

2017

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Recommended Citation

Mitchell, J. A. (2018). Farmers Market Rules and Policies: Content and Design Suggestions (From a Lawyer). *Journal of Food Law & Policy*, 13(1). Retrieved from <https://scholarworks.uark.edu/jflp/vol13/iss1/22>

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FARMERS MARKET RULES AND POLICIES: CONTENT AND DESIGN SUGGESTIONS

(FROM A LAWYER)

Jay A. Mitchell*

Farmers market rules and policies can get a lot done for a market. They can set out what products can be sold at the market, how vendors are selected, what's expected of vendors from growing practices to signage to paperwork, and how vendors are disciplined or removed from the market.

Rules and policies can do more. They can describe a market's history and philosophy, educate consumers, signal compliance with regulatory requirements, and reinforce tax-exempt status or organizational form. Rules can also operate as contracts, with meaningful legal protection and risk management value.

One consequence of this functionality is that rules and policy documents can get pretty long. The landscape gets even more complex when the rules are accompanied by separate vendor applications, hold harmless agreements, and membership materials, and the market has a website providing additional information. All this can put a quite a reading burden on a vendor, and quite a management burden on a market.

This article is about ways to both maximize the value to a market of its rules and minimize the load on the user. The article:

* Professor of Law and Director, Organizations and Transaction Clinic, Stanford Law School. The clinic regularly represents Northern California farmers markets on rules documents and other matters. The author wishes to thank these clients, and the students who worked with them, for the opportunity to learn about market operations and regulation. The author also wishes to thank Maya Spitzer, Jamie Renner, and Aurora Moses for their assistance in the preparation of this article.

- identifies good things the rules can do;
- includes recommendations for rules content, with a focus on market operations, branding, compliance, and legal liability;
- suggests ways to improve vendor understanding of the rules and consumer and community understanding of the market;
- offers ideas for how to improve the protective value of the rules;
- includes suggestions for ensuring consistency across rules, applications, and other market materials;
- provides recommendations about document organization, format, and writing style; and
- calls out areas where discussion with legal counsel may be particularly useful.

The article is addressed to market operators and to lawyers and others who may help markets develop rules, policies, website copy, and related materials.

Rules content: introductory section

The introductory section of the rules is a place for a market to tell its story. It's a useful platform for educating the community and establishing context for market decision-making. Some suggestions:

1. *History and Philosophy.* The organization can describe its mission, history, and operating philosophy. For example, it can set out its commitment to local growers, small-scale farming, organic production, urban ag, nutrition education, and the like. From a legal perspective, these descriptions are useful in that they convey background information for rules content and application.
2. *Business Structure.* For a market operated by a tax-exempt organization, the introduction provides a

vehicle for describing and reinforcing the basis for its tax status. If you're a market set up as a 501(c)(3) charity, for example, you can call out your educational mission and activities, or your role in community building. If you're a market organized as a membership organization, you can highlight the relationship between membership requirements and market participation.

3. *Legal Environment.* The introduction provides an opportunity to note key legal requirements applicable to markets generally. A California operator, for example, may want to set out the basic principles of the extensive regulatory framework applicable to certified farmers markets in the state. That serves an educational function, conveys commitment to compliance with the rules, provides a way to incorporate statutory requirements and terminology if desired, and, as with the mission and philosophy discussion, sets context for the rules.

Rules content: operations

The heart of the rules are the provisions regarding market operations: admission, renewal, fees, stall assignments, inspections, conduct, termination, and so on. These provisions can vary widely by market; this section touches on several topics of more general applicability.

1. *Admissions.* Do your best to set out criteria and preferences for admissions decisions. Some criteria may apply to all applicants and others may apply only to certain types of vendors; if that's the case, break them out into separate sections and be as clear as you can be. Be sure, though, to give the board and management discretion in making admissions decisions.
2. *Renewal.* Pay close attention to renewal matters. If market participation is limited to a single year or

season and annual renewal required, be crystal-clear about that, and state that renewal is never guaranteed. Call out factors that you take into account in making renewal decisions. Those could include rules compliance, consistent attendance, satisfactory stall and farm inspections, absence of consumer complaints, employee product knowledge, and so on. Use the rules to establish a basis for defending a non-renewal decision.

3. *Vendor Tenure.* Even if the rules are clear about renewal requirements, it may, as a practical matter, be hard to remove a longtime vendor that no longer fits the market profile or philosophy. Think about possible transition measures. You might, for example, include a provision that allows you to admit such vendors to a particular market only, limit their market days, or create a wind-down period by advising the vendor that it will not be eligible for admission after a set number of additional seasons.
4. *Change of Ownership.* Consider addressing what happens if there is a change of ownership of a vendor. If it's okay for the new owner to keep selling, be clear that it's subject to the same product limitations and other terms applicable to the prior owner, and that it will have to apply on its own for the next market season.
5. *Attendance and Cancellation.* Be clear about attendance requirements, cancellation lead-times, and the consequence of vendor failure to show up or show up on time. You'll also want to be clear that you make decisions about market operations during inclement weather, not the vendor, and that you reserve the right to adjust market days and hours.
6. *Reselling.* Be sure to set out the rules about vendor reselling. If it is prohibited by law or by your

policy, say so, say it explicitly, and say it more than once.

7. *Fees, Fines, and Late Payments.* State stall fees and disciplinary fines in easy-to-find, easy-to-follow tables, and address what happens if a vendor is late with payments.
8. *Stalls.* Make clear that a vendor can't switch, transfer, or "sublet" its stall space without your approval. If you reserve the right to move vendor stalls, make that clear, too. Set out your requirements relating to vendor-provided tents and equipment, signage, cleanliness, aisle clearance, and display quality.
9. *Pricing.* Set out your policies on pricing and selling activities: no collusion with other vendors, whether or not bargaining with consumers is permitted, permissibility of pre- and post-market selling, accurate signage, and so on.
10. *Inspections.* If you do stall or farm inspections, call them out in the rules, and provide for the vendor's explicit consent and cooperation. Reserve the right to obtain and review vendor permits, licenses, and insurance policies upon reasonable request.
11. *Conduct.* Be clear about vendor and consumer conduct expectations. These provisions could address harassment, vendor courtesy and honesty, noise, smoking, alcohol and marijuana use, firearms, and even the use of bicycles and skateboards in the market.
12. *Animals.* Consider including rules about the presence of vendor and consumer dogs and other animals at the market.
13. *Political and Community Activities.* Markets often

set aside space for community groups, political activists, and others to set up tables and engage in outreach activities. If you do, describe your policies about access to the space and permitted activities, including not impeding traffic flow, use of amplification equipment, signage, and conduct.

14. *Employees and Volunteers.* Make clear that the vendor or community group is responsible for not only its behavior but also its employees, family members, and volunteers acting on its behalf.
15. *Discipline Flexibility.* Give yourself flexibility in the discipline and termination provisions. Make clear that the market has discretion in responding to rules non-compliance. You might list possible responses: giving warnings, closing the stall for the balance of the market day, limiting product offerings, conditioning future participation on modification of current practice, issuing fines, suspending the vendor or multiple days, terminating selling privileges, and even permanently disqualifying the vendor from market participation. You want discretion, and you want strong tools in your pocket
16. *Serious Violations.* Consider identifying violations that can lead to immediate expulsion. Those might include a vendor selling products it didn't grow, misrepresenting products as organic or local, and engaging in violent or threatening behavior. You really want a strong tool in those cases.
17. *Fair Process.* At the same time, provide for a fair process. You may want to permit vendors to appeal suspension and termination decisions to the market's board of directors. Consider setting out specific procedure rules for such appeals; for example, you might require the vendor to submit a written petition within X days after the disciplinary

action, and give the vendor an opportunity to appear in front of the board or relevant committee. And be as clear as you can about those procedures.

Rules content: branding and marketing

The rules and related documents are platforms for communicating and protecting your brand. You should take advantage. Here are three ideas:

1. *Brand.* A market may have a logo. If so, include a provision in the rules that (depending on your policy) either bars vendors from using the logo or grants a license for such use in vendor marketing activities. Be sure to address it, either way.
2. *License.* If you allow use, make clear that the license is effective only for so long as the vendor is approved and participating in the market. Be clear that the vendor can only use the logo in the form you provide. These provisions reflect trademark law considerations—you want to affirmatively protect your brand.
3. *Media Release.* On the flip side, include a provision that gives you the right to use and disclose vendor names, logos, images, and stories in your own marketing activities. You'll want this media release to expressly cover multiple communications vehicles: website, social media, posters, brochures, and so on. You'll also want to make clear that you can use a particular photo or the like without first getting the vendor's approval, and that the vendor has no entitlement to ownership or compensation for such use. This is an area where you might want an attorney to draft or review your language.

Rules content: legal compliance

The rules provide a platform for both effecting and

signaling compliance with regulatory and other external requirements. They can help you not only get it right but also make visible your commitment to compliance. Suggestions:

1. *Market Compliance.* Be sure the rules reflect legal requirements, especially regulatory and contractual obligations relating to you and your operation of the market. Those requirements may relate to all sorts of things, including rules content, permitted product sales, market layout and activities, sampling, parking, fire safety, prepared food packaging and utensils, bags, recycling, information collection and reporting, vendor termination, nutrition assistance programs, wine and beer sales, and other matters.
2. *Vendor Compliance.* You'll want to include provisions requiring compliance by vendors with both laws applicable to market activities generally (where vendor non-compliance could get you in trouble) and specifically to them. Make clear that compliance is their responsibility, not yours, even if you've provided information or technical assistance. Be explicit that non-compliance with law is a violation of the rules.
3. *Site Lease.* Think about whether anything in your lease or license for the market site should be captured in the rules. That could range from prohibited activities to information you need to collect from vendors to be reported to the landlord.
4. *Insurance.* Consider whether anything in your insurance policies should be reflected in the rules. For example, you may want to think about whether your carriers want you to obtain specific indemnities or other terms from vendors, or to limit use of propane tanks and the like. (Think about creating your own risk management checklist to help you monitor compliance and document your diligence.)

5. *Boards and Conflicts of Interest.* Market rules often set out a core decision making role for the board of directors of the operator. Boards approve changes in the rules, set stall fees and other policies, and make decisions about disciplinary actions. The board of a market operator may include vendors, market staff, or owners of nearby businesses. If so, then the organization may want to consider whether its conflict of interest policy effectively addresses the conflicts (or at least awkwardness) that may surface in dealing with fees, disciplinary matters, and other situations arising under the rules. It may make sense to add a provision to the policy specifically dealing with that issue. That action should help facilitate resolution of the question, shore up the decision-making mechanism created under the rules, and signal to regulators your sensitivity to conflicts concerns. If you have a lawyer on your board, you might ask for his or her help here, or talk with your regular counsel.

Rules content: legal liability

Rules, if set up properly, can serve as contracts, and contracts can provide powerful benefits for a market. Some ideas:

1. *Legal Support.* As you'll see from the discussion in this section, this is an area where support from an attorney is particularly important and useful. You'll want to talk about both substance — what protections are available to you and workable in your context and your state — and about how best to put in place those protections — in the rules, in separate agreements or releases, or otherwise, and with the right language.
2. *Standard Provisions.* There are lots of traditional contract tools that are useful in market rules. These boilerplate provisions— those clauses at the end of

a contract called “entire agreement,” “amendment,” “severability,” “third party beneficiary,” and so on — are often full of legalese, but they’re worth considering for inclusion in the rules or other market materials.

3. *Indemnification.* Markets routinely ask vendors to make indemnification or hold harmless promises. These obligations require the vendor to protect the operator from claims made by third parties against the operator as a result of the vendor’s conduct. Be sure to think about the types of claims covered by the indemnity, and about the value of calling out claims of particular concern. Those might include, say, regulatory compliance or food safety. And be sure the language includes a promise by the vendor to “defend” as well as indemnify you, to establish a basis for demanding legal representation as well as payment of judgments or fines.
4. *Liability Limitations.* To limit liability, consider including explicit liability limitation provisions. You could disclaim types of damages. You could try to cap your exposure to stall fees paid during the relevant market year. You can try broad waivers and releases of claims. You can make clear that you don’t refund fees to vendors who are suspended or terminated. You can provide that you have no liability for an unexpected event that closes the market for a day (or permanently), such as loss of the site or a “force majeure” or “act of God” circumstance.
5. *Consents.* To limit liability, consider including express consents by vendors. For example, if this is your policy, you can state that you may tell regulators about vendor non-compliance, or that you reserve the right to tell other markets about farm inspection results or disciplinary decisions, and obtain the vendors’ advance consent to such

disclosure. That should reduce the risk of a vendor later prevailing on a claim about these communications. And, as noted, you'll for sure want to obtain vendors' consent to use of their names and images in your marketing materials.

6. *Acknowledgments.* To limit liability, consider including acknowledgments by vendors. For example, you can have vendors acknowledge that you made no guarantees about sales or traffic, and that vendors aren't relying on you for business advice or legal compliance.
7. *Rules Interpretation.* You might include other provisions that concern the rules themselves. For example, you might want an "entire agreement" clause, which makes clear that there are no representations or promises outside of the rules and specifically-identified related documents. You can provide that the rules are the primary document that controls if there are inconsistencies between the rules and, say, the application form or website. You can provide that the rules can't be amended except in writing, that a waiver of non-compliance is not a free pass forever, and that the rules aren't intended to give legal rights to anyone (such as a consumer or vendor employee) other than the operator and the vendors.
8. *Dispute Resolution.* You can include provisions intended to shape how formal disputes play out. You can provide for an internal appeals process in matters involving fines, suspensions, or termination, and obtain an agreement that the process is final and binding. You can provide that legal disputes will be resolved in specific local courts — so the vendor, not you, has to travel. You can provide that the loser pays the other party's legal fees. You can include a dispute resolution clause, which provides for mediation or arbitration in lieu of a lawsuit.

9. *Specificity.* The key here is refining these standard contract provisions to fit the context. The more specific-to-market-matters you can be, the better. There's no guarantee that a court will enforce any contract provision in every circumstance, but that doesn't mean it's not worth including it; its presence may give you a better shot at heading off the claim or litigation earlier in the process.
10. *Tone.* That all said, you'll also want to think about tone. Some markets may resist including hard-core, largely one-sided contract provisions in their market rules. That's understandable, in that markets, in a real sense, exist to support farmers and other vendors. The countervailing point of view is that markets can't carry out that function without even-handedness, predictability, cost control, and good risk management, which is what this stuff is all about.
11. *Vendor Signature.* Finally, and needless to say, be sure the vendor signs something that confirms acceptance of the rules. That could be an application, a participation agreement, or another document. You'll want the signature, and you'll want to be sure the agreement is signed by the right person. If, for example, the vendor operates as an LLC, you'll want the entity to sign, and you'll want to be sure the names on the various documents—permits, licenses, insurance policies, applications, and contract — line up. And, if you use legal documents in addition to the rules (such as a separate indemnification agreement), be sure to get it signed, too, and in the same manner. No reason to create any potential openings for a challenge, and you want to be sure, from a contract enforceability point of view, that the right person has agreed and is on the hook.

Rules content: consistency with other market materials

Markets often have vendor documents in addition to the core rules. You're well-advised to pay attention to consistency across the multiple documents as well as your website content. Some observations:

1. *Related Materials.* Market operators often use vendor applications (which may vary by type of vendor), participation agreements, separate hold harmless contracts, procedures for nutrition assistance programs, and so on. There's also often relevant eligibility, application process, and other information on the website. And, as noted below, markets organized as membership organizations may have bylaws that cover vendor admission and rights. This is all on top of a big market rules document.
2. *Consistency.* With all these materials, it's easy for discrepancies to develop over time. That can create confusion, plus provide an opening for a disgruntled vendor. So, when you're updating your rules, be sure to review and update the other materials as well. Watch for consistency in content, terminology, and style, and think about opportunities to reinforce the key rules. Attention here will help you present a tight, harmonized set of terms and disclosures to vendors, to regulators, to courts, and to the public.
3. *Rules as Key Document.* Be sure to make clear that the core rules document is the primary document governing the vendor relationship and market operations; the materials should make clear that the rules "control" in case of inconsistencies. As noted above, you can include such a provision in the legal language at the end, and you can add a small-print sentence to that effect in vendor applications and the like.

4. *Separate Signed Documents.* If you use a separate participation agreement or other document to be signed by approved vendors, consider also using it as a vehicle for highlighting hot button provisions in the market rules. You may, for example, want to call out “sell what you grow” requirements, the facts that non-compliance can lead to termination and that admission is for a limited period with no guarantee of renewal, and the indemnification and liability limitation provisions. These disclosures strengthen your case that a vendor had knowledge of the rules, and voluntarily signed up.
5. *Cheat Sheets.* Another way to reinforce the rules, as well as provide practical help to your vendors, is to give them cheat sheets that reflect the rules. You might have a one-page “what to bring on a market day” piece, or a checklist for set-up and clean-up requirements. You might create one-pagers for each type of product (produce, meat, eggs, nursery etc) that summarizes unique production, packaging, documentation, and signage requirements for the product. Just watch out for consistency with the rules document and, as noted above, be sure to review the cheat sheets when you update the rules.
6. *Membership Organizations.* Markets that are organized as corporations with members need to deal with an additional consistency challenge. They have articles, bylaws, and sometimes separate membership agreements, and they operate under state laws that govern member admission and termination. As a result, if vendors are members, then the organization needs to make sure the whole package hangs together. That can get pretty complicated, so it’s worth sorting through in a methodical way, and making sure the corporate documents and the market documents square up.

Rules design: organization, format, and writing style

Thoughtful organizational, formatting, and writing style choices help the user to navigate and understand the document. It's worth the investment, and it's mostly common sense; you don't need to be a graphic designer. Several recommendations:

1. *Buckets.* There is a lot of content in the rules. Breaking up content helps with readability and navigation. Divide it up into separate, sensibly-grouped, plainly-labeled buckets: application process, production requirements, fees, and so on.
2. *Sequencing.* Organize those buckets into a logical sequence. For example, consider a chronological approach to market operations, beginning with a market overview and then marching right through vendor admission, market set-up, signage, product labeling, selling activities, health and safety, conduct, inspections, clean-up, reporting, and termination.
3. *Business Up Front.* Put the market operations information in the front and the discipline, liability, dispute resolution and other more legal provisions in the back. The likelihood of relevance of those provisions is a lot lower than that for the admissions, signage, and other operational terms, and legal stuff up front can set the wrong tone.
4. *Short and Plainspoken.* Try to focus each paragraph on a single topic. Write in short paragraphs and sentences. Use plain language. Defined terms and statutory citations are useful (especially when dealing with multiple categories of vendors) but try to minimize their use; real people don't talk that way.
5. *Table of Contents.* Include a table of contents. Let

the reader know, up front, what's in the document, and how it's organized. Be sure the TOC calls out any exhibits, too; that will help the reader find what it needs. Think about taking advantage of the function in Microsoft Word that automatically creates and updates TOCs.

6. *Numbers and Captions.* Number and caption each section and sub-section. Numbers give users an easy way to refer back to specific rules. Clear captions help users understand what a given section covers and help guide the reader along. Captions for sub-sections are useful for navigating long, multi-part text such as a disciplinary process provision.
7. *Tables.* Use tables, as much as you can, to present information. For example, you can use tables to set out fee and fine schedules, required documents, and differences (days, vendor profiles etc) at different market locations. It's a lot easier to find a number in a table than if it's buried in text.
8. *Rules Attachments.* Put technical detail in attachments or exhibits to the rules, not text. For example, if you require different documents or insurance coverages for different types of vendors, or if you charge different stall fees to different types of vendors, put those requirements in a separate attachment. There's no reason a produce grower should have to plow through the special rules relating to eggs or nursery. Attachments make it easier for the reader to find the relevant information, and make it easier for you to update the content over time.
9. *Branding.* Finally, while you're at it, take advantage of the opportunity to reflect your brand throughout all the documents, website, and marketing collateral. Logos, typeface, general look-and-feel. . . all of that makes a difference in building your

brand.

Conclusion

Farmers market rules can get a lot of business and legal work done for a market. At the same time, they can grow to be lengthy and technical in nature, and it's easy for inconsistencies to develop over time, both in the rules document itself and in respect of related applications, websites, and other market materials. This isn't great from vendor, brand, or legal protection points of view.

The good news is that awareness of functionality, of the work the rules can do, can help a market get the most out its core operating document. Making a habit of paying attention to the entire document set and website, not just the rules, can help head off confusion. And modest investments in design and writing, along with targeted consultation with counsel, can markedly improve document accessibility, use, updating, and legal utility.