# WEST VIRGINIA CODE: §19-35-2

**§19-35-2. Definitions.**

For purposes of this article:

“Acidified food” means a low-acid food item to which acid or acid foods are added with a water activity of greater than 0.85 and a finished equilibrium of pH 4.6 or below. Acidified foods are considered potentially hazardous foods.

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

“Department” means the Department of Agriculture.

“Farm and food product” means any agriculture, horticulture, agroforestry, animal husbandry, dairy, livestock, beekeeping, or other similar product, and includes potentially hazardous foods and nonpotentially hazardous food produced or manufactured therefrom.

“Farmers market” means:

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

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

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

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

(5) A mobile farmers market;

(6) An area within a fair or festival at which farm and food products are sold; or

(7) Any other form of farmers market approved by the commissioner.

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

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

"Potentially hazardous" means a food item that requires time/temperature control or other protocols for safety to limit pathogenic microorganism growth or toxin formation.

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

"Producer" means the person who produces a nonpotentially hazardous food item.

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

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

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