

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 80 Department of Agriculture and Industries

Rule No.: 80-7-1-.04

Rule Title: Criteria and Rules for a Certified Farmers Market

New; Amend; Repeal; Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?

No

Is there a reasonable relationship between the State's police power and the protection of the public health, safety or welfare?

Yes

Is there another less restrictive method of regulation available that could adequately protect the public?

No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule?

N/A

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?

Yes

Does the proposed rule have any economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official
I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer *Joh McVill*

Date: 2-18-16

(DATE FILED)
(STAMP)

APA-2

ALABAMA DEPARTMENT OF AGRICULTURE AND INDUSTRIES
DIVISION OF MARKETING

NOTICE OF INTENDED ACTION

Agency Name: Alabama Department of Agriculture and Industries

Rule No. & Title: 80-7-1-.04 Criteria and Rules for a Certified Farmers Market

Intended Action: To Amend

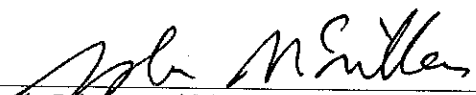
Substance of Proposed Action: To clarify rules related to certified state farmers markets.

Time, Place, Manner of Presenting Views: Views may be presented in writing to the contact person below or in person on the meeting date Tuesday, May 10, 2016, at 10:00 A.M., in the auditorium of the Alabama Department of Agriculture and Industries, Richard Beard Building, 1445 Federal Drive, Montgomery, AL 36107.

Final Date for Comment and Completion of Notice: May 10, 2016.

Contact Person at Agency: Patrick B. Moody, Legal Counsel, Department of Agriculture and Industries, 1445 Federal Drive, Montgomery, Alabama 36107-1123, Telephone No. 240-7117.

2-18-16
Date



John McMillan
Commissioner of Agriculture
And Industries

(1) General Criteria for an Alabama Certified Farmers Market

(a) "Alabama Certified Farmers Market" means a place, structure or building that is used by two or more Alabama Farmers for the direct sale of their own on-farm produce and/or food products to consumers, and where sales of these farm products represent the core business of the market.

1. A grower/producer is a person(s) that grows or produces agricultural products. At least 80% of the agricultural product grown and offered for sale must be produced by the grower/producer or under the grower/producer's direction. The grower must verify in writing with the market manager and the Farmers Market Authority the name, location and contact information from whom the other 20% of locally grown products brought to market originate if this is permissible and clearly defined in the market's rules.

2. A grower or grower representative must be present during market hours when his/her products are offered for purchase.

(b) The market may be operated by an association, non-profit organization, government entity (state, county, municipal, tribal, etc.) or other organization/entity approved by the Authority.

(c) Markets can allow the sale of non-food products (arts and crafts) and other value-added products (soaps, lotions, etc.) at the market's discretion as long as the number of non-food vendors (~~arts and crafts~~) does not exceed 30% of the total vendors. ~~Other value added products includes processed foods, and floral products.~~

1. All products that may be potentially hazardous must be permitted by the appropriate agency or in compliance with all city, county, state and federal laws and regulations.

(d) The market must be organized pursuant to Code of Ala. 1975, Sections 2-5A-1 et seq. and comply with Chapter 80-7-1 of the Alabama Department of Agriculture and Industries Administrative Code.

(2) Rules Requirement for Farmers Markets

- (a) Certified Farmers Markets shall have a clear and organized set of rules that are enforced by a manager, who answers to either a board or steering committee. Market rules should be simple and easy to understand. Certified Farmers Markets shall adopt the minimum rules as set forth in Appendix A.
- (b) Market rules should contain the following:
1. A description of the market governance and market manager responsibilities;
 2. Rules for general operations such as hours/days of market, parking policies, and health and safety policies;
 3. Rules enforcement procedures, including penalties for failure to comply and a grievance procedure;
 4. Policies for who can sell at the market and how the market will approve vendors;
 5. Guidelines for what products can be sold, the use of equipment, the presentation of displays, and the use of scales;
 6. Vendor fees and space assignment policies;
 7. How the market will ensure and enforce compliance;
 8. Rules that are unique to the market such as a waiting list policy or special events;
 9. The market management/governance may conduct farm visits;
 10. Standards of vendor behavior;
 11. All contact information;

(c) All eligible producers must have a growers permit.

(d) In addition to the above, a Certified Farmers Market's rules must, at a minimum, adhere to the following guidelines as set out in (3) - (10) of this chapter.

(3) Home Processed

(a) Home Processed products are subject to sales tax. See Code of Ala. 1975, §40-23-4(a)(5) and §40-23-62(8).

(b) Home processed products must satisfy all public health, labeling, permitting and other requirements pertaining to processed products. Chapter 420-3-22-.01 of the Rules of Food Establishment Sanitation now excludes a kitchen in a private home from the definition of food establishment if only food that is non potentially hazardous (time or temperature control required for safety) is prepared for sale or service at a function such as a charitable, religious, civic, or not-for-profit organization's food sale, or at state sanctioned Farmers Markets, and if the consumer is informed by a clearly visible label, tag, or placard at the sales or service location that the food is prepared in a kitchen that is not inspected by a regulatory agency, i.e. County or State Health Department.

(c) Label, Tag or Placard must conform to the size and form of the label below, and be placed at the top of the product that is to be sold.

| |
|---|
| This item(s) was prepared in a kitchen that is NOT inspected by a regulatory agency. |
|---|

(d) This effectively excludes farmers markets from regulatory requirements of the ADPH regarding non-potentially hazardous home processed foods. Certain home processed foods for example baked breads, rolls,

cookies, cakes, brownies, fudge, double-crust fruit pies, traditional fruit jams, jellies, marmalades and relishes, candy, spices or herbs, snack items such as popcorn, caramel corn and peanut brittle, may be sold at farmers markets with appropriate labeling. The label of a food in packaged form shall specify conspicuously the name and place of business of the manufacturer, packer, or distributor.

- (e) The acidity of foods is measured by pH. The range of pH is commonly considered to extend from zero to 14. A pH value of 7 is neutral, because pure water has a pH value of exactly 7. Values less than 7 are considered acidic, while those greater than 7 are considered basic or alkaline. Acidic foods are usually tart and sour, all fruits are acidic: tomato, lemon, peach, apple, etc. The FDA rule for acid foods states that a food must have a pH below 4.6 to be sold as a minimally processed food. The reason for this is bacteria do not grow at this level of acidity.

- (f) This exclusion shall not be construed as allowing the sale of low acid foods (pH >4.6) in hermetically sealed containers (i.e. such as home-canned green beans, peas, tomato relish, salsa, etc.) when such food is not prepared in a permitted establishment. The finish product will need to be tested, if the ph level is unknown.

- (g) Food Product Testing Requirements:
 - 1. A small sample (at least 1 cup) of the product is required. The cost is approximately \$40.00 per sample. Checks may be made payable to: Alabama Cooperative Extension System or ACES. The sample should be carefully and safely packaged and mailed/sent to:

Regional Extension Agent
Alabama Cooperative Extension
221 Poultry Science Building
260 Lem Morrison Dr.
Auburn University, AL 36849
Alabama Cooperative Extension System
Food Product Testing Services

2. The product must include the following information: Contact Person, Mailing Address, City/State/Zip, Phone/Fax, Email, Product Name

(4) Sampling/ Food Safety

(a) All vendors, regardless of product, must meet the health requirements that prevent food borne illnesses. The standard requirements and recommendations for preparation and sampling at the Certified Farmers Market are:

1. Preparation of fruit and vegetable samples requiring cutting or slicing should be done on-site immediately prior to consumption.
2. No home prepared food samples shall be served at the market.
3. Clean knives and cutting boards must be placed in protective plastic containers, food storage bags, wrapped in plastic wrap, etc.
4. Clean equipment must be used to cut product, in-use items must be stored so they are protected from contamination.
5. Replace soiled knives, cutting boards, etc. with clean items every two hours.
6. Use single service items whenever possible.
7. Store soiled items in a closed bag or container to avoid attracting insects.
8. All fruits and vegetables must be rinsed thoroughly in clean water.
9. Products may be rinsed or cleaned prior to bringing them to the market. The items should be stored in disposable food bags.
10. Rinse melons in a 200 parts per million chlorine solution prior to slicing for sampling.

11. Fruit and vegetable sample servings must be protected from contamination at all times.
12. Serving must be done in a manner protecting the sample from any bare hand contact.
13. Utilize disposable gloves, single service utensils, napkins or tissues, or toothpicks are all adequate methods to avoid handling prepared samples.
14. Any ice used for cooling must be continuously and properly drained to avoid wrapped items soaking in melted ice water.
15. Canned items (i.e., jelly, salsa, etc.) may be opened one jar at a time and sampled with clean disposable utensils.
16. Use toothpicks, wax paper, paper sampling cups, or disposable utensils to distribute samples.
17. Temperature control must be maintained on items needing refrigeration after opening.

(b) The County Environmentalist may have specific additional requirements depending on the food to be prepared and served, the general location of the event or food concession area, the availability of city water and sewage, and other local considerations. The Rules of the State Board of Health require that a permit to operate a temporary food booth be obtained prior to any prepared food being sold.

(5) Meat Products

- (a) Live animals are prohibited for sale at farmers markets in Alabama.
- (b) Only raw meats, including fish and seafood, that are processed, packaged, and labeled at an inspected facility or are otherwise exempted from inspection may be sold at a farmers market. Exempted meats: rabbits, quail and bison.

- (c) Beef, pork, poultry and lamb products sold at farmers markets must originate from livestock slaughtered in a government (federal or state) inspected facility.
- (d) All meat and poultry products must be wrapped and labeled with the seal of inspection on package. USDA publication "Guidance for Determining Whether a Poultry Slaughter or Processing Operation is Exempt from Inspection Requirements of the Poultry Products Inspection Act Revision 1, April 2006," provides detailed information on the requirements for the sale of poultry at markets.
- (e) Meat products, other than fish and shellfish, must be brought to the market in frozen condition and kept frozen until sold. Selling packaged meat at the Farmers market requires sanitary handling and temperature control. A mechanical unit capable of maintaining the meat and poultry products in the frozen state is recommended to be used. For example, a freezer could be used.
- (f) Fish and shellfish products may be sold fresh if maintained at a temperature of 37°F to 41°F.
- (g) Meat at farmers markets being sold by resellers will include a "Distributed by/Packed for", or similar, statement on the labels of their meat products. Conversely, meat products being sold at Farmers markets that are prepared and packaged by the selling vendor will not include a "Distributed by/Packed for", or similar, statement.

(6) Wine/Alcohol/Controlled Substances

~~(a) Wine is prohibited for distribution and/or retailing at farmers markets in the State of Alabama. Alcohol, i.e. beer, whisky, etc., is prohibited for sale at farmers markets.~~

(a) Alcoholic beverages as defined in Alabama Code Sec. 28-3-1 are prohibited for sales or distribution at farmers markets.

(b) Proof of alcoholic content is the responsibility of the vendor.

~~(b)~~ (C) Controlled substances are prohibited for sale at farmers markets.

(7) Insurance

(a) Each Certified Farmers Market shall acquire, ~~or~~ and show proof of liability insurance.

(8) Proper Weights and Measurement

(a) All farmers markets must meet the legal measurement guidelines established by the State of Alabama for dry and wet produce. Produce may be sold by weight, measure or count depending on the commodity. Selling by weight or measure involves legally defined weights and measures. A quart is a legal dry quart or legal liquid quart, not necessarily a quart basket filled past the rim of the basket. A pound is a legal pound, as judged by specially calibrated weights certified by the National Institute of Standards and Technology.

(b) Not all scales are eligible for farmers market usage. Those scales stamped, "Not legal for use in trade" on them, cannot be used to measure product for sell at markets.

Examples of scales not to be used are: bathroom, baby, restaurant portion scales, postal, and kitchen utility scales.

(c) When selling by measure, a standard dry pint or dry quart container is actually measured by the cubic inches it contains, not the shape. An accurate measure would be when the container is filled and struck level across the top sides of the container. When purchasing containers, be certain they meet the legal definition of pints, quarts, pecks, etc.

(d) Just as water weight can be lost after harvest, volume can decrease as well. Some settling also can occur in transit. The content must be level to the top of the

container at the time of sale. It is recommended seller overfill containers to allow for these factors.

- (e) When selling by liquid such as cider, the exact amount in the container has to be measured to achieve the correct cubic inch, fluid amount. When selling bakery products, items must have stated weight on packaging or identified so the consumer may make an informed purchase.
- (f) Scales being used in commerce shall be tested at least once each fiscal year based on the fiscal year adopted by the State of Alabama which runs from October 1st through September 30th.

(9) Dairy Products

(a) All dairy products, including cheese, must be processed, packaged, and labeled at a facility permitted and inspected by the Alabama Department of Public Health's Milk and Food Processing Branch. Product must have the proper labeling vendor contact information or have information posted so consumer will know who to contact if necessary.

(b) Sale of raw milk for human consumption is not legal and cannot be sold at markets.

(10) Shell Eggs

(a) Shell eggs are considered farm products and may be sold at farmers markets with proper labeling information on package. Information required is: name and address of egg packer, date eggs were packed, and grade and weight. Carton or egg container and egg product itself must be sanitized and free from fecal matter and other farm filth.

Egg Weights

| | Dozen Carton | Dozen Carton | 1.5 Dozen Carton | 2.5 Dozen Sleeve |
|---------|--------------|--------------|------------------|------------------|
| Pee Wee | 15 oz | .94 lbs | 1.41 lbs | 2.34 lbs |
| Small | 18 oz | 1.13 lbs | 1.69 lbs | 2.81 lbs |
| Medium | 21 oz | 1.31 lbs | 1.97 lbs | 3.28 lbs |

| | | | | |
|----------|-------|----------|----------|----------|
| Large | 24 oz | 1.50 lbs | 2.25 lbs | 3.75 lbs |
| Ex-Large | 27 oz | 1.69 lbs | 2.53 lbs | 4.22 lbs |
| Jumbo | 30 oz | 1.88 lbs | 2.81 lbs | 4.69 lbs |

(b) There are three consumer grades for eggs: U.S. Grade AA, A, and B. The grade is determined by the interior quality of the egg and the appearance and condition of the egg shell. Eggs of any quality grade may differ in weight (size).

(c) U.S. Grade AA eggs have whites that are thick and firm; yolks that are high, round, and practically free from defects; and clean, unbroken shells. Grade AA and Grade A eggs are best for frying and poaching where appearance is important.



(d) U.S. Grade A eggs have characteristics of Grade AA eggs except that the whites are "reasonably" firm. This is the quality most often sold in stores.

(e) U.S. Grade B eggs have whites that may be thinner and yolks that may be wider and flatter than eggs of higher grades. The shells must be unbroken, but may show slight stains. This quality is seldom found in retail stores because they are usually used to make liquid, frozen, and dried egg products.

(f) Egg Label Example:

| | |
|---|-------|
| Grade A | Large |
| John Doe 12345 Sullivan St Montgomery, AL 36130 Packaged- 06/17/2011 | |

Authors: Don Wambles, Patrick B. Moody

Statutory Authority: Code of Ala. 1975, §2-5A-8.

History: New Rule: Filed February 12, 2014; effective March 19, 2014. **Amended:**