§19-35-1. Legislative findings.

(a) Farmers markets are critical incubators for small farm and food businesses because they offer an inexpensive, accessible, entry-level market for reaching consumers directly, though research has shown that the average vendor makes only a nominal dollar amount in sales on any given market day;

(b) The number of farmers markets and the variety of products sold at farmers markets has increased significantly in the past ten years, adding millions of dollars to the state's economy;

(c) Encouraging locally grown and raised food is important to the health and welfare of the citizens of West Virginia;

(d) Permit fees and requirements for farmers market vendors can vary widely from county to county and from one regulatory official to the other. Current food permit categories are not designed for farmers markets and their vendors, but rather for restaurants, grocery stores or concessioners;

(e) Food permits required for farmers market vendors are currently not recognized across county lines.


For purposes of this article:

"Consignment farmers market" means a farmers market in which two or more vendors deliver their own farm and food products to a common location maintained by a third party that markets the vendors' products and receives a percentage share of the profits from sales, with the individual vendor retaining ownership of the farm and food product until it is sold. A consignment farmers market may be mobile or in a stationary location.

"Delivered" means transferred to the consumer, either immediately upon sale or at a time thereafter.

"Department" means the Department of Agriculture.

"Farm and food product" means any agriculture, horticulture, agroforestry, animal husbandry, dairy, livestock, cottage food, beekeeping, or other similar product. Farm and food products are to be properly labeled.

"Farmers market" means:
(1) A traditional farmers market in which two or more vendors gather to sell farm and food products directly to consumers at a fixed location;

(2) An on-farm market or farm stand run by an individual producer that sells farm and food products;

(3) An online farmers market in which two or more vendors collectively market farm and food products and retain ownership of those products until they are sold; or

(4) A consignment farmers market as defined herein.

"Farmers market vendor" or "vendor" means a person or entity that sells farm and food products at a farmers market.

"Homemade food item" means a nonpotentially hazardous food item, including a nonalcoholic beverage, which is produced and/or packaged at the private residence of the producer.

"Nonpotentially hazardous" means food that does not require time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.

"Produce" means to prepare a food item by cooking, baking, drying, mixing, cutting, fermenting, preserving, dehydrating, growing, raising, or other process.

"Producer" means the person who produces a homemade food item.

"Retailer" means and includes every person engaging in the business of selling, leasing, or renting tangible personal property.

"Seller" means the person who sells a homemade food item to a consumer. The seller of the homemade food item may be the producer of the item, an agent of the producer, or a third-party vendor, such as a retail shop or grocery store.

§19-35-3. Farmers markets; farmers market vendor permits; fees; scope.

(a) Farmers markets shall register with the department and provide information to the department regarding the farmers market and its vendors.

(b) Vendors at a farmers market selling farm and food products shall apply for a farmers market vendor permit and pay the annual permit fee to the department. The permit is valid in all counties in this state. A farmers market vendor permit shall be required in lieu of the food establishment permit, notwithstanding any other provisions of code or rule that require a food establishment permit or any other permit from a local health department. The department shall take final action upon all completed permit applications within 30 days of receipt if the application is uncontested, or within 90 days if the application is contested.

(c) The annual farmers market vendor permit fee is $35.
(d) The following vendors are exempt from obtaining a farmers market vendor permit:

(1) Producers delivering their products to a consignment farmers market only; or

(2) Vendors selling fresh, uncut produce.

(e) A consignment farmers market shall obtain a food establishment permit issued by the local health department. Certain farm and food product also require food establishment or other permits to be sold at farmers markets including, but not limited to, meat, poultry, dairy, fish, and sprouted seeds. Notwithstanding the provisions of this article, the local health department in the jurisdiction in which the farmers market is located has the right to inspect and suspend the food establishment permit of a farmers market vendor that sells or serves food for which a food establishment permit is required.

(f) All farmers market vendor permits shall be displayed in a conspicuous manner.

(g) Nothing in this article eliminates or limits other state and federal rules and regulations that apply to certain farm and food products sold at a farmers market or a consignment farmers market.

(h) The department may establish regulations permitting the sampling of certain farm and food products at farmers markets by vendors.

(i) A vendor is subject to food sampling and inspection by the local health department in the jurisdiction in which the farmers market is located if the local health department determines that the vendor’s food product is misbranded pursuant to §19-35-5(c) of this code, or adulterated, or if a consumer complaint has been received: Provided, That all sampling and inspection shall be performed in consultation with the Department of Agriculture.

(j) If the local health department in the jurisdiction in which the farmers market is located has reason to believe that an imminent health hazard exists it may invoke cessation of production until it deems that the hazardous situation has been addressed to the satisfaction of the local health department: Provided, That a local health department that invokes cessation of production under this subsection shall do so in consultation with the Department of Agriculture.


(a) The Department of Agriculture shall propose emergency or legislative rules for approval in accordance with the provisions of §29A-3-1 et seq. of this code for the purposes of implementing this article.

(b) The Department of Agriculture shall consult with the Department of Health and Human Resources and shall consider the guidelines established in the Farmers Market Vendor Guide in promulgating the rules. The rules shall set forth quantity limitations for each type of farm and food product for which a farmers market vendor permit is required pursuant to §19-35-5(d) of this code.
§19-35-5. Cottage foods; acidified foods; non-potentially hazardous foods; other exempted foods.

(a) Notwithstanding any provision of §16-1-1 et seq. of this code or any rules or regulations to the contrary, the department shall regulate cottage foods, acidified foods, nonpotentially hazardous foods and other exempted foods.

(b) Online farmers market sales shall be delivered in person and are not permitted to be shipped. A home, farm, community, or commercial kitchen may be used by a cottage foods vendor, as determined by the department.

(c) All foods for which a farmers market vendor permit is required pursuant to §19-35-5(d) of this code shall be labeled in compliance with the department’s labeling standards and provide information about its content and sources. The label shall include the words “MADE IN A WV _____ KITCHEN” in capital, bold, 10-point type or larger words, with the blank space to state whether the product was made in a home, farm, community, or commercial kitchen.

(d) A farmers market vendor permit is required to sell the following farm and food products at farmers markets: Certain canned acidified foods, including, but not limited to, pickled products, sauces, and salsas. Acidified foods are low-acid foods to which acid or acid foods are added with a water activity of greater than .085 and a finished equilibrium of pH 4.6 or below. The majority of the produce in canned acidified foods shall be sourced from the vendor’s West Virginia farm or garden, and records of the source of the produce shall be maintained.

(e) A farmers market vendor permit is not required to sell the following farm and food products at farmers markets:

1) Nonpotentially hazardous foods, including, but not limited to: Breads, cakes, and candies; honey, tree syrup, apple butter, and molasses; standardized, nondietary jams and jellies; and dehydrated fruits and vegetables; and

2) Other foods that are exempted from certain regulations, including, but not limited to, certain fermented products, certain exempted condiments, commercially harvested mushrooms, and canned, whole, or chopped tomatoes, tomato sauce, and tomato juice having a finished equilibrium of pH 4.6 or below.

(f) The Department of Agriculture shall consult with the Department of Health and Human Resources to promulgate any rules deemed necessary by the Commissioner of Agriculture to ensure the health, sanitation, and safety of the products produced and sold pursuant to this section.

§19-35-6. Direct sale of homemade food items.

(a) The production and sale of homemade food items, when done in conformity with this section, are exempt from licensing, permitting, inspection, packaging, and labeling laws of this state.
(b) The following conditions apply to the sale and delivery of homemade food items:

(1) The homemade food item must be sold by the producer to the consumer, whether in person or remotely, or by an agent of the producer or a third-party vendor; and

(2) The homemade food items must be delivered to the consumer by the producer, an agent of the producer, a third-party vendor, or a third-party carrier.

(c) The following information must be provided to the consumer, in the format required by subsection (d) of this section:

(1) The name, home address, and telephone number of the producer of the homemade food item;

(2) The common or usual name of the homemade food item;

(3) The ingredients of the homemade food item in descending order of predominance; and

(4) The following statement: "This product was produced at a private residence that is exempt from State licensing and inspection. This product may contain allergens."

(d) The information required by subsection (c) of this section must be provided:

(1) On a label affixed to the package, if the homemade food item is packaged;

(2) On a label affixed to the container, if the homemade food item is offered for sale from a bulk container;

(3) On a placard displayed at the point of sale, if the homemade food item is neither packaged nor offered for sale from a bulk container;

(4) On the webpage on which the homemade food item is offered for sale, if the homemade food item is offered for sale on the Internet; or

(5) On a receipt or other document provided to the customer with the homemade food item.

(e) The homemade food item must not be meat, meat byproduct, meat food product, poultry, poultry byproduct, or poultry food product, as those terms are defined for purposes of the federal Meat Inspection Act and federal Poultry Products Inspection Act, unless the production and sale of the items are within the exemption in 9 C.F.R. §303.1(d), §381.10(c), or §381.10(d) and comply with other applicable federal regulations.

(f) This section shall not be construed to:

(1) Impede the authority of a local health department or the department to investigate or cease the production or sale of food items reported to have caused a foodborne illness;
(2) Preclude the department from providing assistance, consultation, or inspection at the request of the producer of a homemade food item;

(3) Preclude the production or sale of food items otherwise allowed by law;

(4) Exempt a producer, seller, third-party vendor, or third-party agent from any applicable tax law;

(5) Exempt producers or sellers of homemade food items from any law that requires the producer, seller, third-party vendor, or third-party agent to register its business name, address, and other identification information with the state;

(6) Exempt producers or sellers of homemade food items from any applicable law of the federal government, including any federal law prohibiting the sale of certain food items in interstate commerce; or

(7) Exempt producers or sellers of homemade food items from any applicable law of another state.

(g) This section preempts county, municipal, and other political jurisdictions from prohibiting and regulating the production and sale of homemade food items: Provided, That such preemption shall not include space rentals at government-owned or operated facilities, government-sanctioned or operated events, or product placement agreements with government-owned facilities, as well as temporary events 14 days or less in duration.