



# Mississippi Farmers Markets

---

Legislative Recommendations and Innovations  
to Promote and Sustain Farmers Market Development

Prepared December 2009 by

Emily Broad, Esq.

Libby Benton

Myra Blake

Alonzo Emery

Jessica Fitts

Matthew Greenfield

Chris Powell, Esq.

Evan Kubota

Sheila Lopez

Jared Policicchio

Daniel Preysman

Jenny Zhang

# Table of Contents

<b>I. Executive Summary</b> .....	<b>1</b>
<b>II. Introduction</b> .....	<b>2</b>
<b>III. Overview of Farmers Markets</b> .....	<b>3</b>
<b>IV. Sales Tax Laws</b> .....	<b>6</b>
Current Mississippi Law on Sales Tax at Farmers Markets .....	6
Comparison of Sales Tax in Other States .....	7
Recommendations .....	13
Conclusion .....	17
<b>V. Food Safety Laws</b> .....	<b>18</b>
Current Mississippi Law on Food Safety .....	18
Comparison of Food Safety Law in Other States .....	20
Recommendations .....	22
Conclusion .....	24
<b>VI. County and Municipal Funding</b> .....	<b>25</b>
Recommendations for Municipalities .....	25
Recommendations for Counties .....	26
Conclusion .....	27
<b>VII. Food Assistance Programs</b> .....	<b>28</b>
WIC & Seniors Farmers Market Nutrition Programs.....	28
Supplemental Nutrition Assistance Program at Farmers Markets .....	30
Recommendations .....	32
Conclusion .....	33
<b>VIII. Conclusion and Other Legal Innovations</b> .....	<b>34</b>

# I. Executive Summary

## *Summary of Recommendations*

This policy paper addresses state and federal laws affecting farmers markets in Mississippi, focusing on particularly confusing or burdensome areas of the law. Each section reviews Mississippi law and compares it to other states, then recommends alternatives. The key recommendations are as follows:

### **Sales Tax Laws**

- Make clear that farmers, not market managers, are responsible for any sales tax due, putting farmers markets in the same position as the majority of all other retailers.
- Either (1) exempt *all* products sold at farmers markets from sales tax, which would provide the maximum benefit to local communities, or (2) exempt all *food* products sold at markets from sales tax. In many states, farmers do not pay sales tax on any food sold, and in almost all states, farmers do not pay sales tax on whole produce sold.

### **Food Safety Laws**

- Make clear that non-potentially hazardous products (a technical term used by the U.S. Food and Drug Administration (“FDA”) to refer to jams, jellies, and baked goods not subject to spoilage) produced in home kitchens can be sold at farmers markets. In doing this, Mississippi would follow Tennessee, Alabama, and several other states that have permitted homemade goods to be sold at markets.

### **County and Municipal Funding**

- Make clear that municipalities are authorized to fund markets and enter into contracts and agreements with farmers markets.
- Authorize counties to use their funding authority to support farmers markets. Current law unduly limits counties in their ability to provide funding to markets.

### **Food Assistance Programs**

- Promote use of food benefits at farmers markets through the Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”) by increasing WIC Farmers Market Nutrition Program (“WIC FMNP”) and Senior Farmers’ Market Nutrition Program (“SFMNP”) availability in more counties across the state.
- Help farmers markets obtain certification from the U.S. Food and Nutrition Service (“FNS”) to accept Supplemental Nutrition Assistance Program (“SNAP”) benefits (the new name for the federal food stamp program) and require bidders on the electronic food benefits contract to provide wireless SNAP machines to farmers markets.

Our recommendations are based on legislation adopted in several other states; these states have found that such legislation supports farmers markets, maintains the tax base, ensures the safety of local food, and increases the availability of healthy and fresh food to local shoppers.

## II. Introduction\*

### *About This Report*

This policy report explains how Mississippi law affects farmers markets and recommends changes to stimulate their growth. The report is divided into six sections:

1. Overview of Farmers Markets: Overview of Mississippi markets and the benefits they generate for the state's economy and local communities.
2. Sales Tax Laws: Analysis of what products are taxed at farmers markets and who must pay the tax and recommendations for clarifying and amending the law.
3. Food Safety Laws: Analysis of the law on home production of baked goods, jams, and jellies and recommendations for facilitating the sale of such products at farmers markets.
4. County and Municipal Funding: Analysis of the law governing county and municipal governments' ability to fund farmers markets and recommendations for legislative changes to give local governments more flexibility in supporting markets.
5. Government Food Assistance Programs: Review of state and federal policy on the use of public benefits at markets and recommendations to increase access to farmers markets for lower and moderate-income individuals and households.<sup>1</sup>
6. Conclusion & Legal Innovations: Description of several unique measures that legislatures across the country have used to promote farmers markets.

Some of these farmers market-related issues facing Mississippi have been addressed by other state legislatures. The approaches taken in other states are therefore helpful and are included as examples throughout this document. Furthermore, because Mississippi faces some of these issues for the first time, it has the opportunity to become a national leader by adopting the best practices of other states and tailoring them to local needs. Doing so will help Mississippi farmers and residents by encouraging the sale and consumption of healthy food as well as stimulating local economies.

---

\* This paper is the product of the efforts of several individuals. The project was led by Emily Broad, Esq. of Delta Directions Consortium ("DDC") and Chris Powell, Esq. of Cleveland, MS. The research and writing of the report was conducted by Harvard Law School students: Libby Benton, Myra Blake, Alonzo Emery, Jessica Fitts, Matthew Greenfield, Evan Kubota, Sheila Lopez, Jared Policicchio, Daniel Preysman, and Jenny Zhang. The research builds on a Mississippi Farmers Market Legal & Business Guide that was prepared in April 2009 by students from Harvard Law School with DDC and Dr. John Green of the Delta State University Institute for Community Based Research.

<sup>1</sup> The Supplemental Nutrition Assistance Program ("SNAP") is the new name for the federal food stamp program. The Special Supplemental Nutrition Program for Women, Infants and Children ("WIC") is a federal benefit program that provides funds to low and moderate-income mothers (and pregnant women) to buy nutritionally important food, including fresh produce, instead of processed foods.

### III. Overview of Farmers Markets

#### *Healthy Communities and Local Jobs*

Farmers markets are experiencing a national renaissance, with the number of markets now numbering more than 4,500 nationally. The number of farmers markets in the United States grew by 43% between 2000 and 2005.<sup>2</sup> Mississippi has also seen a boom in farmers markets in recent years, with markets springing up throughout the state and an increasing number of farmers choosing to sell directly to consumers. Today, there are more than 55 farmers markets in Mississippi and more than 400 farmers and other vendors selling at these markets.<sup>3</sup> Although a precise number is not available, we estimate that at least \$1.5 million is spent at Mississippi farmers markets each year.<sup>4</sup> Many factors drive consumer demand for farmers markets, including supporting local farmers, obtaining produce at cheaper prices, and alleviating concerns about the safety of the global food supply chain. In turn, farmers markets produce a variety of benefits for local communities, including bringing the community together, promoting healthy foods, and keeping Mississippi food dollars in the state.

The growth in the number of markets has brought attention to the fact that many of the relevant laws are poorly tailored for farmers markets, as well as being complex and unclear. For example, sales tax laws have generated disagreement about what products are taxed at farmers markets and who is required to pay the tax. Food safety laws make it difficult for individuals to sell homemade baked goods, jams, and jellies at markets without building a new kitchen certified for commercial use (which would require, for example, installing two sinks). These laws have resulted in a “lose-lose” situation: farmers do not bring products to market, while consumers purchase out-of-state fruits, vegetables, and other products at grocery stores. Instead of keeping Mississippi’s food dollars in the state and boosting the incomes of small Mississippi farmers, those dollars flow out of the state to large grocery store chains and agricultural companies.

Direct Economic Benefits: Farmers markets create jobs in the local economy and keep Mississippi food dollars inside the state. Farmers markets are an easy place for small farmers to sell their crops because they involve few start-up costs and do not require farmers to advertise, enter into contracts, or guarantee production yields. Farmers markets are so accessible that more than 25% of farmers selling at farmers markets nationally say that they do not sell their crops anywhere else.<sup>5</sup> Farmers markets encourage people with small plots of land to develop them and sell their crops at the

---

<sup>2</sup> Agricultural Marketing Service, “USDA National Farmers Market Manager Survey 2006”, *available at* <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5077203>, (May 2009).

<sup>3</sup> These numbers are based on data from the Mississippi Department of Agriculture and Commerce, which lists 55 markets on its website. Some markets are not included in this list, so the actual number may exceed the 55 identified markets. Mississippi Department of Agriculture and Commerce, “Mississippi Farmers Markets,” *available at* [http://www.mdac.state.ms.us/n\\_library/departments/farm\\_mkt/frk\\_frm\\_markets.asp](http://www.mdac.state.ms.us/n_library/departments/farm_mkt/frk_frm_markets.asp).

<sup>4</sup> There are approximately 400 vendors at the 19 certified markets in the state. Assuming markets operate once a week for 18 weeks a year, with average vendor sales of \$150 per week, gross revenues at certified markets would total approximately \$1.08 million for all certified markets. Given that non-certified markets tend to be smaller with fewer vendors, sales may total \$500,000 to \$750,000 at these markets. Based on these calculations, the total for all markets, certified and non-certified, is between \$1.58 million and \$1.83 million in sales. Depending on the accuracy of these assumptions, the true scale of farmers market sales in Mississippi is probably between \$1 million and \$3 million annually.

<sup>5</sup> According to the USDA National Farmers Market Manager Survey 2006, 25.1% of farmers market vendors use a single farmers market as the only outlet for their farm products. Note that this figure refers only to those vendors selling at a single farmers market. This figure does not include the significant number of farmers who sell at two or three markets but do not sell using other avenues. This means that anywhere from 30% to 50% of farmers selling at markets across the country may be relying exclusively on farmers markets for their sales. Some might have access to other channels, but many have crop yields that are too small or too irregular to sell anywhere but farmers markets. USDA National Farmers Market Manager Survey, *supra* note 2.

market. This means that in states like Mississippi, farmers markets are creating jobs and developing local food sources that otherwise would not exist.

Ultimately, one of the most beneficial aspects of farmers markets is that the money stays in the local economy. Shoppers at farmers markets are able to buy local produce for less than they would at a grocery store, and the money goes into the hands of their neighbors rather than to out-of-state based grocery store chains and supermarkets. By spending this money locally, farmers in turn support local businesses and keep money in the local economy.

Indirect Economic Benefits: Farmers markets also drive traffic to local businesses by drawing a crowd to downtown areas on market days. Across the country, many towns are now hosting markets as a revitalization strategy. A study of seven Oregon farmers markets by Oregon State University found that between 33% and 65% of market shoppers also shopped at a local business when they came to the market.<sup>6</sup> Across Mississippi, markets have been attracting hundreds of people to town on market days.

Farmers markets can also serve as business incubators. For example, in New York, market advocates report that several small businesses got their start at farmers markets. One bakery in Rochester began as a baked goods stall at the Rochester Public Market. The products were so popular that the vendor opened a standalone store in town.<sup>7</sup> In another case, a pet food company got its start when the owner began baking pet treats at home and selling them at the market.<sup>8</sup>

Health Benefits and Safety: Farmers markets are a fun way for shoppers to buy their produce. This means that many farmers market customers come to purchase just a few items but end up purchasing far more, leading them to include more fruits and vegetables in their diets. In addition, with local produce, ripening agents are unnecessary and there are fewer points for contamination. The produce sold at farmers markets typically travels less than 60 miles, compared to the 1,500 miles traveled by most fruits and vegetables sold at grocery stores.<sup>9</sup>

Community Benefits: Farmers markets are community events. They host musicians, showcase local businesses, and sponsor craft fairs. Farmers markets bring together people of various ages from across the community, from those living in the rural outskirts to those living closer to town centers.

In one study, more than 1,600 Los Angeles farmers market shoppers, vendors, and residents were surveyed about the effect that the markets had on their communities.<sup>10</sup> Throughout the city, shoppers praised the markets for bringing together the community and promoting a healthy lifestyle. The study found that among farmers market shoppers:

- 99% felt the market helped improve the health of the community
- 75% came to market to do more than just shop

---

<sup>6</sup> Larry Lev, Linda Brewer & Garry Stephenson, "Research Brief: How do Farmers Markets Affect Neighboring Businesses?," Oregon Small Farms Technical Report 16, Dec. 2003, *available at* <http://smallfarms.oregonstate.edu/sites/default/files/publications/techreports/TechReport16.pdf>.

<sup>7</sup> See Farmers Market Federation of New York, "The Value of Farmers Markets to New York Communities," *available at*: [http://www.nyfarmersmarket.com/pdf\\_files/FarmersMarketsCommunityDev.pdf](http://www.nyfarmersmarket.com/pdf_files/FarmersMarketsCommunityDev.pdf).

<sup>8</sup> *Id.*

<sup>9</sup> Based on a survey of local and conventionally grown produce in Iowa. See Andrew Benjamin and Rich Pirog, Iowa State Univ. Leopold Ctr. For Sustainable Agriculture, "Checking the food odometer: Comparing food miles for local versus conventional produce sales to Iowa institutions," July 2003, *available at*: [http://www.leopold.iastate.edu/pubs/staff/files/food\\_travel072103.pdf](http://www.leopold.iastate.edu/pubs/staff/files/food_travel072103.pdf) (2003).

<sup>10</sup> See Market Umbrella, "Fieldnotes: Farmers Markets Deliver What Communities NEED," *available at*: [http://www.marketumbrella.org/uploads/file/FN\\_Need2.pdf](http://www.marketumbrella.org/uploads/file/FN_Need2.pdf).

- 55% believed that the market increased their connection to the community
- 53% believed that the market improved perceptions of the neighborhood

Mississippi Markets and Legislative Change: Farmers markets in Mississippi are experiencing growth, but they could generate more economic activity and new businesses at the local and state level if the laws affecting them were made simpler and less burdensome. They also have the potential to produce significant health benefits and make good use of the state's fertile land. To facilitate their growth, Mississippi should review the legislative changes made by other states and adopt a version of the legislation recommended in this document.

## IV. Sales Tax Laws

### *Opportunities for Growth*

This section explains Mississippi sales tax law as it applies to farmers markets, addresses how Mississippi compares to other states in exempting farm sales to consumers, and suggests legislative changes that could encourage such purchases in the future.

#### **Current Mississippi Law on Sales Tax at Farmers Markets**

What is Taxed? What items sold by a vendor at a farmers market are subject to state sales tax? What items are exempt from the sales tax?

Generally, all sales of tangible personal property in Mississippi are subject to a 7% sales tax, though two exemptions are applicable to farmers markets.<sup>11</sup> First, all food sales purchased with food stamps are exempt from sales tax, regardless of the food product.<sup>12</sup> Second, vegetables, fruits, herbs, eggs, dairy, and meat are exempt from sales tax if they are (1) sold by their original producers, (2) sold in their original state or condition, and (3) not sold in an “established store,” which is defined as a permanent building owned or leased for at least 90 days by the vendor.<sup>13</sup> Because many markets are outdoor and temporary (and are not operating in a permanent building that they own or lease for 90 days), most fresh produce sold at markets should fall within the exemption. However, all other items sold at farmers markets, including jams, jellies, sauces, breads, cooked meats, cheeses, dried fruits, flowers, and crafts are subject to the 7% sales tax.

Despite the code’s exemption for produce sold outside of “established stores,” authorities in several counties have asserted that farmers markets are established stores because of their weekly schedule and use of tents to sell products. As a consequence, they have asked that farmers market vendors pay a sales tax on all products sold, even including fresh fruits and vegetables that they grew themselves.

Requiring farmers to pay a sales tax on sales of their own fruits and vegetables at farmers markets results in a lose-lose situation. It creates a strong incentive for farmers to leave the market and sell their fruits and vegetables on the side of the road because the law clearly exempts farmers selling at roadside stands from paying sales tax. This is bad for the farmer, who sells less than he or she would at a market, and it is bad for the state, which ends up with no greater tax revenues than it would otherwise (because the sale happens at a roadside stand where the sales are exempt anyway) and, finally, it is bad for the community, which loses out on the many benefits that markets provide to their localities. In some instances, farmers may choose not to sell their crops at all because of the administrative difficulty of paying taxes on a few hundred dollars worth of vegetables.

Who is Taxed? If a sales tax is due, who is responsible for paying the tax? Who is the seller?

Mississippi law requires whoever is selling a particular item to the public to collect the sales tax and remit it to the state.<sup>14</sup> 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 must collect and remit

---

<sup>11</sup> Miss. Code Ann. § 27-65-17(1)(a) (2009).

<sup>12</sup> Miss. Code Ann. § 27-65-111(o) (2009).

<sup>13</sup> Miss. Code Ann. §§ 27-65-103(b), 27-17-365(3) (2009).

<sup>14</sup> Miss. Code Ann. § 27-65-27(1) (2009).



the sales tax collected by the individual vendors at such events.<sup>15</sup> It is unclear whether a farmers market constitutes a promoted event. The regulation only provides that promoted events “include, but are not limited to, community festivals, craft shows, seasonal shows, music festivals, and other similar events.”<sup>16</sup> Some district tax commissioners view farmers markets as promoted events and demand sales taxes from market managers, many of whom are unpaid volunteers with little control over or knowledge of how much the vendors sell. If enforced against all farmers markets in the state, this policy would create a strong disincentive for anyone to volunteer to help start or operate a farmers market.

## Comparison of Sales Tax Laws in Other States

Sales tax laws vary widely across the country, with some states charging no tax at all and other states charging rates as high as 7.25%. Although nearly all states impose a sales tax, most exempt groceries from tax or reduce the tax rate on groceries. Indeed, 45 states impose a sales tax, but only seven states charge the full rate on food. This is because the burden of a grocery sales tax falls disproportionately on poor families, who typically use a higher percentage of their income on food than other families.<sup>17</sup> In addition, of those states that tax the sale of food, many provide special exemptions for farmers markets or crops sold by farmers in order to ease the burden on small, local farmers and encourage the production and consumption of local produce. Mississippi is one of seven states that taxes food at the same rate as other goods and services, and, at 7%, Mississippi has the highest sales tax on unprepared food. Table 1 and Figures 1 to 3 present these practices across all fifty states.

Many states that ordinarily tax groceries exempt farmers’ sales of their own raw produce. In **Alabama**, for example, agricultural produce sold by its producer is exempt from all sales tax.<sup>18</sup> Alabama also taxes other unprepared food at a reduced rate from the general sales tax.<sup>19</sup> **Tennessee** exempts any produce sold by a farmer who produced at least half of the products sold, and all other grocery items are taxed at a reduced rate.<sup>20</sup> Unprepared food in **West Virginia** is taxed at a reduced rate of 3%, and, since 1990, even the reduced rate has not applied to agricultural products sold by their producers, based on a Tax Department interpretation.<sup>21</sup>

In other states, the same type of exemption applies particularly to produce sold at farmers markets. Until 2009, farmers markets and tax collectors in **Arkansas** disagreed over the interpretation of tax statutes. The law on the books taxed items sold at farmers markets (except those already exempt by statute), but this tax was not always enforced. The issue was resolved in the 2008-2009 Legislative Session with a legislative amendment.<sup>22</sup> Under the revised code, all raw vegetables, fruits, nuts, herbs, and flowers sold by the producer at a farmers market are exempt from sales tax.

Even where sales tax does not apply to food, states have shown that they have flexibility to broaden or narrow those exemptions. For example, although **Kentucky** exempts all unprepared food from sales tax, the state explicitly subjects decorative gourds, flowers, and some planted herbs to tax at the ordinary rate of 6%.<sup>23</sup> Food products sold for human consumption are exempt from sales tax in

---

<sup>15</sup> 35-413-05 Miss. Code R. § 203 (Weil 2009).

<sup>16</sup> *Id.*

<sup>17</sup> In Mississippi, where the tax rate is 7%, a family of four that spends \$6,000 per year on food expenses (\$500 per month) will pay \$420 per year in taxes on groceries. This comes out to nearly a month’s worth of groceries. See also Nicholas Johnson and Iris J. Lav, Ctr. on Budget and Policy Priorities, “Should States Tax Food?,” *available at* <http://www.cbpp.org/files/stfdtax98.pdf>.

<sup>18</sup> Ala. Code § 40-23-4(a)(44) (2009).

<sup>19</sup> Ala. Code § 40-23-2(5) (2009).

<sup>20</sup> Tenn. Code Ann. §§ 67-6-301, 67-6-228 (2009).

<sup>21</sup> W. Va. Code §§ 11-15B-2, 11-15-9(a)(31) (2009) and W. Va. State Tax Dep’t. Publ’n TSD-371.

<sup>22</sup> Ark. Code Ann. § 26-52-401 (2009).

<sup>23</sup> Ky. Rev. Stat. Ann. § 139.485 (LexisNexis 2010).

**Massachusetts**, except for prepared meals provided by a restaurant. Notwithstanding, any food sold by weight (liquid or dry measure), count, or in unopened original containers is specifically exempt from the meals tax.<sup>24</sup>

---

<sup>24</sup> 830 Mass. Code Regs. 64H.6.5 (2009).

**Table 1. Fifty State Sales Tax Survey**

State	Base Sales Tax	Sales Tax on Groceries	Sales Tax on Farmers' Produce at Markets
Alabama	4%	4%	--
Alaska	--	--	--
Arizona	5.6%	--	--
Arkansas	6%	3%	--
California	7.25%	--	--
Colorado	2.9%	--	--
Connecticut	6%	--	--
Delaware	--	--	--
Florida	6%	--	--
Georgia	4%	--	--
Hawaii	4%	4%	4%
Idaho	6%	6%	6%
Illinois	6.25%	1%	1%
Indiana	7%	--	--
Iowa	6%	--	--
Kansas	5.3%	5.3%	5.3%
Kentucky	6%	--	--
Louisiana	4%	--	--
Maine	5%	--	--
Maryland	6%	--	--
Massachusetts	6.25%	--	--
Michigan	6%	--	--
Minnesota	6.875%	--	--
Mississippi	7%	7%	7% <sup>25</sup>
Missouri	4.225%	1.225%	1.225%
Montana	--	--	--
Nebraska	5.5%	--	--
Nevada	6.85%	--	--
New Hampshire	--	--	--
New Jersey	7%	--	--
New Mexico	5%	--	--
New York	4%	--	--
North Carolina	5.75%	--	--
North Dakota	5%	--	--
Ohio	5.5%	--	--
Oklahoma	4.5%	4.5%	4.5%
Oregon	--	--	--
Pennsylvania	6%	--	--
Rhode Island	7%	--	--
South Carolina	6%	--	--
South Dakota	4%	4%	4%
Tennessee	7%	5.5%	--
Texas	6.25%	--	--
Utah	4.7%	1.75%	--
Vermont	6%	--	--
Virginia	4%	1.5%	1.5%
Washington	6.5%	--	--
West Virginia	6%	5%	--
Wisconsin	5%	--	--
Wyoming	5%	--	--

<sup>25</sup> As explained above, Mississippi law exempts produce sold by a farmer outside of an established store. Miss. Code Ann. § 27-65-103(b) (2009). However, ambiguities in the law have allowed a sales tax of 7% to be enforced at some farmers markets. This means that although Mississippi appears to have a farmers market sales tax rate of 0% for produce grown by the vendor, some farmers are being asked to pay 7% of all sales on fruits and vegetables they grow themselves.







## Recommendations

This section addresses four possible amendments to the sales tax law. Amendment 1 clarifies that farmers, not market managers, are responsible for collecting and remitting sales tax from their sales at farmers markets. Amendments 2, 3, and 4 are possible exemptions from the state sales tax for products sold at farmers markets. These three are alternative approaches; they differ in scope, but because all address the same problem, only one needs to be enacted. It could be enacted alone or with Amendment 1. Whenever possible, the draft language suggested below is based on language in other states or on language in other parts of the Mississippi Code.

**Amendment 1: Make clear that vendors at farmers markets, not market managers, are responsible for the sales tax on their products.**

The general rule in Mississippi is that when someone sells a product, that person is responsible for collecting the sales tax and remitting it to the tax authorities.<sup>26</sup> As an exception to this rule, the Mississippi Tax Commission has passed regulations requiring the manager of a flea market, an antique mall, or a “promoted event” to collect tax on behalf of all the vendors who sell there.<sup>27</sup> The “promoted event” rule is based on the belief that the operator of an event is generally managing many of the logistics for that event, is paid for the work, and has authority to enforce the collection of sales tax. In such a case, the promoter may be in the best position to understand the sales tax laws and to collect the tax.

The promoted event rule does not, however, have the same logic when applied to farmers markets. Farmers market managers are usually volunteers responsible for picking market times and dates, securing space for the market, and advertising the market to the community. They usually do not have much authority over farmers selling at the market and they do not track the sales made by vendors, making it especially difficult to know how much sales tax is due. In this case, farmers themselves are in the best position to keep track of their sales and to pay the applicable sales tax. Changing the law to make clear that farmers are responsible for their own sales tax collection would require adding the following language to Miss. Code Ann. § 27-65-31:

§ 27-65-31. Seller to collect tax.

...

In the case of sales at a farmers market, only the vendor and not the market owner, organizer, or promoter, shall be responsible for collecting the privilege tax levied and assessed by this chapter. The term “farmers market” means an event or series of events at which two or more vendors gather seasonally for purposes of offering for sale products to the public that include agricultural commodities produced by one or more of the vendors. “Farmers market” shall not include any event held upon any premises owned, leased, or otherwise controlled by any individual vendor selling therein.

---

<sup>26</sup> Miss. Code Ann. § 27-65-31 (2009).

<sup>27</sup> 35-413-05 Miss. Code R. § 203 (Weil 2009).

If this language were adopted by the legislature, it would override the regulation produced by the Tax Commission, but only with respect to farmers markets.<sup>28</sup> Thus, the “promoted events” rule would continue to apply to flea markets, antique malls, music festivals, and similar events, but the legislature would make clear that the rule does not apply to farmers markets.<sup>29</sup>

**Amendment 2: Exempt from taxes all products sold at farmers markets.**

Mississippi could exempt from sales tax all items sold at farmers markets. This approach would do the most to help farmers markets grow because it would be clear (no tax on products sold at a farmers market) and it would create an incentive for local businesses to sell a range of products at the market, drawing in more shoppers. As noted in the introductory section, farmers markets provide a host of benefits to their communities, including revitalizing town centers, incubating local businesses, and promoting fresh, local produce. Revenues foregone by exempting the sale of products at a farmers market would likely be recouped by increased sales at local businesses and other benefits to local economies. In order to effect this change, the following language would be added to Miss. Code Ann. § 27-65-103:

§ 27-65-103. Exemptions; agricultural.

...

The tax levied by this chapter shall not apply to the following:

(a)...

(f) The gross proceeds of sales of all items sold at a farmers markets. The term “farmers market” means an event or series of events at which two or more vendors gather seasonally for purposes of offering for sale products to the public that include agricultural commodities produced by one or more of the vendors. “Farmers market” shall not include any event held upon any premises owned, leased, or otherwise controlled by any individual vendor selling therein.

Note that if the definition of “farmers market” were already included in the law elsewhere, this section could simply reference that section instead of repeating the definition.<sup>30</sup>

<sup>28</sup> *Mississippi State Tax Comm'n v. Lady Forest Farms, Inc.*, 701 So. 2d 294, 296 (Miss. 1997) (noting that an agency’s interpretation is invalid as to any point on which it conflicts with the “plain meaning” of a statute).

<sup>29</sup> The definition of farmers markets in the proposed language is adapted from language in a New Hampshire statute that defines a farmers market in the following way: “The term ‘farmers market’ means an event or series of events at which 2 or more vendors of agricultural commodities gather for purposes of offering for sale such commodities to the public. Commodities offered for sale must include, but are not limited to, products of agriculture, as defined in paragraphs I-IV. ‘Farmers market’ shall not include any event held upon any premises owned, leased, or otherwise controlled by any individual vendor selling therein.” N.H. Rev. Stat. Ann. § 21:34-a(V) (LexisNexis 2009).

<sup>30</sup> This could be accomplished through a variety of means. For example, Miss. Code Ann. § 27-65-103(b) could be amended by deleting language referring to sales through an established store and adopting language to include home-processed goods. Thus, Miss. Code Ann. § 27-65-103(b) would read:

(b) The sales by producers of livestock, poultry, fish or other products of farm, grove or garden when such products are sold in the original state or condition of preparation for sale before such products are subjected to any other process and home-processed goods sold at a retail level by farmers markets. ~~within a class of business or sold by a producer through an established store, as defined in the Privilege Tax Law.~~ Provided, however, that this exemption shall not apply to ornamental plants which bear no fruit of commercial value. All sales by agricultural cooperative associations organized under Article 9 of Chapter 7 of Title 69, or under Chapters 17 or 19 of Title 79, Mississippi Code



**Amendment 3: Exempt from taxes all food products sold at farmers markets.**

Exempting all food products sold at farmers markets from sales tax would bring Mississippi in line with most other states. This approach would have the advantage of being straightforward and easy for farmers market vendors to understand: “If it’s edible, it’s exempt.” This amendment would confirm the existing exemption for raw agricultural products sold by their producers at farmers markets. It would also extend the exemption to breads, jellies, and other processed edible goods. Non-edible products sold at farmers markets (for example, ornamental plants) would continue to be taxed. The amended statute would read:

§ 27-65-103. Exemptions; agricultural.

...

The tax levied by this chapter shall not apply to the following:

(a)...

(f) The gross proceeds of sales of all food items at farmers markets. The term “farmers market” means an event or series of events at which two or more vendors gather seasonally for purposes of offering for sale products to the public that include agricultural commodities produced by one or more of the vendors. “Farmers market” shall not include any event held upon any premises owned, leased, or otherwise controlled by any individual vendor selling therein.

Note that if the definition of “farmers market” were already included in the law elsewhere, this section could simply reference that section instead of repeating the definition.

**Amendment 4: Clarify the existing exemption for farm products sold in their original state by producers.**

This amendment would only confirm the existing exemption from sales tax for agricultural products sold by producers outside of “established stores.” Although the exemption already exists, clarification is necessary because in practice markets may have been denied the exemption. This is the least desirable of Amendments 2, 3, and 4 because it essentially reinforces existing law. There are two possible ways to clarify the exemption.

1. The first option is to delete the language in Miss. Code Ann. § 27-65-103(b) referring to sales through an established store. This would make all sales of agricultural products by producers exempt from tax. The amended statute would read:

§ 27-65-103. Exemptions; agricultural.

...

The tax levied by this chapter shall not apply to the following:

---

of 1972, of agricultural products produced by members for market before such products are subjected to any manufacturing process.

(a)...

(b) The sales by producers of livestock, poultry, fish or other products of farm, grove or garden when such products are sold in the original state or condition of preparation—for sale before such products are subjected to any other process ~~within a class of business or sold by a producer through an established store, as defined in the Privilege Tax Law.~~ Provided, however, that this exemption shall not apply to ornamental plants which bear no fruit of commercial value. All sales by agricultural cooperative associations organized under Article 9 of Chapter 7 of Title 69, or under Chapters 17 or 19 of Title 79, Mississippi Code of 1972, of agricultural products produced by members for market before such products are subjected to any manufacturing process.

Most states with exemptions for agricultural products sold by producers use this approach and do not condition the exemption on the location of the sale. For example, Alabama exempts the “gross receipts derived from the sale or sales of fruit or other agricultural products by the person or corporation that planted, cultivated, and harvested such fruit or agricultural product.”<sup>31</sup>

2. The second approach maintains “established store” in the statute but clarifies that a farmers market is not considered an established store. Arkansas has followed this approach.<sup>32</sup>

The amended statute would read:

§ 27-65-103. Exemptions; agricultural.

...

The tax levied by this chapter shall not apply to the following:

(a)...

(b) The sales by producers of livestock, poultry, fish or other products of farm, grove or garden when such products are sold in the original state or condition of preparation—for sale before such products are subjected to any other process within a class of business or sold by a producer through an established store, as defined in the Privilege Tax Law. Provided, however, that this exemption shall not apply to ornamental plants which bear no fruit of commercial value. All sales by agricultural cooperative associations organized under Article 9 of Chapter 7 of Title 69, or under Chapters 17 or 19 of Title 79, Mississippi Code of 1972, of agricultural products produced by members for market before such products are subjected to any manufacturing process. For purposes of this section, sales made at a farmers market are not made through an established store. The term “farmers market” means an event or series of events at which two or more vendors gather

---

<sup>31</sup> Ala. Code § 40-23-4(a)(44) (2009).

<sup>32</sup> Note that Arkansas uses a different definition of farmers market than the one suggested here, which was taken from New Hampshire. Under Arkansas law, sales of agricultural products by producers are exempt unless sold through an established business. The statute specifically provides, however, that a “farmers market is not an established business if the farmers market sells raw product directly to the user of the raw product and the farmers market is: (a) Comprised of one (1) or more producers of a raw product; (b) Operated seasonally; and (c) Held out-of-doors or in a public space.” Ark. Code Ann. § 26-52-401(18)(B)(ii) (2009).

seasonally for purposes of offering for sale products to the public that include agricultural commodities produced by one or more of the vendors. "Farmers market" shall not include any event held upon any premises owned, leased, or otherwise controlled by any individual vendor selling therein.

Note that if the definition of "farmers market" were already included in the law elsewhere, this section could simply reference that section instead of repeating the definition.

## **Conclusion**

Because of their limited resources, many small farmers cannot research and interpret the tax laws themselves. Uncertainty about when sales taxes must be paid and by whom they must be paid is a barrier to selling at markets. The key to encouraging the growth of markets and increasing tax compliance is to make sure the law is clear and simple. The recommended changes both clarify these issues and provide more favorable treatment to farmers and farmers markets, thereby encouraging their growth and increasing tax compliance (which may partially or fully offset revenue lost from a broader exemption).

We recommend passing Amendment 1 to clarify that farmers, not market managers, are responsible for paying taxes applicable to their sales at the markets. We also recommend passing Amendment 2, instead of Amendment 3 or 4, to exempt all products sold at farmers markets from sales tax. This law would be easy to understand, and would send a strong message to farmers and communities that Mississippi values farm products and wants to encourage their sale and consumption. Sales taxes are not merely an economic burden on small farmers but also a significant administrative and logistical burden. Farmers that must apply for a sales tax permit, keep track of every sale, and remit sales tax on every item may decide to sell fewer items at market or to not sell at all. Thus, we recommend that Mississippi take steps to limit this burden on farmers and promote activity at farmers markets.

## V. Food Safety Laws

### *Fostering a Vibrant Marketplace*

At many farmers markets, vendors sell not just fruits and vegetables, but also flowers, eggs, honey, baked goods, meats, fish, hot foods, and crafts. Many of these items, however, are covered by complex national and state laws that create burdensome requirements for their production and sale. Because these laws are often unclear, and because farmers often lack resources for legal research, they may forego even legal sales for fear of inadvertently breaking the law.

The specific issue is whether certain low-risk foods like bread, jams, and jellies may be sold to the public without being prepared in a certified kitchen. Under present Mississippi law, such sales are prohibited, but other states have recognized the benefits of exempting low-risk foods from the certification requirement. For example, Tennessee and Alabama (among other states) have modified their laws to allow the sales of homemade goods, subject only to limited requirements for labeling and licensing of producers.<sup>33</sup> These alternative requirements are less burdensome and strike a better balance between stimulating home production and protecting public health. Furthermore, because they only apply to “non-potentially hazardous” foods (defined below), the alternative requirements recognize the reality that such foods, because of their low risk, do not need to be regulated as heavily as other, higher risk foods.

What makes the situation more complicated is the widespread belief that selling homemade goods is already permitted by Mississippi law. Many farmers, and even many market managers, believe that there is no prohibition on selling baked goods, jams, and jellies. (And indeed, it is already legal to sell such items at a charity bake sale, making the prohibition on such sales at farmers markets particularly confusing.)<sup>34</sup> The current situation is the worst of both worlds: some vendors are selling products in violation of the law, while others are discouraged from selling because they have heard that such sales are not permitted. By changing the law to permit the sale of homemade foods (in accord with the approach of many other states), Mississippi could (1) put all farmers on an equal footing and (2) promote the growth of markets. These laws would, in turn, develop local economies by incubating small businesses, encouraging more farmers to sell value-added products, and offering consumers a wider variety of choices.

### **Current Mississippi Law on Food Safety at Farmers Markets**

Like many states, Mississippi has adopted the U.S. Food and Drug Administration Food Code (“FDA Code”) as the basis for its food safety laws.<sup>35</sup> The FDA Code is a model code and reference document for state and local governments on food safety. The FDA does not require states to adopt the code, but many states have chosen to do so because the code reflects the expertise and attention of dozens of food safety experts. Importantly, the FDA Code itself is not law; it only becomes binding when states adopt it by statute, and they typically add their own modifications by statute or regulation. Mississippi has adopted the FDA Code with modifications, made by both statute and regulation. Because

---

<sup>33</sup> See Tenn. Code Ann. § 53-8-117 (2009) and Ala. Admin. Code r. 420-3-22.01 (2009).

<sup>34</sup> The Food and Drug Administration (FDA) Code definition of “food establishment” excludes a “kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization’s bake sale.” See FDA 2005 Food Code § 1-201.10, available at: <http://www.fda.gov/downloads/Food/FoodSafety/RetailFoodProtection/FoodCode/FoodCode2005/ucm123946.pdf>.

<sup>35</sup> 15-375-002 Miss. Code R. § 102 (Weil 2009).

the FDA Code was voluntarily adopted by Mississippi, making changes to the state's food safety law does not require rejecting the FDA Code or even adopting a new version. Further changes to Mississippi's adoption of the FDA Code can be made by legislation or by regulation. Regulatory authority for the FDA Code is shared by the Department of Health and the Department of Agriculture and Commerce.<sup>36</sup>

Regulating "Food Establishments": Subject to a few narrow exceptions, Mississippi law designates all locations where food is produced or sold for pay as "food establishments."<sup>37</sup> Once a location is considered a "food establishment," it is subject to a host of rules including the requirement that the establishment have a "sink with at least 3 compartments" and a "test kit" for measuring sanitizing fluids.<sup>38</sup> These are just two of the hundreds of requirements imposed on such certified kitchens. The establishment must also be inspected and permitted by the State Department of Health, and any individuals preparing food in the establishment must undergo annual food service safety certification and/or food service manager certification.<sup>39</sup> Because home kitchens used for household food preparation cannot be certified by the Department of Health, anyone wishing to prepare food for retail sale must have access to a separate kitchen location in the home or a kitchen outside the home that can be certified.

One of the few exceptions to the rule is the exemption for charity bake sales and religious events. Mississippi law permits individuals to produce food at home so long as (a) the food will be sold at functions "such as a religious or charitable organization's bake sale" and (b) the food is not "potentially hazardous."<sup>40</sup> This exemption allows individuals to prepare for sale foods identified as non-potentially hazardous, such as baked goods, jellies, jams, granola, popcorn, coffee, and tea, when those foods are being sold at a function akin to a charity bake sale.

This exemption was not created by Mississippi. Instead, the exemption is in the 2005 FDA Code, which is evidence that the FDA itself has deemed home production of foods to be perfectly safe when those foods are not "potentially hazardous." This exemption provides a model for applying the same logic to farmers markets. Indeed, many states have extended the exemption for the sale of homemade non-potentially hazardous foods to all locations.

What is a "Potentially Hazardous" Food? The most important part of the exemption discussed above is the term "potentially hazardous." The definition in the FDA Code is detailed and technical, referring to the acidity of a given food to determine whether it is considered potentially hazardous.<sup>41</sup> The focus of the definition is on whether a particular item is likely to develop bacteria or viruses that carry disease. In the language of the FDA Code, the question is whether the food supports "pathogenic microorganism growth or toxin formation."<sup>42</sup> Meat, dairy, and shellfish are all classic examples of potentially hazardous foods. However, less obvious foods such as low-sugar jams, cooked vegetables,

---

<sup>36</sup> See Miss. Code Ann. § 41-3-15(4)(f) (2009) (granting primary authority over cafés, restaurants, and other food establishments to the Department of Health) and § 69-1-18 (charging the Department of Agriculture and Commerce with overseeing all "retail food establishments" that are not supervised by the Department of Health under its primary authority).

<sup>37</sup> FDA 2005 Food Code 1-201.10.

<sup>38</sup> FDA 2005 Food Code 4-301.12 and 4-301.14.

<sup>39</sup> Miss. State Department of Health, "Food Code and Food Facility Permits," *available at*: [http://msdh.ms.gov/msdhsite/\\_static/30,0,77.html](http://msdh.ms.gov/msdhsite/_static/30,0,77.html).

<sup>40</sup> FDA 2005 Food Code 1-201.10.

<sup>41</sup> The definition of "potentially hazardous" in FDA 2005 Food Code 1-201.10 essentially defines non-potentially hazardous foods as those having a pH of 4.6 or lower.

<sup>42</sup> FDA 2005 Food Code 1-201.10. Note that the FDA Code does not give specific examples of non-potentially hazardous foods, so we derive our list of non-potentially hazardous foods by negative implication from the items listed as potentially hazardous.

and low-acidity pickles and salsa are also considered potentially hazardous because they can support viral or bacterial growth if not properly stored. In effect, if the food has the potential to cause harm to consumers when not kept under proper temperature and storage conditions, the food is considered “potentially hazardous.”<sup>43</sup>

In order to clarify which items are considered potentially hazardous and which are not, we have compiled the following table based on the 2005 FDA Code<sup>44</sup>:

Potentially Hazardous	Non-Potentially Hazardous
<ul style="list-style-type: none"> <li>• Meat, poultry, and eggs</li> <li>• Fish and shellfish</li> <li>• Cooked vegetables</li> <li>• Dairy products</li> <li>• Mushrooms</li> <li>• Cut melons</li> <li>• Untreated garlic-in-oil mixtures</li> <li>• Baked goods subject to spoilage (such as cream-filled pastries or others that must be refrigerated)</li> <li>• Reduced sugar jams and jellies</li> <li>• Pickles and salsas<sup>45</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Jams, jellies, and preserves</li> <li>• Sweet sorghum syrup</li> <li>• Fruit butter</li> <li>• Fruit pies</li> <li>• Baked goods that are not subject to spoilage</li> <li>• Granola</li> <li>• Coffees/teas</li> </ul>

### Comparison of Food Safety Law in Other States

A significant number of states have modified their laws to allow farmers market vendors to sell non-potentially hazardous foods prepared at home. While the details vary by state, the effect in each is similar: non-potentially hazardous foods may be produced in home kitchens and sold at farmers markets.

The approach taken by **Kentucky** is a good example. Like Mississippi, Kentucky has adopted the FDA Code and, until recently, prohibited the sale at farmers markets of home-prepared food.<sup>46</sup> In 2003, the legislature authorized farmers to sell non-potentially hazardous foods prepared in home kitchens at farmers markets. The Kentucky legislature followed an approach that many other states have used—it created a separate definition for “home-based processors” and then exempted “home-based processors” from the rest of the FDA Code.<sup>47</sup> As described above, the FDA Code as adopted in most

<sup>43</sup> Generally, potentially hazardous foods are subject to strict requirements on storage conditions and temperature controls. Non-potentially hazardous foods are not subject to these storage conditions or temperature controls, yet under Mississippi law, they must still be prepared in a certified, commercial kitchen. Thus, Mississippi law prohibits individuals from making potentially hazardous foods at home under *all* circumstances but, as noted above, state law authorizes home production of non-potentially hazardous foods when they are produced for charity bake sales and religious events.

<sup>44</sup> FDA 2005 Food Code 1-201.10. Some of these items are listed directly in the Food Code while others are based on the standards established by the Food Code.

<sup>45</sup> Although pickles and salsa can theoretically be made non-potentially hazardous, the home producer must test the product to make sure that the pH is 4.6 or lower, which most home producers are not equipped to do.

<sup>46</sup> 902 Ky. Admin. Regs. 45:005 (2010).

<sup>47</sup> Ky. Rev. Stat. Ann. § 217.015 (LexisNexis 2010); §§ 217.136 – 217.138 (LexisNexis 2010). The Kentucky law exempts the home production of non-potentially hazardous food only when such food is sold at “farmers markets, certified roadside stands, or on the processor’s farm.” Ky. Rev. Stat. Ann. § 217.136(5) (LexisNexis 2010).

states regulates only those locations defined as “food establishments,” so excluding home kitchens from the definition of “food establishments” is one of the easiest ways to allow the sale of home-prepared food at farmers markets.<sup>48</sup>

The **Alabama** Bureau of Environmental Services recently amended its Rules of Food Establishment Sanitation to allow the sale of non-potentially hazardous home-processed foods if the products are sold at “a charitable, religious, civic, or not-for-profit organization’s food sale, or at a state-sanctioned farmers market.”<sup>49</sup> Authorized home-processed foods include “baked breads, rolls, cookies, cakes, brownies, fudge, and 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 . . . .”<sup>50</sup> Any of these items may be sold at farmers markets, as long as they are marked with a label indicating that they were prepared in a kitchen that is not inspected by a regulatory agency.<sup>51</sup>

In 2007, the **Tennessee** legislature created a relatively narrow exception for the sale of home-processed foods at farmers markets, stating “Notwithstanding any law, rule or regulation to the contrary, non-potentially hazardous foods prepared in a home based kitchen may be sold at farmers’ markets located in this state.”<sup>52</sup> Subsequent regulations by the Tennessee Department of Agriculture effectively created a parallel licensing system for home kitchens imposing a \$50 annual fee and permit and food-processing course requirements on owners.<sup>53</sup> Although less burdensome than the regular licensing requirements, these regulations undermined the legislative purpose of encouraging the sale of baked goods. In the 2009 legislative session, Tennessee State Senator Bill Ketron proposed a bill that would eliminate these regulations. This bill, which is currently pending in the Tennessee legislature, would prohibit any state agency from imposing a permit requirement or required courses on home kitchen operators.<sup>54</sup>

Pursuant to regulations published by the **New York** Department of Agriculture and Markets, New York residents may produce foods in a non-certified kitchen so long as the foods are not potentially hazardous and are labeled as homemade.<sup>55</sup> These foods include jams, jellies, candy, spices, herbs, baked goods (not including cream components), and snack foods such as popcorn and peanut brittle. Similarly, the **Massachusetts** Department of Public Health permits residents to produce non-potentially hazardous foods in their homes. While Massachusetts requires inspection and licensing of kitchens by the Department of Public Health, unlike in Mississippi, home kitchens may be certified for the production of non-potentially hazardous foods.<sup>56</sup>

In **Ohio**, the state legislature passed a bill in 2001 directing the Department of Agriculture to formulate rules for “cottage food production.”<sup>57</sup> The bill authorizes cottage food producers to prepare

---

<sup>48</sup> Note that in Mississippi, this approach alone may not be sufficient because the Department of Agriculture has authority for supervising any food retailer that is excluded from the Health Department’s definition of “food establishment.” *See supra* note 36.

<sup>49</sup> Ala. Admin. Code r. 420-3-22-.01(8) (2009).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Tenn. Code Ann. § 53-8-117 (2009).

<sup>53</sup> Tenn. Comp. R. & Regs. 0080-4-11.01 - 0080-4-11.08 (2009).

<sup>54</sup> S. 1689, 106th Gen. Assem., Reg. Sess. (Tenn. 2009).

<sup>55</sup> N.Y. Comp. Codes R. & Regs. tit. 1, § 276.3(b)(3) & 276.4(b) (2010). The regulations include a limited number of other requirements, such as requiring a list of ingredients and the weight on the label, as well as rigid metal covers for any glass containers.

<sup>56</sup> 105 Mass. Code Regs. 590.002, 590.003, 590.008, 590.009 & 590.012 (2009).

<sup>57</sup> 2001 Ohio Laws 72. *See also* Ohio Rev. Code Ann. § 3715.025 (LexisNexis 2010).

non-potentially hazardous foods, including jams, jellies, bakery products, granola, popcorn, coffees, and teas.<sup>58</sup> Pursuant to the statute and to the subsequent regulations enacted by the Department of Agriculture, individuals may produce food in their homes without a permit so long as the foods are not potentially hazardous.<sup>59</sup>

## Recommendations

The changes that other states have made to their food laws is an indication both of how many state legislatures have grappled with the issue and of how many have arrived at the same conclusion: individuals should be permitted to produce non-potentially hazardous food in their home kitchen. Exempting the sale of homemade foods at farmers markets from regulations that govern grocery stores and restaurants has become the favored solution in many states. As noted above, the rules for distinguishing potentially hazardous from non-potentially hazardous foods already exist in the FDA Code, so extending this exemption to farmers markets is relatively straightforward.

This section describes the two legislative amendments to the food safety laws that would be necessary to authorize the home production of food for sale at farmers markets. The first amendment exempts farmers market vendors from the need to certify their kitchens or to attend training sessions developed for restaurant workers, while the second amendment would exempt farmers market vendors preparing goods in home kitchens from the requirements applied to commercial kitchens.

### Amendment 1: Add a section to the law on Adulterated and Misbranded Foods to exempt home production of food for sale at farmers markets.

The first step in exempting homemade foods sold at farmers markets from commercial regulations is to add a separate section to the law on Adulterated and Misbranded Foods to make it clear that individuals producing non-potentially hazardous foods at home for sale at a farmers market are not required to attend training sessions or apply for certification of their kitchens. This change would entail adding a section to Miss. Code Ann. § 75-29-1 that adapts language from the New York administrative code.<sup>60</sup> New York is one of the most advanced states in adapting its laws to suit farmers markets, and the language used below is largely based off of the New York scheme, with some modifications based on Tennessee law.<sup>61</sup> The new section would read:

#### (a) Definitions

(1) "Home-processed food" means any food processed in a private home or residence using only the ordinary kitchen facilities of that home or residence which are also used to prepare food for the owner thereof, his family, and nonpaying guests, but shall exclude potentially hazardous foods as defined by rules adopted by the Department of Health pursuant to Sections 41-3-15(4) and Section 41-3-17.

---

<sup>58</sup> Ohio Rev. Code Ann. § 3715.01(20) (LexisNexis 2010).

<sup>59</sup> Ohio Admin. Code 901:3-20-01 - 901:3-20-05 (2009).

<sup>60</sup> This language is adapted from N.Y. Comp. Codes R. & Regs. tit. 1, § 276.3(b)(3); 276.4(b) (2010).

<sup>61</sup> See Tenn. Code Ann. § 53-8-117 (2009). Some language is also adapted from a bill pending in the Tennessee legislature to clarify that individuals may produce homemade non-potentially hazardous foods without a permit. See S. 1689, 106th Gen. Assem., Reg. Sess. (Tenn. 2009).



(2) "Home kitchen" means a kitchen in a private home or residence that an individual uses to produce home-processed foods. A home kitchen, as here defined, does not include a kitchen in which food is produced for retail sale other than home-processed food.

(3) "Farmers market" means an event or series of events at which two or more vendors gather seasonally for purposes of offering for sale products to the public that include agricultural commodities produced by one or more of the vendors. "Farmers market" shall not include any event held upon any premises owned, leased, or otherwise controlled by any individual vendor selling therein.

(b) Home-processed food may be sold at farmers markets located in this state by the preparer of such food, and neither the farmers market nor any operator thereof shall be required to obtain any permit or attend any training related to the production or sale of such food, including, but not limited to training conducted by the Department of Health or any other department of state government.

(c) Notwithstanding any provision of law to the contrary, no person engaged in the preparation or sale of home-processed food at farmers markets located in this state shall be required to obtain any permit or attend any training related to the production or sale of such food, including, but not limited to training conducted by the Department of Health or any other department of state government, provided that the following conditions are met:

(1) All finished product containers are clean and sanitary and are labeled to show:

(i) the name and address of the home processor;

(ii) the common or usual name of the food;

(iii) if the food is fabricated from two or more ingredients, the common or usual name of each ingredient in their order of predominance; except that spices, flavorings and colorings may be designated as spices, flavorings and colorings without naming each, and spices and flavorings may be designated together as flavorings; and

(iv) the net weight, standard measure or numerical count.

(2) All home-processed foods produced under this exemption are neither adulterated nor misbranded.

It is worth noting two aspects of the proposed language above. First, the amendment assumes that the legislature intends to extend the exemption only to products sold at farmers markets. Some states, such as New York, have authorized the sale of homemade foods in all locations so long as the foods are not potentially hazardous. This amendment could be revised to permit such sales at any location. Second, the amendment sets forth standards that must be followed by home-based processors instead of delegating that authority to the Department of Health. If the legislature wished to do so, it could instruct the Department of Health to formulate rules to accomplish certain broad goals laid out by the legislature. This was the approach taken by the Ohio legislature in 2001 when it decided to permit

the production of “cottage foods” in home kitchens. Each of these alternatives is an approach that could be explored by the legislature. Sample language for these approaches is not included here for the purpose of brevity but could be drafted at the request of interested parties.

**Amendment 2: Clarify that the home-based processors are not subject to general food regulations.**

A second amendment is necessary to ensure that farmers are not inadvertently subjected to the food regulations that govern grocery stores and restaurants. Although Amendment 1 would exempt farmers market vendors from the requirement of attending training sessions and applying for certification, a home kitchen would continue to be considered a “food establishment” under the FDA Code and would thus be subject to a host of regulations inappropriate to a home kitchen, such as the requirement that the kitchen have a three-part sink and a “test kit” for measuring sanitizing liquids. Therefore, a second amendment is necessary to make clear that home kitchens are not subject to commercial standards. The appropriate language would amend Miss. Code Ann. §41-3-15 to read as follows:

(4) The State Board of Health shall have authority:

. . .

(f) (i) To establish standards for, issue permits and exercise control over, any cafes, restaurants, food or drink stands, sandwich manufacturing establishments, and all other establishments where food or drink is regularly prepared, handled and served for pay, other than churches, church-related and private schools, ~~and~~ other nonprofit or charitable organizations, and home kitchens as defined by Section 75-29-[ ]. . .

The square brackets in this passage reflect the fact that the actual section number of Amendment 1 is currently unknown. If passed, this provision would refer to the text of Amendment 1. Together, the two amendments would ensure that homemade goods could be sold at farmers markets.

## **Conclusion**

The food safety laws that govern farmers markets in Mississippi today were written with restaurants, grocery stores, and commercial food businesses in mind. Although these laws are well-suited to governing grocery stores and restaurants, they fail to achieve a proper balance when it comes to farmers markets. As noted above, Mississippi already permits the production of non-potentially hazardous foods for charity bake sales. Extending this exemption to farmers markets would encourage an important and growing element of Mississippi communities.

By enacting the suggested amendments, Mississippi will provide consumers a greater choice of local food options, promote local food production, and stimulate local economies. At the same time, the full food safety regulations will continue to govern the sale of potentially hazardous foods at farmers markets, ensuring that public health will be protected.

## VI. County and Municipal Funding

### *Providing Tools to Support Farmers Markets*

For all the benefits farmers markets provide to Mississippi, many struggle to cover their costs. Counties and municipalities may want to support farmers markets because they increase sales for local farmers and provide healthy food for communities. We propose four amendments to clarify county and municipal authority to fund farmers markets. These proposals do not create any obligations or bind government entities in any way, but only remove legal uncertainty for counties and municipalities that wish to fund farmers markets.

### **Recommendations for Municipalities**

#### **Amendment 1: Clarify farmers markets' inclusion as a service program to which municipalities may donate matching funds.**

Miss. Code Ann. § 21-19-65 permits municipal governments to donate matching funds to “social and community service programs”; these are defined by a non-exhaustive list that does not include farmers markets. While farmers markets may be eligible for matching funds under the current statute,<sup>62</sup> their eligibility could be confirmed simply by adding “farmers markets” to the end of the list. This change would reduce confusion and possible withholding of funding based on the assumption that farmers markets are ineligible. The statute would read, in relevant part:

§ 21-19-65. Matching funds for social and community service programs

The governing authorities of any municipality shall have the power to expend monies from the municipal general fund to match any other funds for the purpose of supporting social and community service programs including, but not limited to, juvenile residential treatment centers; juvenile and half-way houses; prenatal care facilities; child day care facilities; mentally ill and alcoholics half-way houses; child and adult emergency shelters; elderly home health aides programs; farmers markets.

#### **Amendment 2: Add farmers markets to the statute authorizing municipalities to donate funds to local economic development organizations.**

This amendment would provide another clarification that municipalities are authorized to donate funds to farmers markets. This option would be broader than Amendment 1, as it would authorize municipalities to donate funds, even funds that are not matched, to farmers markets. This amendment would authorize, but not obligate, municipalities to fund farmers markets under § 21-19-44, which currently applies to local economic development organizations. The amendment would add “farmers markets” to the end of the list. The amended statute would read:

§ 21-19-44. Supporting certain local economic development organizations.

---

<sup>62</sup> The Attorney General has asserted that under that section, municipal governments are entitled to decide based on the character of an organization whether it qualifies as an eligible local program, subject to judicial review, and that “markets could be viewed as appropriate municipal purposes.” Miss. Att’y Gen. Op. (Mar. 2, 2001).

The municipal governing authorities of any municipality shall have the power and authority, in their discretion, to execute contracts and agreements with, and to appropriate, contribute and donate to, or expend budgeted funds for, local economic development organizations and designated Main Street programs, and farmers markets.

## Recommendations for Counties

### Amendment 3: Add farmers markets to the list of charitable uses to which counties may donate.

Counties have less latitude for choosing community services to fund under their analog to the municipal matching funds section. Miss. Code Ann. § 19-5-93 features a much more detailed list of eligible charities, and the Attorney General has stated that only statutorily enumerated charities are eligible for county funding.<sup>63</sup> Unlike the case of municipal funding, where an amendment would lend important clarity to already-established eligibility, inserting a farmers market provision into the county funding statute would open a new door for local support. Such a provision would read:

§ 19-5-93. Donations for certain patriotic and charitable uses

The board of supervisors of each county is authorized, in its discretion, to donate money for the objects and purposes following, to wit:

. . .

(t) *Farmers markets.* The board of supervisors of any county in this state, in its discretion, may donate out of any money in the county treasury such sum of money as the board deems advisable to support farmers markets operating within the county.

### Amendment 4: Remove limitations from county funding for farmers markets.

A narrow class of counties is enabled under Miss. Code Ann. § 19-5-73 to contribute funds to farmers markets and other establishments intended to aid farmers' "disposal and sale" of produce. The current provision includes (1) counties that had a narrow band of population (9,000 - 11,000) during the 1950 census and borders abutting neighboring states or (2) other counties that currently have exceptionally large populations. Those classifications—by population, especially from such an old census—do not even purport to separate counties for which the authority to fund farmers markets is more appropriate than for excluded counties. Striking this limiting language from the legislation would acknowledge that all counties should have equal autonomy in determining whether farmers markets and other programs deserve support. Allowing counties this greater breadth for funding to aid farmers markets and help farmers with the sale and disposal of produce would go beyond Amendment 3, giving counties the capacity to initiate their own farmers markets or farmer support programs. While some counties already have that capacity (pursuant to Miss. Code Ann. § 19-5-73), the line between those that do and those that do not appears arbitrary with respect to farmers markets, their impact, and their need. With the limits removed, the section would read:

§ 19-5-73. Establishment of farmers markets.

The board of supervisors of any county ~~having not less than nine~~

---

<sup>63</sup> Miss. Att'y Gen. Op. (Mar. 18, 1992).

~~thousand (9,000) and not more than eleven thousand (11,000) population according to the federal census of 1950, and having a boundary adjacent to another state, and the board of supervisors of any county having a population in excess of fifty thousand (50,000) with two (2) or more municipalities therein each with a population in excess of ten thousand (10,000) according to the last federal census,~~ are hereby authorized to expend monies from the general fund for the purpose of providing funds to be expended to establish, maintain and operate farmers markets and facilities to assist in the disposal and sale of farm and other food products in the interest of farmers, consumers and the general public.

## Conclusion

As more and more municipalities and counties recognize the importance of farmers markets and their many beneficial impacts on the community, they should have the opportunity to provide funding or other support for the markets. This is particularly true because counties and municipalities are so often charged with making decisions regarding the health and well-being of their residents. In particular, giving counties the authority to establish and maintain farmers markets rather than merely fund them, per Amendment 4, will open the opportunity for additional counties to host farmers markets where individuals or organizations have not yet taken the initiative.

It is important to remember that implementing this funding authority in the law merely provides an opportunity to the county or municipal government; it does not require any particular funding decision and does not bind counties or municipalities to any funding commitments. Accordingly, local governments and local communities would be best served if the Mississippi legislature were to pass Amendment 1 and/or 2 (regarding the funding authority of municipalities) and either Amendment 3 or 4 (regarding the funding authority of counties).

## VII. Food Assistance Programs

### *Expanding Access in the Community*

Federal food assistance programs are increasingly important for families in Mississippi and nationally.<sup>64</sup> Farmers markets interact primarily with two such programs, both operated through the U.S. Department of Agriculture's Food and Nutrition Service ("USDA FNS"). One program is the Women, Infants and Children Farmers Market Nutrition Program ("WIC FMNP"), which provides low-income mothers with special vouchers to use at farmers markets. This program resulted in approximately \$20 million of voucher redemptions at farmers markets in 2007.<sup>65</sup> The other program is the Supplemental Nutrition Assistance Program ("SNAP"), which provided more than 28 million people with \$34.6 billion in food assistance in 2008.<sup>66</sup>

Various barriers complicate the ability of farmers markets to accept food assistance benefits or to increase the use of food assistance benefits. These barriers keep healthy, locally grown foods away from individuals relying on FMNP and SNAP. Many of the individuals using food assistance suffer disproportionately from obesity and obesity-related diseases such as Type 2 Diabetes.<sup>67</sup> This correlation between poverty and obesity demonstrates how important it is to open farmers markets to individuals receiving food assistance, so that they can benefit from these sources of healthy, locally grown food. The barriers to accepting food assistance benefits also deprive farmers markets of the revenue from FMNP and SNAP spending. Helping markets to accept food assistance benefits will help struggling local farmers gain more revenue, due to the added customer stream. We recommend that Mississippi increase funding for WIC FMNP, expand WIC FMNP into additional counties, and help farmers markets accept SNAP benefits.

### **WIC & Senior Farmers' Market Nutrition Programs**

Overview of the WIC FMNP, SFMNP, and other WIC vouchers: The Women, Infants, and Children program ("WIC") is a federal program started in 1974 to provide supplemental foods, health care, and social services referrals, and nutrition education to low-income pregnant and parenting women and children up to age five who are found to be at nutritional risk.<sup>68</sup>

WIC FMNP was created in 1992 to provide fresh, locally grown fruits and vegetables to WIC participants and to expand awareness of and sales at farmers markets.<sup>69</sup> Federal funds cover 100% of

---

<sup>64</sup> See Jason DeParle & Robert Gebeloff, "Food Stamp Use Soars, and Stigma Fades," *New York Times*, at A1 (Nov. 28, 2009), available at <http://www.nytimes.com/2009/11/29/us/29foodstamps.html>; Gary Pettus, "Food Stamp Recipients Up in Mississippi," *The Clarion-Ledger*, available at <http://www.clarionledger.com/article/20091215/NEWS/912150350/-1/archive/Food-stamp-recipients-up-in-Mississippi> (Dec. 15, 2009) (reporting 91,000 additional food stamp recipients in October 2009, a 19 percent increase from the previous year).

<sup>65</sup> Elizabeth Frazão & Victor Oliveira, "The WIC Program: Background, Trends, and Economic Issues, 2009 Edition" Economic Research Report (ERR No. 73), April 2009, available at <http://www.ers.usda.gov/Publications/ERR73/ERR73.pdf>.

<sup>66</sup> USDA, "SNAP Program Participation and Costs," available at: <http://www.fns.usda.gov/pd/SNAPsummary.htm>.

<sup>67</sup> Centers for Disease Control and Prevention, "Estimated County-Level Prevalence of Diabetes and Obesity – United States, 2007," *Morbidity and Mortality Weekly Report*, available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5845a2.htm> (Nov. 20, 2009) (statistical analysis finding highest levels of obesity and diabetes present in several of Mississippi's poorest counties).

<sup>68</sup> Food & Nutrition Service, "WIC at a Glance," available at <http://www.fns.usda.gov/wic/aboutwic/wicatagance.htm> (Jan. 4, 2010).

<sup>69</sup> 7 C.F.R. § 248.1 (2010).

the program's food costs and 70% of its administrative costs.<sup>70</sup> WIC participants are issued FMNP coupons in addition to their regular WIC benefits. These coupons can be used to buy foods from eligible farmers, 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.<sup>71</sup> The federal food benefit level for FMNP recipients is between \$10 and \$30 per year per recipient; however, state agencies may supplement this benefit level.<sup>72</sup>

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. The program was established in 2002, following a pilot in 2001. SFMNP is available to individuals who are at least 60 years old and have household incomes of not more than 185% of the federal poverty guidelines.<sup>73</sup> In 2008, nearly \$22 million in vouchers were made available to seniors nationwide for use at more than 3,900 farmers markets.<sup>74</sup>

In addition to the WIC FMNP and SFMNP, USDA recently added a new type of voucher for fruits, vegetables, and whole grains, to its standard WIC food packages.<sup>75</sup> The USDA has asked each state WIC agency to develop new rules by which retailers and farmers markets can accept these vouchers. Importantly, these new rules give states the authority to determine whether farmers markets can accept the new vouchers in addition to FMNP vouchers.<sup>76</sup>

WIC FMNP and SFMNP in Mississippi: Mississippi has participated in WIC FMNP since 1998. The state program started small, targeting a few counties (it now operates in Bolivar, Harrison, Hinds, Holmes, and Noxubee counties) and limiting the benefits to \$14 per recipient. Then, in the early 2000s, USDA froze state funding levels. As a result, Mississippi has a relatively small WIC FMNP program. In 2008, Mississippi received \$75,000 from the USDA for the FMNP and was able to provide seasonal benefits of \$14 to 7,978 recipients. By contrast, Alabama expanded its WIC FMNP before the funding freeze and received \$380,323 in 2008, providing \$20 of seasonal benefits to 31,347 recipients. This makes the Alabama program about five times as big as that of Mississippi.<sup>77</sup>

Unlike most states, which give their WIC recipients checks, vouchers, or debit cards (Electronic Benefits Transfer ("EBT") cards) each month to purchase food supplies,<sup>78</sup> Mississippi distributes its WIC benefits as actual food packages. In the summer months of June and July, FMNP vouchers are issued to WIC recipients at local WIC sites. Farmers markets are selected and trained for the WIC FMNP based on

---

<sup>70</sup> Frazão & Oliveira, *supra* note 65. States operating WIC FNMP must therefore contribute at least 30% of the program's administrative cost.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Food & Nutrition Service, "Senior Farmers Market Nutrition Program," available at <http://www.fns.usda.gov/wic/SeniorFMNP/SeniorFMNPOverview.htm>.

<sup>74</sup> USDA, "SFMNP Profile – FY2008," available at <http://www.fns.usda.gov/wic/SeniorFMNP/SFMNPFY2008Profile.htm>.

<sup>75</sup> See 72 Fed. Reg. 68,965-69,032.

<sup>76</sup> Frazão & Oliveira, *supra* note 65.

<sup>77</sup> Food and Nutrition Service, "WIC Farmers' Market Nutrition Program," available at <http://www.fns.usda.gov/wic/fmnp/FMNP2008.htm>.

<sup>78</sup> Food and Nutrition Service, "Frequently Asked Questions about WIC," available at <http://www.fns.usda.gov/wic/FAQs/FAQ.HTM>.

criteria developed by the Mississippi Department of Agriculture and Commerce (MDAC) and the Mississippi State Department of Health (MSDH).<sup>79</sup>

Mississippi has also 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, which are distributed in June and July at local feeding sites and through home-delivered meals.<sup>80</sup> The program operates in Holmes and Harrison Counties, as well as at sites in southern Mississippi.<sup>81</sup>

Even if an increase in funding from the USDA made expansion possible, Mississippi would face several challenges as it attempted to grow its WIC FMNP program.<sup>82</sup> As mentioned above, unlike most states, Mississippi WIC participants pick up their food packages at facilities operated by the state and receive FMNP vouchers when they pick up their food packages. This system hurts voucher redemption rates because farmers markets are often far from distribution centers and participants often will not make a separate trip to redeem a \$14 voucher. There have been some efforts to bring farmers to the distribution centers, but this has proved too time-consuming for many farmers.<sup>83</sup> The distribution center system also limits the ability of Mississippi farmers markets to take advantage of the changes to the standard WIC food package. In many states, participants can choose to redeem the new standard WIC voucher at farmers markets. However, in Mississippi, the state just added fruits and vegetables to the food packages available at the distribution centers; thus, local farmers do not benefit from the new standard WIC voucher.

Other factors that may impair voucher redemption rates in Mississippi include: the low voucher value, participants' lack of familiarity with farmers markets, the preference of participants for ready-to-eat foods as opposed to produce that requires preparation, a resistance by farmers to become involved with the program, and the climate in Mississippi, which makes it difficult for farmers to carry a full array of fresh produce all summer.

### **Supplemental Nutrition Assistance Program at Farmers Markets**

Overview of the SNAP Program: SNAP and its predecessor, the Food Stamp Program, were established by the Food Stamp Act of 1964. Responsibility for administering the program is divided between federal and state governments. State governments are charged with administrative duties dealing with certifying eligibility and delivering benefits to recipients, but the federal government establishes mandatory eligibility rules and manages the approval for vendors or retailers to accept SNAP benefits. States, in their administrative capacities, can aid retailers in promoting SNAP acceptance or in obtaining necessary technology for the processing of benefits at the time of sale.

---

<sup>79</sup> Mississippi Department of Agriculture and Commerce, "Mississippi Farmers Market Nutrition Program," *available at* [http://www.mdac.state.ms.us/n\\_library/programs/mfmnp/mfmnp\\_program.html](http://www.mdac.state.ms.us/n_library/programs/mfmnp/mfmnp_program.html).

<sup>80</sup> "Mississippi Farmers Market Nutrition Program," *supra* note 79.

<sup>81</sup> *Id.*

<sup>82</sup> These examples are based on a conversation with Purvie Green, Mississippi Department of Agriculture and Commerce's Program Coordinator for Mississippi's WIC FMNP and SFMNP.

<sup>83</sup> The Senior FMNP should not suffer from the same obstacles, since the program distributes vouchers directly to eligible seniors and the seniors do not go to distribution centers to obtain any of their foods.



SNAP in Mississippi: As of September 2009, 236,781 Mississippi households and 553,289 individuals received a total of over \$68 million in monthly SNAP food assistance benefits.<sup>84</sup> The state's ratio of actual recipients versus those who are eligible remains below the national average of 60%.<sup>85</sup>

All SNAP benefits 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.<sup>86</sup> To become eligible to accept SNAP payments, vendors such as farmers markets must first be approved by the FNS. This has proven to be a big barrier in Mississippi and elsewhere since the federal SNAP application, targeted at retailers and grocery stores, is difficult to complete in the context of a farmers market.<sup>87</sup> This barrier could be diminished through simplification of the application process (which must happen at a federal level) or through assistance to farmers market managers in navigating the existing process (which could happen at a state or local level).

Once FNS approves a vendor to accept SNAP payments, a vendor (whether supermarkets, farmers markets, or other food retailers) with a permanent location that has access to electricity and communications wiring can receive a free wired POS device. However, because most farmers markets exist in outdoor locations without electricity, they can only process SNAP sales by purchasing a wireless POS device. Such devices have become cheaper over the past few years, but still cost \$800-\$1,000 per device.

Most successful SNAP access expansions around the country have placed one POS device at each farmers market and used a centralized system (the Food Trust in Philadelphia is a good example).<sup>88</sup> Under a centralized system, shoppers come to the market, swipe their cards at the main booth for a certain amount of money, and are given tokens to spend at any booth in the market. Shoppers spend the tokens at different booths, and at the end of the day vendors exchange the tokens for cash. To close out the process, the market processes the SNAP transaction and is reimbursed for the money that was distributed to the vendors in exchange for their tokens. Thus, each farmers market needs just one wireless POS device, a one-time expenditure, and funds to cover various fees relating to processing, maintenance, and minimum sales volume. This is not an exorbitant expenditure. If MDAC and local and regional market groups aggressively pursue funding from both USDA and private sources to cover these costs, we believe it is possible to gain full farmers market SNAP access in Mississippi by 2012.<sup>89</sup>

---

<sup>84</sup> Mississippi Department of Human Services, “September 2009 Monthly Statistical Report,” at 1, *available at* <http://www.mdhs.state.ms.us/agcystats.htm>.

<sup>85</sup> Some states have actual receipt rates in excess of 75%. See U.S. Food and Nutrition Service, *Reaching Those In Need: State Supplemental Nutrition Assistance Program Participation Rates in 2007 – Summary* (Nov. 2009).

<sup>86</sup> FNS does offer the option of manual processing at the time of sale and a later phone call to a centralized service center to complete the transaction. However, due to this method's serious transactional complications – labor, time, and complexity – it is not in widespread use as a processing method.

<sup>87</sup> For example, the questions asked in the form are quite invasive for farmers market managers, many of whom are unpaid volunteers. In addition, some farmers markets in Mississippi that have completed the SNAP retailer application have been denied approval because the FNS found that the market did not generate sufficient income to warrant SNAP certification.

<sup>88</sup> For a video overview of The Food Trust's efforts to reach communities lacking affordable fresh food options, see The Robert Wood Johnson Foundation. *Philadelphia Story: Access to Healthy Foods is Making a Difference*, *available at* <http://www.rwjf.org/files/newsroom/profiles/foodtrust/>.

<sup>89</sup> In addition, new technology could be on the horizon that may help solve the SNAP device problem in Mississippi. This new technology is intended to turn any cell phone into a credit card reading machine through the attachment of a mobile pay device. Although it is intended for use with credit cards, this device, called the “Square,” may allow markets with cell phone access to serve SNAP users if state electronic benefit processing systems could successfully interact with the Square readers. This technology may, at a future point, be available to users at no cost beyond a per-transaction fee.

In addition, in our discussions with the Mississippi Department of Human Services, department officials noted they circulated a Request for Proposals (“RFP”) for a new electronic benefit distribution system capable of handling wireless SNAP transactions. The RFP includes a requirement whereby the vendor would provide free wireless POS machines to those farmers markets certified by FNS to accept SNAP benefits. Maintaining this requirement in vendor bidding on the contract would greatly increase the opportunity to use SNAP at farmers markets.

## Recommendations

Mississippi should consider a variety of solutions, some of which require no additional state-level funding and others that might require reallocation of funds or an increase in funding. The goal of all measures will be, first, to increase the number of farmers markets accepting FMNP and SNAP as a means of payment, and, second, to promote this option as an attractive alternative for recipients of food assistance funds.

Recommendations for WIC FMNP and SFMNP Access: Farmers and consumers in Mississippi would benefit most if Mississippi worked to secure more federal funding in order to both expand its WIC FMNP program to more counties and increase the voucher amounts in Mississippi. The following are steps that state departments and agencies could take to increase this funding, as well as increase WIC FMNP usage at markets:

- Lobby for overall increases in state grant funding for the WIC FMNP in the Child Nutrition Reauthorization Act that Congress will be considering in early 2010. Additional funding could expand WIC FMNP into other counties and increase the voucher amounts.
- Improve the interaction between the state’s distribution centers, the FMNP, and local farmers markets.
- Work with the state WIC agency to ensure that new regular WIC “fruit and vegetable” vouchers, in addition to FMNP vouchers, will be redeemable at farmers markets.
- Work to expand access to and knowledge of the SFMNP program, as well as making this program available to seniors and farmers in more counties in Mississippi.
- Consider supplementing the amount of WIC FMNP and SFMNP vouchers with state funds. Several states, such as Michigan, have implemented comparable programs.

Recommendations for SNAP Access: MDAC and local/regional market groups should aggressively pursue funding from USDA and private sources to cover the costs of providing a wireless machine to each market. Once markets are equipped to accept SNAP, Mississippi should help promote farmers markets in the target population, including educating individuals about the lower prices and higher quality of food products offered at farmers markets. Specific methods to increase SNAP access include:

- Help markets obtain FNS certification to accept SNAP benefits by creating a “SNAP Certification Tip Sheet” to guide farmers market managers through the application.<sup>90</sup>
- Develop contracts with third-party benefit administration vendors that would provide an electronic benefit distribution system capable of handling wireless SNAP transactions.
- Form partnerships with private foundations and nonprofits to bring more money, attention, and outreach to increase food benefits use at farmers markets.<sup>91</sup>

---

<sup>90</sup> See, e.g., The Food Trust, *Increasing Access, The Clark Park Farmers’ Market SNAP/Food Stamp Pilot Program: Farmers’ Market SNAP/Food Stamps Resource Guide*, (July 21, 2009), available at [http://www.thefoodtrust.org/catalog/download.php?product\\_id=159](http://www.thefoodtrust.org/catalog/download.php?product_id=159).

- Reallocate state SNAP administrative funds toward EBT access expansion including the purchase of wireless POS devices. Nothing in the applicable federal food assistance regulations appears to prevent such reallocation and Iowa has successfully done this, allowing it to expand food assistance access at farmers markets to 103 of the state’s 173 markets.<sup>92</sup>

## Conclusion

Mississippi should lobby for an overall increase in state grant funding for the WIC FMNP in the Child Nutrition Reauthorization Act that Congress will be considering in early 2010. Additional funding would allow the WIC FMNP to be expanded into other counties and allow an increase in voucher amounts. Mississippi could also supplement the WIC FMNP and SFMNP vouchers with state funding. This has been done in some states such as Michigan.

Mississippi should also pursue funding from the federal government and private sources to cover the costs of providing a wireless machine to each farmers market to allow the use of SNAP benefits. Once markets are able to accept SNAP payments, Mississippi can help educate food assistance recipients about the benefits of using their SNAP dollars at farmers markets. As Mississippi moves to increase access to SNAP and WIC FMNP at farmers markets, there are many resources that the state can access in addition to this report.<sup>93</sup>

---

<sup>91</sup> Several examples deserve mention. In the Boston area, The Food Project has partnered with the Wholesome Wave Foundation to provide financial assistance for SNAP benefit acceptance hardware and to incentivize SNAP usage by matching SNAP purchases by up to \$10. See The Food Project, “Boston Bounty Bucks,” available at <http://thefoodproject.org/boston-bounty-bucks>. In Philadelphia, The Food Trust has funded, through grants from private foundations, SNAP benefit access at all 30 of their markets. See The Food Trust, “Farmers’ Market Program,” available at <http://www.thefoodtrust.org/php/programs/farmers.market.program.php>. The Project for Public Spaces, a national non-profit based in New York, funds both individual markets and regional associations for projects that will expand market access to low-income consumers. See Project for Public Spaces, “Diversifying Markets Initiative,” available at <http://www.pps.org/markets/info/regranting/>. Individual farmers markets or a network of farmers markets in Mississippi could join together with nonprofit organizations as well as government to work towards expanding SNAP access.

<sup>92</sup> See 7 C.F.R. 274.12 (2010).

<sup>93</sup> See, e.g., August Schumacher, Suzanne Briggs, & George Krumbhaar, *Wireless Card Services: Supporting SNAP (Food Stamps), WIC and Senior Farmers Market Nutrition Programs*, The Kresge Foundation (May 29, 2009). This report, prepared by a team of consultants and a high-level former USDA official, provides a comprehensive analysis of the issues that can serve as a guide for Mississippi as it considers how to expand SNAP and WIC usage at markets.

## VIII. Conclusion and Other Legal Innovations

### *Fostering a Market-Friendly Mississippi*

Consumer demand for farmers markets has grown tremendously over the last ten years with the number of markets increasing almost 50% between 2000 and 2005 alone.<sup>94</sup> Shoppers are drawn to markets not only because markets are sources of healthy, affordable local produce, but also because they bring the community together, contribute to economic development, and allow shoppers to support growers in their own community.

Mississippi has the opportunity to clarify and amend its laws regulating farmers markets to promote their growth and success. As other states are working through these issues, Mississippi has the chance to set a national standard on some of these important issues. Beyond these legislative changes, Mississippi can also draw upon other programs around the country and adapt the most successful initiatives for use in Mississippi.

Below are some examples of innovative legislation and programs in other states that may serve as guides for Mississippi as it works to strengthen its farmers markets.

- **Alabama:** The Alabama Farmers Market Authority has created a web-based program entitled *Farmer Connect* that allows restaurants and chefs to purchase food from local farmers over the internet.<sup>95</sup> In addition, the governor of Alabama has created a “Farmers Market Week,” in which state agencies and schools promote local markets.<sup>96</sup>
- **Massachusetts:** The City of Boston, in conjunction with The Food Project, has started a program called “Boston Bounty Bucks,” which provides matching funds for SNAP purchases up to \$10, thus increasing the purchasing power of SNAP benefits at farmers markets.<sup>97</sup> Some farmers markets around the country are also using this program to match WIC FMNP vouchers.
- **New York:** The Farmers’ Market Federation of New York and the New York Department of Agriculture and Markets partnered to provide wireless POS devices to farmers markets throughout the state.<sup>98</sup> In order to make this program a success, market managers are provided, free of charge, a wireless EBT terminal; 1,000 serialized, market-specific EBT wooden tokens; EBT logs; a vinyl banner to display at the EBT sales booth; “We Gladly Accept EBT Token” signs for farmer booths; training; and technical assistance.<sup>99</sup> In addition, the “New York Fresh Checks” program, funded by the Humpty Dumpty Institute, allows markets to issue a \$5 check to every customer who purchases a minimum of \$5 in EBT tokens each market day.<sup>100</sup> Finally, the Farmers’ Market Federation of New York has contracted to provide vendors at member markets with cheap light crop insurance, vendor liability insurance, and even health insurance through

---

<sup>94</sup> USDA National Farmers Market Manager Survey 2006, *supra* note 2.

<sup>95</sup> Farmers Market Authority website, click “Farmers Market Connect,” *available at* <http://www.fma.alabama.gov/>.

<sup>96</sup> Farmers Market Authority, “Governor Proclaims National Farmers Market Week,” Aug. 1, 2006, *available at* <http://www.fma.alabama.gov/pdfs/News/GovProclaimsNatIFMWk.pdf>.

<sup>97</sup> The Food Project, “Boston Bounty Bucks,” *available at*: <http://thefoodproject.org/boston-bounty-bucks>.

<sup>98</sup> Farmers’ Market Federation of New York, “Farmers’ Market Wireless EBT Project,” *available at* <http://www.nyfarmersmarket.com/ebt.htm>.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

Blue Cross/Blue Shield. Also, entire markets may purchase cheap commercial general liability insurance.<sup>101</sup>

- **Washington:** In 2008, Washington implemented a \$1.5 million program called Local Farms-Healthy Kids to increase the amount of local food consumed through schools, food banks, and farmers markets.<sup>102</sup> The Farmers Market Association provides a variety of services to farmers markets, including marketing, education, advocacy, and access to affordable group liability insurance and a market safety/risk reduction program.<sup>103</sup> Also, many Washington markets use a system with the state's Department of Social and Health Services to accept EBT cards by phoning in EBT account numbers and giving the consumers scrips or tokens.<sup>104</sup> Finally, the Washington State Farmers Market Association has worked to change liquor-licensing requirements to facilitate sales of local wine at markets.<sup>105</sup>

These programs are examples of innovative ways for state governments and nonprofits to support farmers markets in their states. They can serve as valuable models as Mississippi evaluates options for strengthening farmers markets in the state and increasing access to those markets for lower and moderate-income households.

---

<sup>101</sup> Farmers' Market Federation of New York, "Farmers' Market Federation Benefits," *available at* <http://www.nyfarmersmarket.com/memberbenefits.htm>.

<sup>102</sup> Washington State University, "Local Farms – Healthy Kids," *available at* <http://king.wsu.edu/foodandfarms/LocalFarmsHealthyKids.html>.

<sup>103</sup> Washington State Farmers Market Association, "Membership Benefits," *available at* <http://www.wafarmersmarkets.com/membership.html>.

<sup>104</sup> Washington State Farmers Market Association, "Food Stamps and EBT at Farmers Markets," *available at* <http://www.wafarmersmarkets.com/resources/foodstamps-market.html>.

<sup>105</sup> Washington State Farmers Market Association, "Sale of Washington Wine at WSFMA Member Markets," *available at* <http://www.wafarmersmarkets.com/resources/winesalesatfarmersmarkets.html>.