those listed to get more information on the topics in this guide.

We wish you all the best and hope that you find the information useful to advancing the cause of farmers markets and local food security.

About the Authors

This guide is the product of the research and personal experiences of dozens of individuals, some of who have been involved for decades in promoting farmers markets. Chief among these is Dr. John Green of the Institute for Community Based Research at Delta State University. For many years, Dr. Green worked with students at Delta State University and others to support farmers markets. JR Love, an MBA student at DSU and a Delta native, and Miranda Walker, an AmeriCorps VISTA volunteer at the ICBR, traveled near and far to speak with market managers and to learn about the issues they face. The Delta Directions Consortium, led by Emily Broad, a joint fellow at the Social Science Research Center at Mississippi State University and Harvard Law School, recruited and supervised eight Harvard Law School students to spend their spring break in the Delta, working to compile the information and experiences that these individuals and institutions have accumulated and conduct legal research on the topics of concern. The students involved in the project were Amir Ali, Max Chen, Marianna Jackson, William Magnuson, Jordan Myers, Daniel Preysman, Benjamin Saltzman, and Dina Stukanow Dominguez. Chris Powell, an attorney practicing in Cleveland, Mississippi served as the legal adviser to this project.

This guide was most recently updated in March 2011 by Harvard Law School student Brent Bernell under the supervision of Emily Broad, Senior Clinical Fellow at the Harvard Law School Health Law and Policy Clinic.

This guide owes much of its value to countless other individuals involved with the markets. Not all of them can be named here, but a debt of gratitude is owed to Maggie Barnes, Anita Butler, Kate Failing, Lise Foy, Michelle Johansen, Thommy Miller, Robert Hitt Neill, Carol Puckett, Angela Simpson, and Cornelius Tool.

Non-Profit Status

This section is written in Q&A form and seeks to provide information on what exactly a non-profit organization is and when a farmers market might choose to become one.

Q: What is a non-profit?

A: A non-profit is an organization that does not aim to make a profit and which is not part of the government. The most common non-profit organization is a 501(c)(3) non-profit, which is a corporation, formed under state laws, that has applied for a tax exemption from the IRS. It is called a 501(c)(3) because that is the section of the tax code that allows the organization not to pay federal income tax. In addition, if an organization has official 501(c)(3) status, any donations made to the organization are tax deductible.

Q: How is a non-profit different from a corporation?

A: A nonprofit is a special type of corporation. In order to have a 501(c)(3), you must file Articles of Incorporation with the Mississippi Secretary of State, draft the corporation's by-laws, and hold regular board meetings. That makes a non-profit just like any other corporation. The only difference is that a 501(c)(3) non-profit is a corporation that has gotten permission from the IRS not to pay federal income taxes.

Q: What are the requirements to become a non-profit?

A: The most important requirement for corporations to comply with Section 501(c)(3) of the US tax code is that the organization be organized and operated exclusively for purposes that are "religious, charitable, scientific, testing for public safety, literary, or educational..."¹ The organization does not need to currently have any projects or money, but it does need to have a 3-year budget planned and a mission compatible with Section 501(c)(3) of the US tax code. Importantly, a 501(c)(3) organization cannot be organized or operated for the benefit of private interests and none of its net earnings can be used for the benefit of a private shareholder or individual. Once the market becomes a non-profit, it must get funding from a variety of

¹ 26 U.S.C.A. § 501(c)(3).

sources and can't rely on just a few large grants for all of its funding. Grower fees are especially important in making sure the market satisfies IRS funding rules.²

Q: Can a farmers market qualify as a Section 501(c)(3) organization?

A: Yes. The farmers market should make a case that it is a “charitable” organization. According to the IRS, the term “charitable” includes “relief of the poor, the distressed, or the underprivileged . . . lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination . . . and combating community deterioration and juvenile delinquency.”³ Although some farmers market have been denied 501(c)(3) status on the basis that they were merely helping growers make a profit, many other markets have qualified.⁴ An organization is especially likely to qualify if it serves a range of purposes, such as public education, community gardens, or revitalizing a downtown area through the market. Before applying for tax-exempt status, you should consult with other farmers markets that have gone through the process. If your farmers market does not meet the qualifications to be a 501(c)(3) organization, it may still qualify as a 501(c)(5) organization, which refers to “labor, agricultural, or horticultural organizations.”⁵ 501(c)(5) organizations are also exempt from paying federal income tax, but, unlike 501(c)(3) organizations, they do not offer the benefit of tax-deductible donations for donors and are subject to several other restrictions in addition to those applied to 501(c)(3) organizations.

Q: What are the advantages and disadvantages of becoming a non-profit?

Advantages	Disadvantages
<ul style="list-style-type: none"> • Tax exemption • More funding because donations are tax deductible (this is especially important for government and foundation grants) • Liability protection. Market managers are much less likely to be personally liable. 	<ul style="list-style-type: none"> • Oversight by the IRS, including annual filing requirements • Activities are restricted in terms of employee salaries and participation in activities that are political in nature • Corporate formalities must be observed, such as board meetings, record keeping, etc.

Q: What steps do I need to follow to create a non-profit?

A: The essential steps to form a 501(c)(3) are:⁶

1. Name: Make sure the name you want to give your non-profit is available. You should check this through the Mississippi Secretary of State (<https://business.sos.state.ms.us/corp/soskb/csearch.asp>) and the US Patent and Trademark Office (<http://www.uspto.gov/>). Reserving the name costs \$25.⁷

² Non-profits’ funding sources are subjected to the Public Support Test, which requires that a certain percentage of funding come from qualified sources. For more information, see <http://www.irs.gov/pub/irs-tege/eotopicj93.pdf>.

³ IRS Website: <http://www.irs.gov/charities/charitable/article/0,,id=175418,00.html>.

⁴ See IRS Private Letter Ruling 200818028 (February 8, 2008), denying 501(c)(3) status to a farmers market because it provided a “substantial private benefit” to the growers without charitable or economic development programs.

⁵ 26 U.S.C.A. § 501(c)(5).

⁶ Additional checklists with more detailed information about creating a non-profit organization can be found at the following websites: <http://www.irs.gov/charities/article/0,,id=96210,00.html> and http://www.sos.ms.gov/business_services_nonprofit5.aspx.

⁷ The cost is the same for name reservation for a corporation, LLC, nonprofit, or fictitious business name/d.b.a. For more information, visit http://www.sos.ms.gov/business_services_business_formation.aspx.

2. Articles of Incorporation: Prepare and file Articles of Incorporation with the MS Secretary of State. This requires a \$50 fee and must be done on the 2-page State Form F0001. You can find the form at http://www.sos.ms.gov/business_services_feesForms.aspx.
3. By-laws: Prepare by-laws for the non-profit corporation. These do not need to be filed with the Secretary of State.
4. Board of Directors: Form a Board of Directors and hold an official organization meeting to elect the Board of Directors, elect officers, and adopt the by-laws.
5. EIN: Obtain a federal Employer Identification Number (EIN). EIN numbers may be obtained by filling out form SS-4. This can be done online at www.irs.gov. For more information on how to apply for an EIN, visit <http://www.irs.gov/businesses/small/article/0,,id=97860,00.html>. (You should apply for the EIN after filing the Articles of Incorporation because only after filing the Articles will you have your official name. If you already have an EIN, however, you should be able to file your Articles under the same name that you used to get the EIN.)
6. IRS Exemption Application: Apply for federal tax exemption via IRS Form 1023. This requires a one-time fee of \$400 or \$850 depending on the size of the organization's revenues, including farmers/vendors' fees, grants, and any other source of funds. The application can take 10-15 hours to complete. You can find the form online at <http://www.irs.gov/pub/irs-pdf/f1023.pdf>. Pending further delays, the IRS will release a new, web-based software program called Cyber-Assistant in 2011 to help applicants complete Form 1023. Once the program is active, registration fees will change to \$200 for organizations (regardless of size) using the software to register online and \$850 for organizations (regardless of size) that do not utilize Cyber-Assistant.
7. State Registration: Register with the Mississippi Secretary of State as a charitable organization. The organization must file a United Registration Statement and pay a \$50 annual fee prior to any fundraising. The form can be found at: <http://www.sos.state.ms.us/forms/Charities/URSAndInstructions.pdf>.⁸ Additionally, the market must register as a corporation with the Mississippi Department of Revenue (formerly the Mississippi State Tax Commission). More information, including the application, can be found at <http://www.dor.ms.gov/regist.html>.

Q: How long does it take to become a non-profit? How much does it cost?

A: Becoming a 501(c)(3) takes about six months. You can become a state corporation very quickly – as soon as you file the Articles of Incorporation, you are officially a corporation. But applying for and obtaining the IRS tax exemption may take anywhere from 2 - 12 months. The total cost is anywhere between \$525-\$975 in fees, plus the cost of preparing the application if any. Note that, as mentioned above, the cost of filing for 501(c)(3) status online will decrease to \$200 once the Cyber-Assistant tool is activated in 2011.

Q: If the market isn't incorporated, can it have a bank account?

A: Yes. You can get a bank account for the market by getting an Employer Identification Number (EIN) from www.irs.gov. If you go to your local bank, they will set up an account in the name of whoever is opening the account with a second name under the market. For example, if Fred Smith is getting an EIN for the Jackson Farmers Market, the bank would create an account for "Fred Smith doing business as the Jackson Farmers Market." That way, any checks written to the "Jackson Farmers Market" can be deposited in the account.

Q: If the market isn't incorporated, can it get insurance?

A: No, not exactly. Individuals can obtain insurance and organizations can obtain insurance. Most markets that don't have non-profit status are affiliated with another organization, such as the local Main Street Association or the local Chamber of Commerce. These affiliate organizations can obtain insurance in their

⁸ If the corporation has employees, it must also register for unemployment insurance with the Mississippi Department of Employment Security (<http://www.mdes.ms.gov>). If you have any question about this or any other requirement, you should seek out professional legal and/or financial planning advice.

name to cover the market, and the policies should protect market managers. However, if the market is unaffiliated, individual market managers can take out insurance in their own names. That is, a market manager can get her own insurance policy to cover any losses due to harm on the premises. She can also get product liability protection if she sells her own products. For more information, see the section of this guide entitled “Insurance.”

Q: If the market isn’t incorporated, can it sign a lease agreement?

A: No, not exactly. But, someone else can sign a lease on the market’s behalf. Individuals can sign leases and organizations can. Keep in mind that any individual who signs a lease may be liable to farmers/vendors and visitors for dangerous conditions on the property.

Q: I want to get funding for the market. Do I need to be a non-profit?

A: No. Although many grants are available only to 501(c)(3) non-profits, there are many sources available for individuals, informal cooperatives, and individual farmers/vendors. (See the section of this guide entitled “Funding Sources” for more information.) In addition, many granting organizations will allow markets to apply through an affiliated entity, such as the Chamber of Commerce or the local Main Street Association. Of course, one of the major reasons that organizations will form a 501(c)(3) is that there are more funding sources available, not to mention that individuals are more likely to make donations if they can get a tax deduction!

Q: Is it possible to get some of the benefits of being a non-profit without incorporating?

A: Yes! If there is an existing non-profit that the farmers market can partner with, the market can sometimes piggyback on the other organization’s 501(c)(3) status. This is called **fiscal sponsorship**, an arrangement where the 501(c)(3) lends its non-profit status to the farmers market. The 501(c)(3) is called the “fiscal sponsor” or “fiscal agent.” Any funds that a farmers market raises (including fees and grants) are passed on to the fiscal sponsor, which uses the funds to pay any suppliers, buy advertising materials, etc. This kind of relationship can be beneficial for both the farmers market and the fiscal sponsor, but it must be very carefully managed. Here are some things to keep in mind:

1. The IRS strictly prohibits “conduit” arrangements. For example, when a donation is made by A to B, earmarked for C, it is in reality a donation from A to C, and if C is not exempt under section 501(c)(3), the gift is not a tax-deductible contribution. To be deductible, the fiscal sponsor must have “complete discretion and control” of the funds, and any funds must be used to further the fiscal sponsor’s tax-exempt purposes.
2. Because any farmers market funds are controlled by the fiscal sponsor, there must be a strong relationship of mutual trust.
3. The mission of the fiscal sponsor must be broad enough to cover the farmers market. A good way to think about it is: If the fiscal sponsor had wanted to start a market, would its mission have allowed it to do so? This question is important because an organization that goes outside its mission may lose its tax-exempt status with the IRS.
4. There are important tax and liability implications for both the fiscal sponsor and any individuals working on the project. The farmers market should consult an attorney or accountant. The market should sign a contract with the fiscal sponsor outlining the terms of the arrangement.
5. The fiscal sponsor must report any funds it receives or payments it makes as part of its annual IRS filings on Form 990. To the extent it pays the market manager, it must report payments on a W2 or a 1099 depending on whether the market manager is considered an employee or an independent contractor. If the market manager or anyone else affiliated with the market gets payments from the fiscal sponsor, this is an important issue, and you should contact an attorney or accountant to determine how to handle this. A good place to look for the basics is <http://www.irs.gov/businesses/small/article/0,,id=99921,00.html>.

Additional Resources: For more information on business entities (for-profit and non-profit), you can check the Secretary of State’s website at <http://www.sos.ms.gov>. Another useful resource for nonprofits in Mississippi is the Mississippi Center for Nonprofits. This organization provides training and assistance for nonprofits throughout the state and can be found at <http://www.msnonprofits.org>.

Land Use – Leasing or Permissive Use

In order to make sure that your market will have a consistent place to operate, it is important to make sure you have permission to use the land on which your market operates. There are two types of use that markets should know about – Lease Agreements and Permissive Use.

I. Lease Agreements

Your landlord may require that you sign a lease agreement. If you are paying rent, you should insist on a written lease agreement. We have put together a model agreement, attached as Appendix A, which can be used to lease a plot of land for your market. You should feel free to make changes to the model lease so that it makes sense for your particular market. Below are instructions for filling out the lease.

Instructions for Model Lease Agreement

1. In the first blank space, write the name of your market (your market is the “lessee”). For example, you could write “Cleveland Farmers Market.”
2. In the second blank space, write the name of the organization that is leasing you the land. This could be a city, such as “The City of Leland” or it could be a private organization, such as “Viking Range Corporation.” This is the “lessor.”
3. In the third blank, you should describe the piece of land being leased. For example, this could be “The south-western corner of the parking lot of Walmart.” Make your description as detailed as possible.
4. For the Market Season, write the start date and end date of the market season each year.
5. For the Market Days, list the days that the market will be open each week. For example “Wednesdays and Saturdays.”
6. For the Market Hours, list the times that the market will be open on the days that it is operating.
7. If you are not paying any rent for the land, you can delete the provision on the Market Fee, otherwise fill in the rental price.
8. For Sections I and II, delete anything that does not make sense for your particular agreement.
9. In Section III #1, write the number of years that you expect this lease to be valid, with the specific desired start and end date.
10. If there are other things that you expect to be provided, include them in the agreement.
11. Make sure you have one representative of appropriate authority from each party sign the agreement and make a copy for each party.
12. If the lease is from the city, make sure the lease is (a) approved by a majority vote of the Board of Aldermen or City Council, and (b) recorded in its Minutes.

II. Permissive Use

If your market is located on city property, your city may be reluctant to sign a written lease agreement. That is okay. Just make sure that the city’s Board of Aldermen or City Council (a) approves, by majority vote, your market’s use of the property, and (b) records the approval in its Minutes.

Market Rules

Market rules are the detailed rules governing the operation of the farmers market. They contain information such as market hours, farmer/vendor responsibilities, operating procedures, food and health regulations, and additional guidelines for farmers/vendors and visitors at the market. Market rules are different from by-laws. The by-laws govern the management of a corporation or non-profit corporation. Both by-laws and the articles of incorporation are legal documents. Though the market rules are not a legal document, they do serve an important purpose by protecting the market and the market managers from certain liability. The market rules dictate what farmers/vendors and visitors can and can't do at the farmers market and put the farmers/vendors on notice as to their responsibilities.

Here are some suggested market rules. They should be adjusted to fit your market's individual needs and then should be distributed to market employees, volunteers, and farmers/vendors.

I. Statement of Purpose

This statement should outline the mission of the farmers market. It can be written in sentence form or in bullet points.

- a. **Example Statement:** "This Farmers Market is a community-based organization intended to support local farmers, to promote the sale of fresh, home-grown foods, and to encourage environmental and nutritional awareness."
- b. **Example Bullet Points:** The goals of _____ Farmers Market are:
 - To strengthen and support local farmers
 - To bring people together in a community activity
 - To support and stimulate local entrepreneurs and small businesses
 - To stimulate _____'s downtown area
 - To create interest in environmental issues
 - To encourage the consumption of healthy foods

II. Applications to Sell at the Market

Markets should make all farmers/vendors sign written "Vendor Applications" or "Vendor Agreements." The application should include biographical information about the farmer/vendor (name, address, phone number, etc.) and information about the products the farmer/vendor intends to sell. It may be useful to have separate applications for artisan items and food items. For artisan items (e.g. arts and crafts), the vendor should describe the items he/she wants to sell and possibly attach a picture of the goods. Food item applications may require more detail, including information about the farmer/vendor and their operation and the origin of their products. All applications should require each applicant to agree to follow the market's rules and allow a representative of the market to tour the farmer/vendor's operation if it is deemed necessary. The market should also make all farmer/vendors sign a copy of the market rules acknowledging that they have read the rules and will abide by them.

If your market charges farmers/vendors a participation fee to sell at the market, you should consider providing both a daily or weekly rate and a full-season rate for participation.

- a. **Option 1: Daily or Weekly Rate.** Charge farmers/vendors X amount for each use of market premises. Price may be contingent upon whether or not a farmer/vendor chooses to accept accommodations, such as a tent.
- b. **Option 2: Full-Season Rate.** Charge farmers/vendors Y amount for use of the market for the entire season. This rate would be less expensive than it would be to charge on a daily or weekly basis. This option encourages farmers/vendors to commit to participating in the market for the duration of the season.

III. Membership Requirements (Who Can Sell)

Markets may wish to establish the following stipulation: “Vendors shall be farmers and/or gardeners, who grow agricultural products or raise livestock in the local community.”

- a. Markets will have to establish a suitable definition for “local.”
 - For example, a market may restrict membership to farmers/vendors within a geographic region, such as the Mississippi Delta, or within 100 miles of the market.

IV. Products (What Can be Sold)

Markets should be explicit about which products may or may not be sold. The market rules should clearly state that all products are sold at the discretion of the market manager, or his/her agent, and the market’s board. The market should also be clear about expectations for the origins of any food products or other goods (e.g. grown in Mississippi or hand crafted). In outlining which products may or may not be sold at the market, markets should consider the following categories:

- a. **Raw Agricultural Products:** Products grown or produced by the vendor.
 - Fruits and Vegetables
 - Plants and Flowers
- b. **Prepared-for-Sale Raw Agricultural Products**
 - Shelled Peas
 - Sliced Fruits and Vegetables
 - Butchered Meats
- c. **Cooked/Processed Agricultural Products**
 - Cooked or Boiled Eggs
 - Baked Goods
 - Jams/Jellies/Preserves
 - Pickles/Pickled Vegetables
 - Sauces/Relishes/Pestos
 - Cheeses
 - Fresh Juices/Drinks
- d. **Other Goods**
 - Flowers
 - Crafts
 - Markets should also be explicit as to what specific type of crafts can be sold (e.g. wood carving, weaving, pottery, quilts, baskets, candles, etc.).
 - Markets may choose to limit the percentage of crafts that food vendors can sell or the percentage of crafts-only vendors allowed in the market.

NOTE: Market rules should alert the farmers/vendors that **the farmers/vendors** must comply with **any** federal and state food regulations on products sold at their booth, including obtaining the proper permits, licenses, or certification. For any further questions, see the section entitled “Food Safety Regulations.”

V. Setting Up and Taking Down

These provisions should exist to establish an orderly process for farmers/vendors to set up and take down their booths.

- a. **Setting Up:**
 - Markets should explicitly define the lot of each selling space.
 - Markets should also explicitly state when vendors may begin setting up and when the market will open for customers.
 - Markets may wish to limit participants to those vendors that set up their booths prior to the opening of the market absent prior arrangements.

- Spaces should be assigned on a first-come, first-serve basis.
 - Markets may wish to give priority to those signing up and paying for the entire season.
 - Daily farmers/vendors should be provided space depending upon availability.
 - Markets may want to require farmers/vendors to set-up on the next available space beginning from a certain fixed point (such as a particular street).
 - If a farmer/vendor does not attend the market, the market manger may rent the space to another farmer/vendor.
 - Similarly, markets should establish a “cut-off” time at which pre-reserved lots will become available to rent to another farmer/vendor.
 - Markets may wish to provide farmers/vendors with tents and tables.
- b. **Taking Down**
- Markets should have an explicit time after the close of the market by which the farmers/vendors must be off the market premises.
 - Market rules should explain that farmers/vendors are responsible for cleaning up their lots and leaving the lots in as good a condition as they were when rented.
 - Markets may wish to provide trash receptacles for trash generated by the market’s visitors.
 - If they have rented tables or tents, farmers/vendors must return the items to market personnel.

VI. Pricing/Sales Tax

a. **Sales Tax:**

- Market rules should state that **the farmers/vendors** are to be responsible for collecting and paying any required sales tax. Although certain items are exempt from the sales tax, the farmers/vendors are responsible for determining whether or not their goods qualify for the exemption. (See the section entitled “Sales Tax” for further instruction.)
 - **Note:** As discussed in the “Sales Tax” section, most of the goods sold at certified farmers markets are **exempt** from sales tax collection. However, even at certified markets, the rules should state that each farmer/vendor is responsible for assessing whether his/her goods fall within the exemption.

b. **Pricing:**

- Market rules should require vendors to post their prices.

VII. Enforcement

Markets should establish a policy to deal with violations of market rules. The rules should clearly explain the parties that will be evaluating claims (usually the market manager and possibly the market’s board) and the process by which complaints will be addressed.

a. **Customer Complaints:**

- Markets should state clearly that complaints made against vendors by customers or guests of the market will be addressed by the market manager or some other pre-designated party.

b. **Vendor-Vendor Complaints:**

- Market managers may wish to encourage farmers/vendors to bring any complaints concerning other farmers/vendors to the market manager for resolution.

c. **Vendor Breach of Market Rules:**

- Markets may want to establish fines for certain violations and bans for violations that are especially egregious.

VIII. General Rules

- a. **Signs and Advertisements:** Market managers may require all farmers/vendors to display a sign in their stall identifying the name of the farmer/vendor and their location, as well as additional information, such as the vendor's telephone number and address.
- b. **Parking:** Markets should establish an appropriate parking policy for *both* farmers/vendors and customers.
- c. **Alcohol:** Markets should prohibit alcohol at the market. Some insurance policies exclude protection for the markets for incidents resulting from the use of alcohol.
- d. **Weights and Measures:** Markets may require farmers/vendors to use scales when selling goods. Markets may reserve the right to check the scales for accuracy but should note that it is the farmers/vendors' responsibility to ensure that scales are in working condition. Mississippi law requires that all scales used for commercial products be both certified and inspected by the state.⁹ This requirement applies to both scales used at farmers markets and those used by farmers that pre-weigh and package their goods before coming to market.¹⁰ Scale manufacturers and distributors should provide a list of certified scales, but prospective buyers and existing owners can also search online at <http://www.ncwm.net/certificates> to determine whether their scale has been properly certified. The Weights and Measures Division of the Mississippi Department of Agriculture and Commerce can also help with certification questions and should be contacted to set up an initial inspection of a new scale. They can be reached at (601) 359-1149.
- e. **Temperature:** Markets may reserve the right to check the temperature at which climate-sensitive goods are sold.
- f. **Behavior:** Markets may want to encourage farmers/vendors and shoppers to comport themselves in a certain manner by for example:
 - Requiring shoes and shirts.
 - Prohibiting alcohol, drugs, smoking, and pets (or allowing pets only if they are kept on leashes).
- g. **Liability Clause:** Markets should include a provision exempting them from liability in the case of an accident or injury.
 - Example:
 - “The Market will not be liable for any damage, loss or theft of any possessions left at the market. All farmers/vendors are responsible for their own tent and/or stall and should arrange it so that it does not impede thoroughfare. Farmers/vendors are responsible for obtaining their own insurance in case of accident.”
 - More detailed example, taken from the Sullivan County, New York Farmers Market (NOTE: this example fails to address insurance):
 - “I (we), the undersigned, have read the Rules and Regulations and do agree to abide by all these rules and regulations. I (we) further agree to operate my (our) stall in accordance with these rules and regulations and to pay all applicable fees as set out in the rules and regulations. I (we) do understand that the stall fee, length of season and hours of operations are set in the rules and regulations, and I (we) will abide by them.
 - I (we) further understand that failure to comply with the rules and regulations could mean dismissal from the market.
 - As a vendor wishing to participate in _____, located in _____, I (we) agree to SAVE, HOLD HARMLESS AND INDEMNIFY ___ and the Town(s) of _____ from any and all liability or responsibility pertaining to any damages to person or property on

⁹ Miss. Code Ann. § 75-27-23 (2010). Opinion of Connie F. Braswell, Director of the Weights and Measures Division, Mississippi Department of Agriculture and Commerce on February 11, 2011.

¹⁰ Opinion of Connie F. Braswell, Director of the Weights and Measures Division, Mississippi Department of Agriculture and Commerce on February 11, 2011.

the site assigned to me (us) by _____, when such damages or liability arise out of acts of my (our) own, or of my (our) employees or associates, located at such site.”

- NOTE: For more information, see the section entitled “Insurance.”

h. **Contact Information:** Market managers should list the phone number, address, and/or email address to which questions should be directed.

i. **Additional Rules:** Markets may include any other rules that they see fit.

For example, two sample rules from a “General Rules of the Market Section” are:

- “No one may sell or attempt to sell any merchandise on the market grounds without the express permission of the market manager”
- “Farmers/vendors are expected to stay for the duration of the market day even when attendance is low and the weather is bad.”

IX. Disclaimer

Market rules should include a disclaimer stating that the market reserves the right to modify the rules and regulations at any time. In the case of a subsequent modification, the revised rules should be distributed and all farmers/vendors should sign the new rules acknowledging that they have received and read the rules and agree to abide by them.

Food Safety Regulations

Ensuring the health and safety of local consumers is one of the most important concerns of farmers markets. Many products that local farmers/vendors sell are potential health risks, especially if the products are improperly prepared or stored. If an individual gets sick, it will have negative consequences for both the farmer/vendor and the market. Therefore, all efforts should be made to ensure that farmers/vendors follow the proper procedures in preparing and selling their products.

I. General Food Regulations

Primary responsibility for ensuring the safety of food sold at farmers markets lies with the Mississippi Department of Health and the Mississippi Department of Agriculture and Commerce (MDAC).¹¹ Your local health department is the agency most likely to be enforcing food safety rules at your market, so each farmer/vendor should talk to the local health inspector about the rules for the specific products that he or she plans to sell. This is the best way to avoid violations and ensure that food sold at the market is safe. Appendix B lists the health inspectors in Bolivar, Coahoma, Desoto, Holmes, Leflore, Panola, Quitman, Sunflower, Tunica, and Washington Counties.¹² To find information about the local health department office nearest you, visit the Mississippi Department of Health site at http://www.msdh.state.ms.us/msdhsite/_static/19,0,166.html.

Another excellent source of advice is the Mississippi Farmers Market, the State’s official farmers market located in Jackson. You can find more information about the market, including upcoming events, at the market’s website: http://www.mdac.state.ms.us/n_library/departments/farm_mkt/index_farmmkt.html.

¹¹ The Department of Health is formally responsible for overseeing processed foods (baked goods, jams, jellies, soups, cut fruit) while the MDAC and the USDA focus on fruits, vegetables, meat, dairy, and eggs. However, the MDAC does not currently inspect farmers markets unless they are certified by the state (a voluntary program). With some minor modifications, Mississippi has adopted the FDA’s model Food Code. The most recent version is the 2009 Food Code. The full text of the code can be found online at

<http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/FoodCode2009/>. A list of Mississippi-specific modifications can be found at http://www.msdh.ms.gov/msdhsite/_static/30,1542,77,60.html.

¹² These counties have been included as counties with markets that have worked with the Delta Regional Farmers Market Alliance.

You can also contact the market by email at FarmersMarket@mdac.state.ms.us or by phone at either (601) 359-1159 or (601) 354-6573.

Farmers and vendors can sell whole, fresh fruits and vegetables without obtaining a permit. However, all prepared foods (for example, bread, jam, canned vegetables, pickles) must be produced in certified kitchens. The Mississippi Department of Health certifies kitchens that meet certain requirements, but home kitchens used for household food preparation cannot be certified. Also, “potentially hazardous foods” (which include meat, poultry, and dairy products) must be processed in certified facilities, and a permit is required for their sale.

Potentially Hazardous Foods

Meat, poultry, fish, shellfish, eggs (except eggs treated to eliminate Salmonella), cooked vegetables, dairy products, mushrooms, raw seed sprouts, cut melons, cut leafy greens, cut tomatoes, untreated garlic-in-oil mixtures, and baked goods that are subject to spoilage (such as custard or cream-filled pastries or other baked goods that must be refrigerated) are examples of potentially hazardous foods.¹³ According to federal and state regulations, “potentially hazardous food” means a food that requires time and temperature controls because it is capable of supporting the growth of infectious or toxic microorganisms.¹⁴

Farmers/vendors must receive a permit from the MS Department of Health before selling potentially hazardous foods. If farmers/vendors are unsure about whether their product is potentially hazardous, they should contact the local health department. They should also contact the local health department in order to apply for a permit to sell these foods.

Farmers/vendors who sell potentially hazardous foods should put their products inside a clean and sanitary container. The container should be properly labeled. See below under “Food Labeling” for more information about the labeling requirements.

Non-Potentially Hazardous Foods

Foods not mentioned above are generally considered non-potentially hazardous foods. These include jams, jellies, sweet sorghum syrup, preserves, fruit butter, fruit pies, air-cooled hard-boiled eggs, and baked goods that are not subject to spoilage, among other products.¹⁵ According to federal and state regulations, “non-potentially hazardous food” means a food that does not support the growth of infectious or toxic microorganisms.¹⁶ Farmers/vendors who sell “non-potentially hazardous foods” do not need a permit from the Health Department. However, non-potentially hazardous foods must be prepared in certified kitchens. Certification is conducted by the Mississippi Department of Health. For more information, visit <http://www.msdh.state.ms.us/msdh/site/static/30,0,77.html>.

Farmers/vendors selling non-potentially hazardous foods should use clean and sanitary containers to store the foods, and should follow the same labeling requirements listed under “Food Labeling.”

¹³ Whether a food is “potentially hazardous” or not depends primarily on its pH and water activity. The definition used by the FDA is found in the US FDA Food Code § 1-201.10 (B) Potentially Hazardous Food (2)(a) and can be viewed online at <http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/FoodCode2009/ucm189170.htm>. The FDA definition of “potentially hazardous food” is incorporated into Mississippi law at Miss. Code Ann. § 69-1-18 (1)(a) (2010).

¹⁴ The specific definition in the FDA Food Code can be found at <http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/FoodCode2009/ucm186464.htm>.

¹⁵ Examples taken from the Market Rules for the Mississippi Farmers Market, available at <http://www.sos.state.ms.us/busserv/AdminProcs//PDF/00014980b.pdf>.

¹⁶ US FDA Food Code § 1-201.10 (B) Potentially Hazardous Food (3).

II. Specific Food Regulations

This section includes *only* basic information about food regulations for *some* of the goods commonly sold at farmers markets in this region. For more information on specific food regulations, visit the FDA Food Code at <http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/FoodCode2009/default.htm> or the MS Department of Agriculture and Commerce at http://www.mdac.state.ms.us/n_library/agency_info/reg_laws/index_regl_subpart4_RS.html.

NOTE: This section is not comprehensive - there are other foods not mentioned here that are subject to regulation. Also, the regulations for the foods listed here are *not complete* and may be subject to change over time. Thus, farmers/vendors wishing to sell *any items* other than fresh, unmodified fruits/vegetables must research the pertinent regulations and should contact their local health department with any questions.

A. Food Labeling

All finished products must be placed in a clean and sanitary container with a label. Mississippi follows federal law on food labeling.¹⁷ The label should be conspicuous and should include the following:

- The name and address or place of business of the manufacturer, packer, or distributor.¹⁸
- The common/usual name of the food or a descriptive statement identifying the food, including the form in which the product is marketed (i.e. whole, sliced, diced, etc.) if the product is marketed in various forms.¹⁹
- The ingredients in descending order of predominance in weight, if the food is prepared from two or more ingredients.²⁰
- Any major food allergens included in the food.²¹
- An accurate declaration of the product's quality (do not make claims about the nutritional content of the food unless you follow federal regulations about nutritional content).²²
- The net weight, standard measure, or numerical count of the product/items.²³
- Ready-to-eat potentially hazardous food should include the date by which the food should be consumed.²⁴
- Raw fruits, vegetables, and fish can only be labeled as “fresh” if the food is in its raw state and has not been frozen or subjected to any form of thermal processing or preservation.²⁵

B. Food Temperature

According to the Mississippi State Department of Health, the major cause of food-borne illness is food kept at improper temperatures for cooking, cooling, holding, and reheating food. Most bacteria grow when food is kept in the “danger zone” between 41 degrees and 140 degrees.

The Department of Health advises food vendors to keep cold foods at 40 degrees Fahrenheit or less. Hot foods should be heated to their full temperature of at least 140 degrees Fahrenheit (though some foods may require higher temperatures) and kept at that temperature while serving. Any market offering cooked food should check the website of the Department of Health for details at <http://www.msdh.state.ms.us/msdhsite/static/43,345,77.html>.

¹⁷ 15 Mississippi Department of Health § III 75-04.103.

¹⁸ 21 C.F.R. § 101.5.

¹⁹ 21 C.F.R. § 101.3.

²⁰ 21 C.F.R. § 101.4.

²¹ US FDA Food Code § 3-602.11 (B). Major food allergens include milk, egg, fish (e.g., bass, flounder, or cod), crustacean shellfish (e.g., crab, lobster, or shrimp), tree nuts (e.g., almonds, pecans, or walnuts), wheat, peanuts, and soybeans or food ingredient that contains a protein derived from one of these. US FDA Food Code § 1-201.10 (B)(1)(a).

²² 21 C.F.R. § 101.9, 13.

²³ 21 C.F.R. § 101.105(a).

²⁴ US FDA Food Code § 3-501.17 (A).

²⁵ 21 C.F.R. § 101.95 (a).

C. Raw Vegetables and Fruits

Farmers/vendors do not need a permit in order to sell whole, raw fruits and vegetables, though all fruits and vegetables should be washed, dried, and kept away from contaminants.²⁶

D. Sliced or Chopped Fruit and Vegetables

The FDA treats sliced or altered fruits or vegetables (shelled peas, cut fruits, etc.) as “processed foods” which must be prepared under special guidelines for sanitation and safety.²⁷ Because some health inspectors may require that they be prepared in a certified kitchen, farmers/vendors selling cut or altered fruits or vegetables should consult their local health inspector.²⁸

E. Baked Goods/Jams/Jellies/Preserves

Farmers/vendors selling these foods must produce them in a certified kitchen approved by the Health Department.²⁹ A home kitchen generally cannot be an approved facility. For more information, call the Food Protection Office at 601-576-7689. We have proposed legislative and regulatory changes to allow the sale of home-produced non-potentially hazardous foods (including most jams, jellies, and preserves), but under current Mississippi law all prepared foods must be made in a certified kitchen.

In addition to the certified kitchen requirement, farmers/vendors must obtain a certification for the sale of such processed foods by completing, or having at least one full-time employee complete, a certified food safety management course. The “ServSafe” food safety course is recommended and recognized by the Mississippi State Department of Health. For more information, visit the Mississippi State University Extension calendar for ServSafe at <http://msucare.com/servsafe/index.html>. The course lasts two days and costs \$130.

The farmer/vendor should check with the local health department to determine whether their products are potentially hazardous. Farmers/vendors should also follow the “Food Labeling” requirements noted above.³⁰

NOTE: Non-potentially hazardous foods, which include most baked goods, jams, and jellies, may be prepared in home kitchens and sold to raise money for religious or charitable organizations. Thus, if home-prepared, non-potentially hazardous baked goods are donated to the farmers market, a non-profit market may be allowed to sell the goods to raise funds to support that market.³¹

²⁶ 21 C.F.R. § 110.19

²⁷ Although the definition of processed foods at 21 C.F.R. § 201(gg) focuses on jams, jellies, pickles and other highly altered foods, the FDA has taken the position, in a non-binding opinion, that simple cut fruits and vegetables qualify as “processed foods.” See the “Guide to Minimize Microbial Food Safety Hazards of Fresh-cut Fruits and Vegetables” at <http://www.fda.gov/food/guidancecomplianceregulatoryinformation/guidancedocuments/produceandplanproducts/ucm064458.htm>.

²⁸ Opinion of Richard Butler, Director of the Mississippi Farmers Market, Mississippi Department of Agriculture and Commerce on April 2, 2009.

²⁹ US FDA Food Code § 8-301.11 says “A person may not operate a Food Establishment without a valid permit to operate issued by the Regulatory Authority.”

³⁰ Opinion of Richard Butler, Director of the Mississippi Farmers Market, Mississippi Department of Agriculture and Commerce on April 2, 2009.

³¹ US FDA Food Code § 1-201.10 (B) Food Establishment (3)(d) says that the following is *not* considered a food establishment for purposes of regulations: “A kitchen in a private home if only food that is not Potentially Hazardous (time/temperature control for safety) food is prepared for sale or service at a function such as a religious or charitable organization’s bake sale if allowed by law and if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority.”

F. Eggs

All farmers/vendors selling eggs must follow three main requirements. (1) The egg producer must write his/her name and address on the egg container;³² (2) eggs must be refrigerated at a temperature of 45 degrees or lower;³³ and (3) the egg package should include this safe handling instruction on its label: “To prevent illness from bacteria: keep eggs refrigerated, cook eggs until yolks are firm, and cook foods containing eggs thoroughly.”³⁴

Farmers/vendors selling **fewer than six dozen eggs per week**, or selling eggs they **produced at home**, are exempt from all provisions governing the sale of eggs except the above three requirements.³⁵

All other farmers/vendors selling eggs must comply with the above provisions and additional requirements that depend on how many egg-laying hens the farmer/vendor owns. Operations with **less than 3,000 laying hens** must ensure that all eggs offered for sale meet the minimum grading requirements for AA, A, or B eggs.³⁶ Further, all containers in which eggs are marketed must state on the outside of the container: 1) the consumer grade of the eggs; 2) the size or weight class of the eggs; 3) the word “eggs”; 4) the number of eggs in the container; 5) the name and address of the producer, packer, or distributor; 6) the date the eggs were graded; and 7) the words “keep refrigerated” or other similar words.³⁷

Farmers/vendors selling eggs from an operation with **more than 3,000 laying hens** are subject to additional heightened production regulations. More information about recent changes to the requirements can be found on the FDA website at:

<http://www.fda.gov/Food/FoodSafety/Product-SpecificInformation/EggSafety/EggSafetyActionPlan/ucm170615>.

G. Meats

Any meat from cattle, sheep, goats, rabbits, or pigs sold at farmers markets must be slaughtered and processed at a facility that is licensed and inspected by the state or the federal government.³⁸ Meat that is processed at an inspected plant must be packaged in accordance with state regulations.³⁹

Poultry is not subject to the same kinds of regulations. Farmers who raise their own birds and produce **fewer than 20,000 birds** per year are exempt from inspection by either the state or the federal government. Any poultry products sold under this exemption must be labeled with the name and address of the farmer as well as the statement “Exempted--P.L. 90-492.”⁴⁰ Further, farmers who raise their own birds and produce **fewer than 1,000 birds** are not covered by federal regulations at all, and do not need to include the exemption label when selling their product.⁴¹

Because meat is a potentially hazardous food, it must be kept at 45 degrees Fahrenheit or below. If poultry, fish, or other meats are sold cooked then they must be cooked to 165 degrees.⁴²

³² Miss. Code Ann. § 69-7-321 (2010).

³³ 21 C.F.R. § 115.50 (b)(2), Miss. Code Ann. § 69-7-329 (2010).

³⁴ 21 C.F.R. § 101.17 (h).

³⁵ Miss. Code Ann. § 69-7-321 (2010).

³⁶ Miss. Code Ann. § 69-7-323 (2010).

³⁷ Miss. Code Ann. § 69-7-327 (2010).

³⁸ Miss. Code Ann. §§75-33-7, 75-33-3(1)(b) (2010).

³⁹ Miss. Code Ann. § 75-33-1 (2010).

⁴⁰ 9 C.F.R. §§ 381.10(a)(5) & (a)(6).

⁴¹ 9 C.F.R. §§ 381.10(c).

⁴² Mississippi State Department of Health, http://www.msdh.state.ms.us/msdhsite/_static/43,345,77.html.

Additionally, since meat and poultry are potentially hazardous foods, a permit from the Department of Health is required to sell them to the public, regardless of any of the variations in inspection requirements noted above.

H. Dairy

The production and sale of dairy products (milk, cheese, sour cream, etc.) is governed by the Pasteurized Milk Ordinance, which requires that any farmer/vendor producing or selling milk have a permit, acquired from the Department of Health.⁴³ In addition, all milk or milk products intended for human consumption must be pasteurized.⁴⁴

III. Organic Food Certification

Many farmers/vendors want to label their products as “organic” in order to attract customers. The organic label is regulated by federal and state laws. In general, in order for food to be labeled organic, it must be free of synthetic substances, must contain no antibiotics or hormones, must not be irradiated or fertilized with sewage sludge, must be raised without the use of most conventional pesticides, and must contain no genetically modified ingredients.

Products may only be labeled “organic” if the farmer is certified by the USDA, or if the farmer’s total organic sales are less than \$5,000.00 a year.⁴⁵ All organic farmers must register with the Mississippi Department of Agriculture and Commerce.⁴⁶ Therefore, small farmers may label their products “organic” as long as they are registered with the state, but big farmers must both register with the state *and* receive USDA certification.

A list of USDA accredited certifying agents can be found by visiting this site:

[http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateJ&navID=NationalOrganicProgram&leftNav=NationalOrganicProgram&page=NOPACAs&description=USDA Accredited Certifying Agents&acct=nopgeninfo](http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateJ&navID=NationalOrganicProgram&leftNav=NationalOrganicProgram&page=NOPACAs&description=USDA%20Accredited%20Certifying%20Agents&acct=nopgeninfo). The application fee for certification ranges from \$25 to \$75, depending on how much land is used for farming. Organic farmers must also pay a \$25 or \$50 renewal fee each year.⁴⁷

For more information on how to register and/or certify as an organic farmer, you can contact Kevin Riggan, Mississippi Department of Agriculture and Commerce, by calling 601-359-1138 or emailing kevin@mdac.state.ms.us.⁴⁸ Although there are private certifiers, MDAC is the most cost effective way to obtain organic certification. Mississippi State University has also created a handout describing the organic certification process in Mississippi, available at <http://msucares.com/pubs/publications/p2454.pdf>.

⁴³ See Miss. Code Ann. § 75-31-65 (1)(c) (2010), setting the model Pasteurized Milk Ordinance as the regulatory structure to be enforced by the State Board of Health.

⁴⁴ The full text of the Pasteurized Milk Ordinance, which governs dairy production and sale, can be found at <http://www.fda.gov/downloads/Food/FoodSafety/Product-SpecificInformation/MilkSafety/NationalConferenceonInterstateMilkShipmentsNCIMSMModelDocuments/UCM209782.pdf>. Permitting is discussed in Section 3 of that document.

⁴⁵ The National Organic Program (NOP) includes as an exemption from the organic certification process: “A production or handling operation that has \$5,000 or less in gross annual income from organic sales is exempt from certification... [However, a]n exempt producer or handler must comply with the labeling requirements of section 205.310 and the organic production and handling requirements applicable to its type of operation.” 7 CFR § 205.101(a)(1).

⁴⁶ Miss. Code Ann. § 69-47-5(1) (2010).

⁴⁷ Organic farmers may be able to get some portion of the costs of certification reimbursed through the Organic Cost Share Program. More information can be found at: [http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateQ&navID=Certifiers&rightNav1=Certifiers&topNav=&leftNav=NationalOrganicProgram&page=NOPCostSharing&description=Organic Cost Share Program&acct=nopgeninfo](http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateQ&navID=Certifiers&rightNav1=Certifiers&topNav=&leftNav=NationalOrganicProgram&page=NOPCostSharing&description=Organic%20Cost%20Share%20Program&acct=nopgeninfo).

⁴⁸ More information about organic farming can be found online at: http://www.mdac.state.ms.us/n_library/departments/reg_services/rgs_fruitveg_organic.html.

Sales Tax

Most produce sold at farmers markets is not subject to sales tax. For the products that are subject to sales tax, the farmers/vendors should be responsible for collecting and remitting the sales tax. The market managers should make this responsibility clear in their market rules. This section gives some basic information about the sales tax required in Mississippi and how sales tax can be remitted to the Mississippi State Tax Commission.

Q: What is taxed?

A: Under recently passed Mississippi law, all food products that are grown, made or processed in Mississippi and sold from certified farmers markets are not subject to state sales tax.⁴⁹ Only farmers markets certified by the Mississippi Department of Agriculture and Commerce qualify for this exemption. However, only raw produce and home processed food products are covered under the law, and food vendors that are an extension of an established retail food outlet (restaurants being the most common example) are not exempt from collecting a sales tax on goods sold. Additionally, food products not grown or made in Mississippi and non-food items, such as landscape plants and arts and crafts, are not covered by the exemption and are subject to sales tax.

This is a recent and significant change in the law that provides a significant financial advantage to selling food products at a certified farmers market. See the section on Market Certification below for more information on the approval process and its economic benefits.

Food products sold at uncertified farmers' markets may still be exempt from sales tax under Mississippi law if the products are (1) sold by their original producer, (2) in their original state, and (3) not sold in an "established store" (a permanent building owned or leased for at least 90 days by the vendor).⁵⁰ This exemption applies to all producers of livestock, poultry, fish, or farm, grove, or garden grown produce. Because many markets are outdoor and temporary (and are not operating in a permanent building that they own or lease for 90 days), most markets should fall within the exemption.

Note: However, some authorities, notably local tax commissioners, have recently argued that a farmers market is an "established store" because of its use of tents to sell products and its weekly schedule and that therefore the exemption does not apply. Although we believe that most agricultural products sold in their original state by their original producers fall within the exemption, Mississippi law is unclear, allowing local tax commissioners to demand sales tax revenue even when vendors are selling their own produce. Certified farmers markets do not face this uncertainty due to the recent revision of the law noted above. For this reason, we encourage markets to seek certification.

The following guidelines generally apply to products sold at markets in Mississippi:

1. Any food products, whether raw, cooked, or processed that are sold at a **certified** farmers market are not subject to sales tax as long as they are not an extension of a food retail establishment.
2. At an **uncertified** market, raw fruits, vegetables, eggs, milk, poultry, fish, and meat sold by the farmers who produced them, are not subject to sales tax. Also, shelled peas and sliced fruit are not subject to sales tax. These raw products are exempt from sales tax because they are "sold in the

⁴⁹ Miss. Code Ann. § 27-65-103(f) (2010).

⁵⁰ Miss. Code Ann. §§ 27-65-103(b), 27-17-365(3) (2010).

original state or condition of preparation for sale before such products are subjected to any other process.”⁵¹

Note: This tax exemption applies to the farmers or producers of the products; there is no exemption for items bought from the farmers and resold at a farmers market by another person.

3. At an **uncertified** market, jams, jellies, pestos, baked goods, breads, pasteurized milk, etc. are subject to sales tax (7%). Cooking, mixing, and processing food means the food is not in its “original state” and thus removes its tax exemption.
4. All food sales purchased with food stamps are exempt from sales tax, regardless of the food product or where it is sold.⁵²
5. Ornamental plants (i.e., flowers), which bear no fruit or commercial value, are subject to a sales tax (7%) when sold either at a certified or uncertified market.⁵³
6. Non-food items such as crafts, paintings, and antiques, are subject to sales tax (7%) when sold at either a certified or uncertified market.

Q: How much is the sales tax?

A: Sales tax in Mississippi is 7%.⁵⁴

Q: Who is responsible for collecting the sales tax?

A: Mississippi law requires whoever is selling a particular item to the public to collect the sales tax and remit it to the state.⁵⁵ However, there is an exception to this rule. In the case of a promoted event, the Mississippi Tax Commission considers the manager or promoter to be the “seller;” therefore, the manager or promoter is responsible for collecting and remitting the sales tax.⁵⁶ It is unclear whether a farmers market constitutes a promoted event. This ambiguity has allowed some district tax commissioners to characterize uncertified farmers markets as promoted events and to demand sales tax from market managers, many of whom are unpaid volunteers with little control over or knowledge of how much vendors are making. The common understanding of the law, however, is that farmers market vendors and not managers are responsible for collecting and remitting sales tax.

As a result, we recommend that uncertified farmers markets should require all farmers/vendors to collect and pay their own sales tax. Example language that markets may use in their Vendor Agreement or Market Rules is: “Farmers/vendors are responsible for collecting and remitting a 7% sales tax on all products, except raw fruits, vegetables, eggs, milk and meat which you grew and produced yourself.”

Note that the issue of collecting the sales tax only applies to uncertified farmers markets. As noted above, most food products grown, made, or processed in Mississippi sold at certified farmers markets are exempt from the sales tax.

Q: How do you remit sales tax?

A: To pay sales taxes, farmers/vendors should follow the following steps:

⁵¹ Miss. Code Ann. § 27-65-103(b) (2010).

⁵² Miss. Code Ann. § 27-65-111(o) (2010).

⁵³ Miss. Code Ann. § 27-65-103(b) (2010).

⁵⁴ Miss. Code Ann. § 27-65-23 (2010).

⁵⁵ Miss. Code Ann. § 27-65-27(1) (2010).

⁵⁶ 35-413-05 Miss. Code R. § 203.

1. Register with the Mississippi State Tax Commission (“MSTC”). The proper forms are available online at: <http://www.dor.ms.gov/regist.html> and <http://www.dor.ms.gov/taxareas/sales/main.html>.
2. After registering, farmers/vendors can file and pay sales tax by mail or online at: <http://www.dor.ms.gov/taxareas/sales/Salesinetfiling.html>. If farmers/vendors need assistance, they should contact an accountant.
3. For more information about sales tax, please see "Sales Tax FAQ" from the MSTC at: <http://www.dor.ms.gov/info/faqs/SalesFAQ.pdf>.

Market Certification

The Mississippi Department of Agriculture and Commerce (“MDAC”) offers **free** certification to qualified farmers markets. The program is entirely voluntary but can be very beneficial to participating markets. Certified markets are listed on the MDAC website, receive up to \$300 of promotional assistance with advertising specific to the market (including items such as logo stickers, pricing tags, and signage), and the opportunity to participate in educational workshops and potentially apply for mini-grants. In addition, the single greatest benefit to MDAC certification is the recently enacted **sales tax exemption**. As noted above, all food products grown, made, or home processed in Mississippi and sold at certified farmers markets are exempt from sales tax. Given the somewhat uncertain status of other sales tax exemptions, there is a strong incentive for farmers/vendors to sell at certified markets where their goods are certain to be exempt from sales tax collection. Only markets that have MDAC certification can offer this exemption to farmers/vendors, thereby giving certified markets a competitive advantage in attracting the best vendors.

Farmers markets must meet the following requirements in order to eligible for certification:

1. At least 50% of the agricultural products offered for sale at the market must be produced by the grower or under the grower’s direction within Mississippi.
2. A grower or grower representative must be present during market hours when his/her products are offered for purchase.
3. The market must be operated by a grower’s association; a certified, non-profit organization; or a government entity (state, county, municipal, tribal, etc.)

Markets that allow the sale of non-food products (arts, crafts, or plants) are still eligible for certification. However, those goods will not be exempt from sales tax collection.

Markets interested in gaining certification must apply with the MDAC and undergo a state inspection. MDAC certification must be renewed annually in order to keep the sales tax exemption. For more information you can contact Donna West at (601) 359-1118.

Insurance

Q: What types of insurance are relevant to farmers markets?

A: **Commercial general liability insurance** provides the market manager with protection against most types of liability incurred on the premises of the market. Such insurance typically covers **bodily injury and property damage liability** (physical injuries to farmers markets’ employees, farmers/vendors, and customers; damage to equipment, etc.), **personal and advertising injury liability** (other injuries caused by

farmers markets, e.g. wrongful invasions of private properties, copyright infringements in the use of advertisements, etc.), **and medical payments to injured persons.**

Some commercial general liability insurance policies offer an optional, but important feature – coverage for **products/completed operations liability.** This insurance provides protection for liability associated with the products sold at the market. For example, this would cover liability from injuries associated with eating food items sold at the market.

In certain states (e.g., New York), farmers markets require individual farmers/vendors to purchase **vendor insurance** as a condition to participate in the market. These vendor insurance policies typically name the market as an additional insured. For example, if Mr. Smith sells produce at his local farmers market, he must obtain standard vendor insurance that has been pre-cleared by the market and name the market on the insurance policy. The market’s commercial liability insurance will then provide additional protection above and beyond that provided by vendor insurance.

Q: What types of insurance do markets in the Mississippi Delta have? How much do they pay?

A: Farmers markets in the Delta have different types of insurance coverage and may pay very different yearly premiums for their coverage. The table below presents two sample insurance policies purchased by farmers markets in the Mississippi Delta.

	Market A	Market B
Aggregate Limits of Liability	\$2 million	\$2 million
Products/Completed Operations Liability	Excluded	Included
Bodily Injury and Property Damage Liability	\$1 million each occurrence	\$1 million each occurrence
Damages to Rented Property	\$100,000 each occurrence	\$25,000 fire damage only
Personal and Advertising Injury Liability	\$1 million each occurrence	\$1 million each occurrence
Medical Payments	\$5,000 any one person	\$5,000 any one person
Gross Sales Exposure	\$40,000	\$1,500
Annual Premium	\$2,000	\$143 ⁵⁷
Effective Rate	\$50 per \$1,000	\$93.33 per \$1,000

Q: Should all farmers markets have insurance protection? How much insurance should they have?

A: Yes, if they can afford it.

Before deciding on the right amount of insurance to purchase, the farmers market should assess its risk exposure. For example, a farmers market that features live music and entertainment may draw a much larger crowd onto its premises than other markets and may be exposed to much bigger premises liabilities compared to one without live music and entertainment. Likewise, a market that has been receiving significant funding in the form of donations or grants may have more financial assets at risk compared with one that has less financial resources at its disposal. As a result, it might have more to lose in a lawsuit and might need insurance more than other markets.

⁵⁷ Minimum premium required for this policy. Premium calculated based on estimates of gross sales is lower.

The question of entity structure may also be relevant. On the one hand, if a farmers market is unincorporated and operates as an informal arrangement without any insurance, potential tort claimants are more likely to sue individual farmers/vendors if they have a sizeable amount of assets, rather than suing the market itself. By having insurance, a farmers market is more likely to shield individual farmers/vendors from lawsuits. On the other hand, if a farmers market operates under the auspices of another non-profit organization, liabilities of the market could become liabilities of the parent organization. Likewise, if a market is already incorporated as a 501(c)(3) non-profit corporation, the entity itself will need insurance protection against potential liabilities.

Q: Should farmers markets have product liability insurance?

A: In most instances, if the farmers/vendors are responsible for the safety of their own products as stipulated in the market rules and the farmers market simply provides a venue for transactions, then the risk exposure of the farmers market or market manager is minimal. Note that if a farmers market's commercial liability insurance also includes product liability insurance, then each farmer/vendor must be a member of the market in order for the product liability insurance to extend to him. This typically requires the market to maintain an up-to-date directory of participating farmers/vendors.

Q: Should farmers markets in the Mississippi Delta require individual farmers/vendors to have vendor insurance in order to participate in the market?

A: While the two-tiered protection (vendor insurance and market insurance) found in other states eliminates most risks associated with the operation of a farmers market, it may be unrealistic to have the same requirement in the Mississippi Delta. Currently, the priority for the farmers markets in the region is to encourage more farmer participation and to increase the general public's awareness of the markets. Requiring insurance will decrease farmer/vendor participation in the market. Markets should clearly indicate in the market rules that farmers/vendors are responsible for their own liabilities and that farmers/vendors should decide for themselves whether they need insurance protection.

Once the farmers markets have matured into sizable operations where farmers/vendors could generate substantial and consistent profits, they should consider requiring vendor insurance.

Q: Should farmers markets in the Mississippi Delta team up to purchase group insurance?

A: Group insurance policies could save money for the smaller markets in the region. However, for the larger markets in the region, the savings are unlikely to be substantial. Before obtaining group coverage, markets should consult an attorney about joint venture or partnership liability that may be incurred as a result.

Q: What steps should market managers take with regard to insurance?

A: There are a few action steps you can take to determine your need for insurance to make sure you get the right insurance for your market:

1. Risk Assessment: Market managers should first assess their risk exposures based on the factors outlined above.
2. Estimate of Gross Sales: Gross sales of a market determine its policy premium. Market managers should try to form reasonably accurate estimates of gross sales at their markets.
3. Understand the Insurance Policy: Insurance policies are some of the most complex contracts in existence. Ask your insurance agents any questions you have and ask them to go through the policies with you in detail. Many courts hold insurance agents' representations to clients as controlling interpretations of the insurance policies.
4. Shop for the Best Insurance Policy: Policies and premiums can vary substantially from one insurance company to another. It is always advisable to contact multiple insurance agents and compare the best

deals that they have to offer. Below, we list the contact information of a number of insurance agents who have provided insurance policies to farmers markets in the region.

Ed Deane
Washington County Farm Bureau – Leland Office
Tel: (662) 686-7955

Jacob Clark
Clark Insurance – Greenwood Office
Tel: (662) 453-1111

Billie Whit Purvis
SouthGroup – Greenville Office
Tel: (662) 378-5200

Accepting Food Stamps and WIC Vouchers

Farmers/vendors at farmers markets have the ability to accept food stamps provided by the Supplemental Nutrition Assistance Program (“SNAP”) and vouchers provided by the Women, Infants, and Children Farmers Market Nutrition Program (“WIC FMNP”). Both are operated through the United States Department of Agriculture’s Food and Nutrition Service (“USDA FNS”). Participating in these programs expands the market for local farmers, helps provide healthy products for individuals and families that might not be able to afford them otherwise, and encourages deeper community involvement and interaction. The authorization process for farmers markets differs by program: the food stamp application is to be completed by the market manager, while farmers/vendors must apply individually in order to be eligible to accept WIC vouchers. Both processes are **absolutely free of charge** and are described in further detail below. An in-depth practical guide for accepting food stamps and WIC vouchers can be found starting on pg. 36 of the report “Food Assistance Programs and Mississippi Farmers Markets,” which can be downloaded at: <http://deltadirections.org/files/download.php?file=18855455584d2cc24bcc502.pdf>. The guide offers extensive instructions that go into even greater detail than those listed below.

I. Food Stamps and EBT Machines

The Supplemental Nutrition Assistance Program (“SNAP” is the new name for the food stamp program) allows low-income individuals and families to access nutritious food. Food stamps were originally submitted in paper form, but the United States Department of Agriculture (“USDA”) recently switched from paper coupons to Electronic Benefit Transfer (“EBT”) cards, which are used by swiping them through an EBT machine.

All SNAP benefits now exist entirely on EBT cards and thus, any vendor wishing to accept SNAP must rely on a special EBT card reader, referred to as a Point of Sale (“POS”) device, to process EBT transactions. To become eligible to accept SNAP payments, vendors such as farmers or farmers markets must first be approved by the Food and Nutrition Service division of the USDA (“FNS”). Once FNS approves a vendor to accept SNAP payments, a vendor (whether a supermarket, farmers market, or other food retailer) can receive a *free* POS device. Traditionally, only wired machines, which require a permanent location with access to electricity and communications wiring (e.g. a telephone line), were available for free. However, because most farmers markets exist in outdoor locations without electricity, they can only process SNAP sales by using a wireless POS device. Although such devices are commercially available, they typically cost between \$800 and \$1,000 per device and likely require a monthly processing fee of approximately \$45 and a transactional fee of 10 to 15 cents per swipe.

In spring 2011, Mississippi Department of Human Services (“MDHS”) and MDAC announced a new program to provide free *wireless* EBT machines to individual farmers and farmers markets in Mississippi. Vendors must still apply through FNS in order to be authorized to accept SNAP benefits, but once approved, the wireless EBT machines will be provided at no cost and without any minimum sales requirement. However, vendors should be aware that unlike some purchased models, free EBT machines, both wired and wireless, only accept SNAP benefits and cannot accept credit or debit card purchases.

Here are the steps the market manager should take to become authorized to accept SNAP and obtain a free EBT machine:

1. For those wishing to apply online, set up a USDA eAuthentication account by following the “Register” link at <http://www.fns.usda.gov/snap/retailers/register.htm>.
2. Complete the Retailer Application online by clicking the “Fill Out Online Application” link at <https://www.fns.usda.gov/SNAP/retailers/application-process.htm> or call toll-free at (877) 823-4369 to obtain a paper application.⁵⁸ **Note:** FNS may take up to 45 days to process an application once it is complete.
3. Send all required documentation to your servicing FNS office, which is provided during the online application process or for paper applicants, will be given when you receive your application package.
4. For help, call the Mississippi FNS field office at (919)-790-2927 or the Mississippi EBT customer service line at 866-598-1772. For additional questions about the free wireless EBT machines, market managers or farmers can also contact Purvie Green at MDAC by phone at (601) 359-1168 or via email at purvie@mdac.state.ms.us.

Once a farmers market qualifies with FNS, it will receive a free EBT machine of its choosing from the MDHS. Although individual farmers may apply for EBT machines, farmers markets may also want to get a machine for use by all the vendors selling at the market. This will help to ensure that smaller and part-time vendors will have access to the machine for their sales. Markets with only one centralized EBT machine may want to consider implementing what is generally known as a “token system.” In a token system, the market creates market-specific tokens that correspond to different dollar amounts. Customers seeking to use SNAP benefits receive tokens from the centralized EBT machine when they swipe their SNAP card and then use those tokens to purchase food from individual vendors. At the end of the day, vendors can then redeem those tokens with the farmers market for money. While market managers will need to pay extra care to avoid the potential for fraud, MDAC and MDHS have no objections to markets using free EBT machines with a token system.

Alternatively, if the farmer or farmers market does not have either a wired or wireless EBT machine, the farmer can use manual vouchers. This process requires a mobile phone to check if funds are available in the customer’s EBT account and to place a hold on the purchase amount by calling toll-free at (800) 221-5689. The customer will then give the farmer a paper voucher in the amount of the transaction that the farmer can then mail to FNS in order to receive money in his account. In the alternative, a farmer can keep the free POS device at home and clear all paper vouchers through the device at the end of the day.⁵⁹

Note: It is **not** necessary for the farmers market to incorporate in order to participate in the SNAP program. The market manager may register the POS device with his/her personal bank account and

⁵⁸ Paper applications should be mailed to: Retail Administration Center Food and Nutrition Service, USDA Cedar West Building, Suite 102 3109 Poplarwood Court Raleigh, NC 27604.

⁵⁹ Additional information can also be found in the FNS’ SNAP EBT Farmers Market Handbook, available at: <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5085298&acct=wdmgeninfo>.

disperse the funds to the individual farmers/vendors after they are deposited into his/her account by the state.

II. WIC Farmers Market Nutrition Program Vouchers

The Farmers Market Nutrition Program (“FMNP”) was created in 1992 and allows low-income pregnant and post-partum women, as well as women with infants and children, to use WIC vouchers to purchase fresh fruits and vegetables from farmers/vendors at authorized farmers markets. In Mississippi, the program provides recipients with \$15 in vouchers per season. In the summer months of June and July, FMNP vouchers are issued to WIC recipients at local WIC sites. These coupons can be used until the end of October to buy foods from farmers/vendors at eligible farmers markets or roadside stands that have been approved by the state agency. The farmers then submit the coupons to the bank or state agency for reimbursement.

Farmers markets are selected and trained for the WIC FMNP based on criteria developed by the Mississippi Department of Agriculture and Commerce (“MDAC”) and the Mississippi State Department of Health (“MSDH”). The MDAC has already authorized the program to operate in Bolivar, Hinds, Holmes, Lauderdale, Noxubee, Sunflower, and Warren Counties. Farmers/vendors outside of these counties should contact Purvie Green, Mississippi FMNP Coordinator, by phone at (601) 359-1168 or by email (purvie@mdac.state.ms.us) for more information about bringing the FMNP to their area. MDAC can only finance a limited number of markets each year, so markets with low redemption rates may lose authorization in future years as new markets are approved.

In order to participate, each farmer/vendor at a WIC FMNP-authorized market must be approved by the MDAC to accept the FMNP vouchers in a simple, two-step process:

1. Attend an FMNP training session. Contact Purvie Green, the Program Coordinator, at (601) 359-1168 for information on upcoming training sessions.
2. Complete and submit the FMNP Farmer Application and Agreement, which includes submitting a crop plan. The crop plan should identify which fruits and vegetables the farmer intends to produce and in what quantities. The forms for these documents can be found online at: http://www.mdac.state.ms.us/n_library/programs/mfmnp/pdfs/wic_farmerapp.pdf.

Once the two steps are completed, the farmer/vendor will be authorized to accept vouchers from WIC participants at the farmers market. The vouchers (each worth \$3) can be exchanged during the period of time set by the county (usually from June or July until October). The farmer/vendor then mails the vouchers to MDAC and receives a check for 100% reimbursement. A staff member of MDAC will visit the farmer/vendor once a year to ensure compliance with the program regulations.

In addition to WIC FMNP, the Seniors Farmers Market Nutrition Program (“SFMNP”), also administered by FNS, provides low-income seniors with vouchers to purchase fresh fruits and vegetables at farmers markets and roadside stands. Mississippi has participated in the SFMNP program since 2004. Seniors over the age of 60 who are receiving services from local Agency on Aging organizations are eligible for vouchers. Each growing season, participants receive \$28 in vouchers (7 checks valued at \$4 each), which are distributed in June and July at local feeding sites and through home-delivered meals. Recipients can then redeem the checks for fresh fruits and vegetables from participating farmers. The program currently affects up to 4,000 seniors and operates in Adams, Carroll, Desoto, Forrest, Harrison, Hinds, Holmes, Lawrence, Leflore, Lowndes, Marion, Oktibbeha and Walthall Counties and other areas throughout south Mississippi.

Funding Sources

There are many funding sources available for farmers markets, though some applications are more difficult to complete than others. We have attempted to provide a sampling of the funding sources that other markets have been successful in obtaining or sources that have a lot of money available (and hence may be worth the extra effort).

Some of these grants are provided by government entities (state and federal), some are provided by corporations, and others by private foundations. Each market should consider the sources below and look at the additional resources at the end of this section. Grant funding can be a wonderful resource to help advertise markets, pay for supplies, pay salaries for market managers, or involve local schools in the market.

The most important funding source is the USDA's Farmers Market Promotion Program ("FMPP"), which provides grants for general market operations, expansion of the market, and advertising. If a market has not already tapped the FMPP, it should do so before continuing down the list of other funding sources.

The following are funding sources that markets should consider applying for:

I. Government Funding Opportunities

USDA Farmers Market Promotion Program

The Farmers Market Promotion Program ("FMPP") is an excellent opportunity to get significant funding from the USDA. The deadline to apply is generally in mid to late **April**. If you plan to apply in the future, check the program's website (<http://www.ams.usda.gov/AMSV1.0/FMPP>) for specific deadlines.

What they fund: Through the FMPP, the USDA funds projects targeted to help improve and expand domestic farmers markets, roadside stands, community-supported agriculture programs, agri-tourism, and other direct producer-to-consumer market opportunities. The grant can be used for, but is not limited to:

- Business planning, market growth management, and recordkeeping
- Food safety and handling
- Outreach to under-represented ethnic groups
- Alternative purchasing methods, such as WIC, food stamps and debit/credit technologies (NOTE: This might be a good source of funding to get a device that will accept food stamps EBT cards, credit, and debit all-in-one)
- Associational and other organizational development

Size of grants: Up to \$100,000.

Who is eligible: Agricultural cooperatives, producer networks, producer associations, local governments, nonprofit corporations, public benefit corporations, economic development corporations, regional farmers market authorities, and Tribal governments.

Additional Information: A detailed "how to" guide for applying for a FMPP grant can be found at the USDA's website at:

<http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5082923>. The program's website (<http://www.ams.usda.gov/AMSV1.0/FMPP>) also contains additional resources, including an application checklist and specific program guidelines. You can also contact Carmen Humphrey,

USDA Branch Chief, at 202-694-4000 or by email at Carmen.Humphrey@usda.gov. The following are examples of the kinds of organizations that have recently received FMPP funding:

- **Mississippi (2009):** \$85,800 to Hancock County, Bay St. Louis, MS, to provide infrastructure, education, and other training workshops for local farmers and vendors to sell and promote their products at the new Hancock County Farmers Market.
- **Mississippi (2009):** \$31,075 to Delta State University, Cleveland, MS, to support infrastructure improvements and implement a promotional campaign for the Cleveland Farmers Market to provide local farmers with direct access to consumers, increase consumer access to locally grown produce, and enhance and expand the market.
- **Arkansas (2010):** \$48,102 to the University of Arkansas, Fayetteville, AR to increase the participation of SNAP, WIC, and Senior FMNP recipients at farmers markets by promoting the benefits of eating locally grown fresh produce and expanding new EBT technology at Northwest Arkansas Farmers Market Alliance member markets.
- **Georgia (2010):** \$37,547 to the Upper Ocmulgee River RC&D Council, Inc., Lawrenceville, GA, to 1) promote the nutritional benefits of locally grown foods among low-income citizens, 2) purchase EBT machines and provide training to 8 new local farmers markets, and 3) support the continuing operations of 16 existing EBT markets.
- **Louisiana (2010):** \$39,417 to the Historic Lower 9th Ward Council for Arts and Sustainability, New Orleans, LA, to 1) purchase equipment, signage, and supplies, 2) develop an advertising and promotional campaign, and 3) establish a new EBT program at the new Sankofa/Lower 9th Ward Farmers Market to sell fresh local produce and seafood.
- **North Carolina (2010):** \$45,746 to Foothills Farmers' Market, Shelby, NC, to 1) create a brand for the Market, 2) purchase print, radio, and billboard advertising and expand web/social media efforts, and 3) engage community stakeholders in the development of a strategic plan that guides the growth and continued development of a sustainable local food system.

Sustainable Community Innovation Grant

What they fund: This grant program is administered by Southern Region Sustainable Agriculture Research and Education ("SARE") program, under the UDSA. The goal of the Sustainable Community Innovation ("SCI") grants is to connect farm and non-farm communities through the use of sustainable agriculture. The grant has been awarded to expand farmers markets, to develop community gardens, and to promote Community Supported Agriculture ("CSA") shares. Most often, the grants are provided to support a new project but have in some cases been awarded to expand existing markets. The deadline is generally October 1st, but check <http://www.southernsare.uga.edu/callpage.htm> for the most current information.

Size of grants: Up to \$10,000.

Who is eligible: Anyone.

Additional information: The key to applying for this grant is bringing together farmers and non-farmers in a town or county. Past applicants have done so through educational outreach and through economic development, such as moving the market to a downtown area to draw people to the market and to local businesses. One market used the money to fund a community garden where participants were able to sell their harvest at the local market. Proposals are also more likely to succeed when there are multiple partners. This could include a local university such as Delta State University, the local Chamber of Commerce, the local Main Street Association, a regional development organization, other non-profit organizations, or local schools. This grant is a great opportunity to grow a market and may be used in part for advertising and promotion. The website

for the grant is http://www.southernsare.uga.edu/scig_page.htm. The contact for the grants is Paige Patton, who can be reached at (770) 412-4787 or by email at sare@griffin.uga.edu. If you choose to apply for this grant, you should look at the Call for Proposals (<http://www.southernsare.uga.edu/callpage.htm>) and make sure to submit by the deadline. Generally the call goes out during the summer and in recent years, proposals have been due October 1st. It would also be helpful to look at descriptions of past grant application winners, which are accessible at: <http://www.southernsare.uga.edu/winners.htm>.

Local Government Funding

Municipality: Another great way to get more funding for your farmers market is via funding from your municipality. The governing authorities of your municipality may have the authority to match funds you receive from other sources.⁶⁰ Currently, Mississippi law permits municipal governments to donate matching funds to “social and community service programs[.]”⁶¹ Although the state’s definition of “social and community service programs” does not include farmers markets, the list is non-exhaustive and farmers markets may be eligible for municipal funding. To obtain matching municipal funding, you would first need a separate independent source of funding.

County: Most counties in Mississippi do not have explicit authority to fund farmers markets;⁶² however, funding may still be available on a case-by-case basis.

Other Government Grants

The USDA funded Community Food Project provides one-time grants from \$10,000 up to \$300,000 for large scale projects that attempt to make low-income communities more self reliant at maintaining their food systems. Programs are funded from 1 to 3 years and must have resources that match the federal grant dollar-for-dollar. Individual markets are not likely to qualify – instead, regional efforts are best positioned to take advantage of this funding. For more information, visit: http://www.csrees.usda.gov/nea/food/in_focus/hunger.

The Value Added Producer Grants Program is a competitive grants program run by the Rural Business Cooperative Service at the USDA. The grants are targeted at farmers to help them expand their businesses. Although markets don’t profit directly from this grant, they may wish to inform their farmers/vendors of the opportunity. For more information, visit: <http://www.rurdev.usda.gov/rbs/coops/vadg.htm>.

The Federal-State Marketing Improvement Program (“FSMIP”) provides matching USDA fund to state Departments of Agriculture, state agricultural experiment stations, and other appropriate state agencies to assist in exploring new market opportunities for U.S. food and agricultural products, and to encourage research and innovation aimed at improving the efficiency and performance of the marketing system. Markets that are able to get state funding should also consider pursuing FSMIP funds. More information, including guidelines for applying, can be found at: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateC&navID=WholesaleandFarmersMarkets&leftNav=WholesaleandFarmersMarkets&page=FSMIP&description=FederalStateMarketingImprovementProgram&acct=gpfsmip>.

⁶⁰ Miss. Code Ann. § 21-19-65 (2010).

⁶¹ *Id.*

⁶² Miss. Code Ann. § 19-5-73 (2010) authorizes a narrow class of counties to contribute funds to farmers markets and other establishments intended to aid farmers’ “disposal and sale” of produce.

The Business and Industry Guaranteed Loan Program aims to improve, develop, or finance business, industry, and employment, and improve the economic and environmental climate in rural communities by helping new and existing business get access to loans. Under the program, the USDA guarantees loans to business from private banks, essentially co-signing the loan and guaranteeing to pay a portion of any loss that might come from the business not repaying its loan. Organizations receiving this benefit can be either for-profit or non-profit, but must be in rural areas (any area except a city or town, or surrounding area, that has a population exceeding 50,000). The program has funds specifically designated for initiatives that establish and facilitate the processing, distribution, aggregation, storing, and marketing of locally or regionally produced food products. More information can be found at the following websites:

http://www.rurdev.usda.gov/rbs/busp/b&i_gar.htm

http://www.usda.gov/wps/portal/usda/knownyourfarmer?contentid=kyf_grants_rd3_content.html&navtype=KYF&deploymentaction=changenav

The Rural Cooperative Development Program awards USDA-funded grants for establishing and operating centers for cooperative development with the primary purpose of improving the economic condition of rural areas through the development of new cooperatives and improving operations of existing cooperatives. Only non-profit entities may apply, but grants are available for up to \$200,000. This opportunity is best geared towards larger initiatives that may also include a farmers market. More information is available at: <http://www.rurdev.usda.gov/rbs/coops/rcdg/rcdg.htm>.

The Specialty Crop Block Grant Program awards USDA-funded grants to states to enhance the competitiveness of specialty crop industries. Specialty crops are defined as “fruits, vegetables, tree nuts, dried fruits, horticulture, and nursery crops (including floriculture).” Although funding will not be awarded to projects that solely benefit a particular commercial product or provide a profit to a single organization, institution, or individual, this can be a consistent source of funding for projects that fit within the program’s parameters. Applications are usually due at the beginning of May, but the exact date varies by year. For information about the program itself, including guidelines, you can visit the USDA’s website at:

<http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&navID=SpecialtyCropBlockGrant0Program&rightNav1=SpecialtyCropBlockGrant0Program&topNav=&leftNav=CommodityAreas&page=SCBGP&resultType>. For information about how to apply for the MDAC-administered grants, you can contact Paige Manning by phone at (601) 359-1163 or via email at paige@mdac.state.ms.us. You can also find information online at <http://www.mdac.state.ms.us>.

II. Private Funding Opportunities

There are many private organizations and foundations that could potentially provide funding to farmers markets. Below are descriptions of grants that are offered by a few of these foundations:

Farm Aid

What they fund: Farm Aid provides grants to farm and rural service organizations for a variety of purposes. One of these purposes is supporting “innovative programs” that build local food systems.

Size of grants: Up to \$20,000, though most are from \$3,000-\$7,500.

Who is eligible: Only 501(c)(3) non-profits, though others can apply through an existing non-profit.

Additional information: Farm Aid focuses on promoting “family farms” and will fund organizations that can show how their work improves the position of family farms. In particular, Farm Aid is a great source of funding for public education, legislative advocacy and advertising about farmers markets and their role in supporting family farms. Make sure that if you approach Farm Aid, you

indicate that you are applying for the program “Growing the Good Food Movement.” It is one of four grant areas and the one most directly related to farmers markets. Grant guidelines are online at: http://www.farmaid.org/site/c.qII5IhNVJsE/b.2723745/k.9953/Grant_Guidelines.htm. The website also has a sample grant proposal that may be useful. You can also contact Hilde Steffey, Program Associate, by phone at 1-800-FARM-AID or by email at grants@farmaid.org. Examples of recent grants awarded and a general program description can be found at: http://www.farmaid.org/site/c.qII5IhNVJsE/b.2723621/k.9C20/Grant_Program.htm.

W.K. Kellogg Foundation

What they fund: The Kellogg Foundation focuses on improving the lives of children in poverty. It does so through various means, including supporting local food systems and rural development. While Mississippi is a target state for their funding, because the Kellogg Foundation receives many applications from well-established non-profits with large grant-writing staffs, applying to the Foundation is likely to be difficult and is probably ideal for large projects with clear goals (as opposed to ongoing operations). Applications are reviewed throughout the year, so there is no deadline.

Size of grants: Up to \$100,000-\$500,000.

Who is eligible: Only 501(c)(3) non-profits.

Additional information: Before applying for a grant, the market should research past successful proposals and seek grant-writing assistance. The Kellogg Foundation prefers that applications be made through the Internet. For more information, including a link to the online application, visit <http://www.wkkf.org/grants/for-grantseekers.aspx>. You can also contact the foundation at (269) 968-1611.

Corporate Grants

Many large corporations have a separate foundation arm for charitable donations. You may consider looking at the website of some of these businesses or approaching them directly to gauge their interest in providing funds. The best businesses to approach are:

1. Local businesses.
2. Businesses with many rural stores, such as Walmart, Kroger, Dollar General, or Family Dollar.
3. Businesses that supply or purchase from farms, such as John Deere, Bobcat, or Archer Daniels Midland.
4. Businesses that focus on public health, such as Blue Cross Blue Shield, Kaiser Permanente, Merck, Assurant, or Humana.
5. Food businesses, such as Kraft, Dole, or Procter & Gamble.

III. Other Funding Resources

There are many more government and private organizations offering grants that could fit the needs of farmers markets. Here are some good resources that provide information about other grant opportunities:

1. The USDA website has information about many of the programs listed above and some additional ways to receive financial assistance. For more information, visit: http://www.usda.gov/wps/portal/usda/knownyourfarmer?navtype=KYF&navid=KYF_GRANTS.

2. The Farmers Market Consortium Resource Guide, published by USDA's Agriculture Marketing Service. It can be found online at:
<http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELDEV3100937&acct=frmrdirnkt>.
3. Grassroots Guide to the 2008 Farm Bill, published by the National Sustainable Agriculture Coalition. This guide can be found online at <http://sustainableagriculture.net/publications/grassrootsguide/>. This guide also provides a list of grants that may be available directly to farmers, particularly from struggling communities.
4. Grants.gov is a website that allows you to search through all government grants and download applications and/or apply online.
5. The Rural Assistance Center provides information to organizations based in rural America, including advice on funding. Information can be found online at <http://www.raonline.org/>.
6. See the section entitled "Additional Resources" for a list of other websites that may be useful.

Additional Resources

The internet has a wealth of free information for farmers market managers, organizers, and farmers/vendors. In addition to the contact information and websites listed throughout this guide, here are a few useful resources where one can find further information:

I. Federal Government

- United States Department of Agriculture: <http://www.usda.gov>
- United States Farm Service Agency: <http://www.fsa.usda.gov>
- Internal Revenue Service: <http://www.irs.gov>
- Supplemental Nutrition Assistance Program (retailer information):
<http://www.fns.usda.gov/snap/retailers/merchants.htm>
- WIC Farmers Market Nutrition Program (national information):
<http://www.fns.usda.gov/wic/FMNP/FMNPfaqs.htm>

II. Mississippi

- Mississippi Department of Agriculture and Commerce: <http://www.mdac.state.ms.us>
- Mississippi Secretary of State: <http://www.sos.ms.gov>
- Mississippi State Tax Commission: <http://www.dor.ms.gov>
- Mississippi Farmers Market Nutrition Program:
http://www.mdac.state.ms.us/n_library/programs/mfmnp/mfmnp_program.html
- Mississippi Department of Health, Local Health Department information:
http://www.msdh.state.ms.us/msdhsite/_static/19,0,166.html

III. Universities

- Delta State University Institute for Community Based Research:
<http://www.deltastate.edu/pages/537.asp>
- Mississippi State University Extension Services: <http://msucares.com/>
- Alcorn State University Extension Service (Provide technical assistance to farmers locally):
<http://asuextension.com/asuep/index.php>

IV. Other Resources

- Mississippi Center for Nonprofits: <http://www.msnonprofits.org/>
- Farmers Market Coalition resources: <http://www.farmersmarketcoalition.org/resources/resource-library/>
- Market Umbrella (New Orleans' farmers market information and manager resources):
<http://www.marketumbrella.org/>
- Cleveland farmers market blog: <http://clevelandfarmersmarket.blogspot.com/>
- Farmers Markets New Mexico (Sample market rules from various markets in New Mexico):
http://farmersmarketsnm.org/Market_Managers/Market_Rules/index.html
- Farmers Market Federation of New York (Publications and other helpful information about starting a market): <http://www.nyfarmersmarket.com/>
- Rural Coalition (advocacy/policy group, provides assistance to farmers and works closely with USDA): <http://www.ruralco.org/>
- Heifer International (Provide funding and technical assistance to farmers):
<http://www.heifer.org/site/c.edJRKQNiFiG/b.485969/>
- Growing Power, Inc. (Provide trainings and workshops for farmers):
<http://www.growingpower.org/>

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Appendix A: Sample Lease Agreement

MEMORANDUM OF AGREEMENT

This agreement is entered into and executed by _____, herein referred to as Lessee, and _____, herein referred to as Lessor, for the purpose of securing a space for Lessee to operate a farmers market on Lessor's property;

Whereas the Market Location, owned by Lessor, is located at _____.

Whereas the Market Season (the lease period) shall be from _____ until _____ and special market weekends may be scheduled with consent of both parties;

Whereas the Market Days shall be _____ each week during the Lease Period;

Whereas the Market Hours shall be between the times of _____ and _____;

Whereas the Market Fee, payable by Lessee to Lessor, shall be \$_____, paid weekly/biweekly/monthly.

Now, therefore, in consideration of the foregoing and mutual covenants and agreements contained herein, the parties have agreed to the following:

Section I: Lessee shall:

1. Supply, set up, and take down the equipment used at the market.
2. Administrate the financial and record-keeping aspects of running the market.
3. Timely pay the Market Fee.
4. Supply personnel to set up, manage, and clean the market area.

Section II: Lessor shall:

1. Keep the leased premises reasonably safe.
2. Allow access to the Market Location to farmers/vendors, market managers, and to the public. Such access shall be permitted before and after Market Hours for farmers/vendors and market managers to set up and take down the market.
3. Permit reasonable adjustments to the Market Season, Market Days, and Market Hours if Lessee chooses to extend or shorten the market season, days, or hours based on weather or other considerations.
4. Allow public use of Lessor's dumpsters, restrooms, electrical outlets, and other facilities.

Section III: Lessee and Lessor agree that:

1. The term of this agreement shall be ____ year(s), beginning _____ and ending on _____. It may be extended or revised with the consent of both parties.
2. Both parties will promote and advertise the market before and during its season, at their discretion.
3. Notwithstanding any other provisions of this agreement, if funds anticipated for continued fulfillment of the agreement are, at any time, not forthcoming or insufficient, then both parties shall have the right to amend or terminate this agreement without penalty by giving the other party not less than thirty (30) days' written notice.
4. If either party fails to fulfill its obligations under this agreement in a timely and proper manner or if either party violates any terms of this agreement, the aggrieved party shall have the right to terminate this agreement and withhold further services by giving the other party not less than thirty (30) days' written notice.

WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT.

By: _____ Date: _____

Position & Organization: _____

By: _____ Date: _____

Position & Organization: _____

**Appendix B: List of Local Health Departments
And Local Health Inspectors**

Local Health Departments

Bolivar County Health Department

711 3rd St.
Cleveland, MS 38732
Tel: (662) 843-2706

1006 Dr. Martin Luther King Jr.
P.O. Box 446
Rosedale, MS 38769
Tel: (662) 759-3361

Coahoma County Health Department

1850 Cheryl St.
Clarksdale, MS 38614
Tel: (662) 624-8316

DeSoto County Health Department

3212 Highway 51 South, Suite A
Hernando, MS 38632
Tel: (662) 429-9814

6569 Cockrum Rd., Bldg. A, Suite 2
Olive Branch, MS 38654
Tel: (662) 895-3090

8705 Northwest Drive
Building A, Suite 1
Southaven, MS 38671
Tel: (662) 393-2775

Holmes County Health Department

106 Westwood Avenue
Lexington, MS 39095
Tel: (662) 834-3142

Leflore County Health Department

2600 Browning Road
Greenwood, MS 38930
Tel: (662) 453-0284

Panola County Health Department

381 Highway 51 South
Batesville, MS 38606
Tel: (662) 563-4616

Quitman County Health Department

235 Chestnut Street
Marks, MS 38646
Tel: (662) 326-2861

Sunflower County Health Department

412 Hwy 49 S.
Indianola, MS 38751
Tel: (662) 887-4951

Tunica County Health Department

2073 Old Hwy 61 North
Tunica, MS 38676
Tel: (662) 363-2166

Washington County Health Department

801 N. Broad St.
Leland, MS 38756
Tel: (662) 686-7711

1633 Hospital St.
Greenville, MS 38701
Tel: (662) 332-8177

306 East Avenue South
Hollandale, MA 38701
Tel: (662) 827-5626

**For a listing of all local health departments in the State of Mississippi, visit the Mississippi State Department of Health website at <http://www.msdh.state.ms.us/msdhsite/static/19,0,166.html>.