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agriculture

Farmers' Markets and Health Departments Policies, Procedures, and Guidelines



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Farmers' Markets and Health Departments Policies, Procedures, and Guidelines



Introduction

The number of farmers' markets in Massachusetts has grown significantly in recent years, and as interest from farmers and consumers has grown, the variety of foods and types of vendors has multiplied as well. Because Massachusetts uses "home rule," a policy under which local boards of health and health departments have broad authority, the public health requirements governing farmers' markets vary widely from town to town and city to city. This has caused challenges for vendors and for health inspectors. In western Massachusetts, smaller, volunteer-run boards of health lack clear best practices to put into place when a farmers' market begins in their town. Farmers who vend at multiple markets throughout the state are faced with conforming to varied permitting requirements and implementation policies from town to town. Some local health agents have improperly applied retail food permit applications and policies to farms which are exempt from those rules.

The Massachusetts Department of Public Health Food Protection Program (FPP) released a "Policies, Procedures, and Guidelines" document focused on farmers' markets in 2006, and last updated it in 2013. This document is immensely helpful in laying out permitting requirements, safe food handling practices, and requirements for food demonstrations and sampling. CISA has developed this document as a companion to the Food Protection Program's guide in order to provide suggestions for how health departments may interpret grey areas and to give insight into how other health departments have applied state regulations and their own requirements on the ground.

We understand that local health departments are empowered by the state to develop and enforce rules and requirements necessary to protect the health of citizens, and that working within the federal, state, and local requirements is vital for farmers' market vendors and managers. Our goal is to support these relationships and enable vibrant, safe, farmers' markets!

How to use this document

The left column is the original, unedited text of the Food Protection Program's "Policies, Procedures, and Guidelines" document. The right column contains CISA's notes on particular points within the Food Protection Program guidelines. Turn to page eight for a list of permits and licenses required of farmers' market vendors, organized by product. The appendices are additional policies and resources that have been released by the Department of Public Health, the Massachusetts Department of Agricultural Resources, and the Massachusetts Food Protection Program, and which have not been developed or edited by CISA.

Commonly used acronyms

DPH: Department of Public Health, a state agency

FPP: Food Protection Program, a subset of the DPH

LBOH: Local Board of Health

MDAR or DAR: Massachusetts Department of Agricultural Resources

PHF: Potentially Hazardous Food

USDA: United States Department of Agriculture



Food Protection Program Policies, Procedures and Guidelines

Issue: Farmer's Markets No: RF-08

While there is no regulatory definition for *farmer's markets*, the Massachusetts Department of Agricultural Resources (DAR) defines them as: “public markets for the primary purpose of connecting and mutually benefiting Massachusetts farmers, communities, and shoppers while promoting and selling products grown and raised by participating farmers.” (1) The Massachusetts Department of Public Health Food Protection Program (FPP)’s interpretation of farm products currently includes:

- Fresh Produce (fresh uncut fruits and vegetables)
- Unprocessed honey (Raw honey as defined by the National Honey Board: Honey as it exists in the beehive or as obtained by extraction, settling or straining without added heat.)
- Maple syrup
- Farm fresh eggs (must be stored and maintained at 45°F (7.2°C). (2)

Farmer's Market Vendors that Require a Retail Food Permit

Some farmer's markets, which traditionally offered locally-grown produce and farm products, have expanded into retail food operations offering processed foods. Farmer's market vendors that sell food products and processed foods other than those farm products listed above, (3) shall be licensed as a retail food operation and inspected by the Local Board of Health (LBOH) in accordance with Massachusetts Regulation 105 CMR 590.000 - Minimum Sanitation Standards for Food Establishments - Chapter X. Examples of processed foods commonly sold at farmer's markets include pies, cakes, breads, jams and jellies, candy, and baked goods. (4)

While some farmer's markets are organized by a market manager (someone who assists vendors in the coordinating of permitting and other issues for the market), for enforcement purposes, the FPP recommends that LBOHs issue retail establishment licenses to individual vendors. (5) Based on the number of weeks the farmer's market is operating, license fees may be established as a percentage of the annual fee charged for a regular food establis-

(1) See Appendix 1 for MDAR’s “Policy for Massachusetts Farmers’ Markets.” Farmers’ markets are required to have a set of rules that govern the operation of the market. The market management makes decisions about vendor eligibility based on business location, product source, and production practices.

(2) The Food Protection Program (FPP) does not require or recommend requiring mechanical refrigeration. CISA’s recommendation is that compliance be based on whether vendors can demonstrate maintenance of temperature, not based on specifying the method vendors must use to do so.

(3) The Food Protection Program (FPP) does NOT require or recommend licensing or inspections for the “farm products” as defined in this document.

(4) Processed foods are prepared off-site at a licensed facility. Foods prepared on-site usually fall under seasonal/temporary food service permits or mobile food service permits, depending on the permitting practices of the local health department.

(5) Most local boards of health have taken the Food Protection Program’s recommendation to issue licenses to individual vendors rather than the market as a whole, since the market managers are not involved in the production of food sold at the

ment permit, or the LBOH may set a specific permit fee for a farmer's market operation. Whichever fee system and fee the board selects, the fee should not be higher for the seasonal operation than the regular food establishment fee is on an annual basis. (6)

The LBOH must assess the facilities available to the farmer's market, and prohibit any foodhandling operation that cannot be safely performed. In addition, the LBOH may prohibit the sale of certain food items if the items cannot be handled and maintained in accordance with 105 CMR 590.000 requirements.

Safe Food Handling Practices

Physical and Sanitary Facilities

Most often, farmer's markets are held in an open-air setting, such as a town common or field. In some cases, there may be restrooms and handwashing facilities nearby that vendors may use. (7) If restrooms and handwashing facilities are not available, the market must provide portable restrooms and handwashing facilities for use by the vendors. Handwashing sinks must be easily accessible (within 25 feet) to vendors handling exposed, processed foods. (8)

If only agricultural products and packaged-food items are offered for sale, there is no requirement for handwashing stations at each individual vendor area. However, if portable toilets are provided, a handwashing station must also be made available.

Approved Source

Processed foods sold at a farmer's market must be manufactured in a licensed food processing facility, a licensed food establishment, or a licensed residential kitchen. Copies of residential kitchen permits, retail food establishment permits or food manufacturing licenses where the food was prepared should be submitted to the LBOH along with the vendor's application. (9)

The definition or identification of an "approved source" for *fresh fruits and vegetables* is not addressed in federal or state retail regulations. (10)

In Spring 2008, the FPP, in collaboration with LBOHs, began working with the Division of Marine Fisheries (DMF) and DAR to pilot the retail sale of *shellfish* at farmer's markets. Shellfish harvesters, including aquaculturists, must obtain approval

markets. CISA recommends that health departments select a staff member to function as the primary farmers' market contact. That staff member should relay information about requirements, the permitting process, and the fee structure to the market manager or board and ask for their help in communicating those requirements to vendors and gathering applications and fees.

(6) Permitting and fee structures are a common source of tension between markets and health departments. CISA recommends that permits be applicable to all markets in a town for a calendar year, rather than requiring a separate permitting process and fee for multiple markets, especially in communities that have summer and winter markets. This simple step can greatly reduce the paperwork burden on both health department staff and farmers that are vending at multiple markets each week and year-round.

(7) Only if there are vendors selling exposed, processed food are markets required to have handwashing facilities within 25 feet. Otherwise, "nearby" is not defined. CISA recommends that health department staff work with market managers to figure out a mutually agreeable arrangement.

(8) Local boards of health, including those in Amherst and Northampton, have allowed vendors handling exposed, processed foods to supply their own handwashing facilities by bringing water in a container with a spigot, soap, and a bucket to catch the runoff. Running water is not a standard requirement at local farmers' markets. At the indoor winter markets, access to restrooms in the building often meets the handwashing station requirement.

(9) See Appendix 2, "Residential Kitchens, Questions and Answers" for details on which foods may be prepared in residential kitchens, and which foods may not.

(10) There are no certifications, inspections, or permits required for the sale of fresh, uncut fruits or vegetables. CISA recommends that boards of health not add to the paperwork burden of farms by requiring unnecessary paperwork from those selling products that require no permits.

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from DMF and FPP in accordance with state statute and regulations. LBOHs that have received applications for shellfish vendors should contact FPP prior to any local approval under 105 CMR 590.000. In Spring 2011, FPP finalized the program with an FPP Policy entitled "Shellfish at Farmer's Markets; No. SF-10." (11)

Finfish and crustaceans may be sold at a farmer's market provided they are sold only from a vendor who holds a DMF retail seafood dealer permit in addition to the LBOH food permit. If the finfish and crustaceans at the farmer's market are sold from a retail truck, the permit required from DMF is a retail seafood truck permit. A retail seafood truck permit allows the permit holder to use the permitted truck at various locations within Massachusetts with the same retail truck permit with the approval of the LBOH. However, when finfish and crustaceans are transported in private vehicles and sold at a booth at a farmer's market (i.e., not directly from a permitted seafood truck), a separate retail seafood dealer permit is required for each vendor and each market location. (12)

Meat and Poultry

Meat must be slaughtered in a federally inspected facility. These facilities are also licensed by FPP. USDA-inspected meat products must bear the mark of inspection on each retail package. Poultry products may be processed in a USDA facility or a state only licensed facility if the processor is working under the exemptions allowed in the USDA Poultry Act. (13)

Raw Milk and Raw Milk Products

Raw (unpasteurized) milk is not allowed for sale at farmer's markets in accordance with 105 CMR 590.000. Raw milk is only allowed for sale in Massachusetts at farms which are certified and inspected by DAR. Aged cheeses made with raw milk that are made in a licensed food manufacturing facility are an approved food supply provided that vendors maintain strict temperature control of 41°F or below. (14)

Wine

Legislation passed in August, 2010 allows licensed farm-wineries to sell wine at farmer's markets. The licensed farm-winery seeking to participate in the agricultural event is the applicant and must submit the agricultural event certification application to

(11) See appendix 3 to view "Shellfish at Farmers' Markets; No. SF-10."

(12) See the MA Department of Marine Fisheries website (mass.gov/eea/agencies/dmf/) for more information on seafood dealer permits.

(13) There are no federal or state certifications, inspections, or permits required for farms that grow animals for slaughter. Retail packages containing meat or poultry must bear the mark of inspection, but the farmers themselves have no certifications or permits to submit in advance of sale. Because meat products are potentially hazardous, local boards of health typically require meat vendors to fill out permit applications in advance of the market season with no additional required paperwork. Temperature controls and the mark of inspections must be checked at the market.

(14) Note that cheeses made with raw milk are subject to the same rules as cheeses made with pasteurized milk, not to the same rules as raw milk.

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DAR. After the application is approved by DAR and the agricultural event is certified, the farm-winery will need to submit an application to the local liquor/license control board that has jurisdiction over the event's location to obtain a license to allow the sale of wine. The local licensing authority may then issue a special license for the sale of wine at the event. (15)

While wine is considered to be a “food” by definition of M.G.L. Chapter 94, section 1, and in accordance with 105 CMR 590.000 which adopts by reference the federal 1999 Food Code, because the vendor has a special liquor license it is not recommended that the LBOH issue a food permit as well.

(15) See appendix 4, “Agricultural Event Certification FAQ,” for more information on this process.

Temperature Control

Any food requiring temperature control for safety (TCS) must be held at proper temperatures in accordance with 105 CMR 590.000 and federal laws during transportation and display for sale. With the exception of shellfish transportation, mechanical refrigeration is not a requirement if food temperatures can be maintained and verified.

(16)

Display Conditions

Fresh uncut fruits and vegetables can be displayed in the open air. They should be stored off the ground. Vendors can accomplish this in a number of ways. Most vendors will simply use a table, or empty crates or boxes underneath the crates holding the produce is another option. (17) Cut produce that is a potentially-hazardous food (PHF) (melon, raw seed sprouts, cut tomatoes and raw garlic mixtures) must be maintained at or below 41 °F. This may be achieved by either refrigeration or storing the food on self-draining ice in an insulated container. It is strongly recommended that chopped greens be held under temperature control while on display at the market. (18)

All food products, with the exception of uncut produce, require protection while on display.

Vendors may individually package items such as baked goods or, if displayed in bulk, should cover the items while on display until dispensed to the consumer. Items offered in bulk should be dispensed with a utensil, single-use glove, or single-use paper sheet. (19)

(16) Note that mechanical refrigeration is not a requirement. Because of the expense and challenges of accessing electricity at many market locations, CISA recommends that food temperature requirements be based on proven ability to keep food at acceptable temperatures, rather than a universal mechanization requirement.

(17) The MA Food Code specifies that food “shall be protected from contamination by storing the food ... at least 15cm (6 inches) off the floor.”

(18) This recommendation refers to chopped whole heads of lettuce or other produce, not bagged, young greens.

(19) Prepared foods are not required to be individually packaged, as long as they are covered while on display and dispensed using food-safe methods.

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Food Samples

Processed food samples should be cut, wrapped and secured in the licensed facility in which they are manufactured, and must be protected from environmental and consumer contamination during transportation and display. Any food-handling process involving exposed ready-to-eat foods must be closely evaluated for proper controls and restricted if there is any potential for contamination or growth of pathogenic organisms. If a vendor offers food sampling, the LBOH may impose additional handwashing requirements for that vendor. (20)

Food Demonstrations

Vendors or market managers may wish to offer food/cooking demonstrations during farmer's market season. Cooking demonstrations with small samples of cooked food may be prepared and offered at the farmer's market for promotional and/or educational value with prior LBOH notice, review, and approval. Safe food handling practices, including adequate food cooking temperatures, must be followed. Sample portions are to be "bite-size" as the intent of the sample is that the food is not for food service. (21)

Product Labeling

All packaged foods must be labeled with the common or usual name of the product; list of ingredients in descending order of predominance by weight and a complete list of subingredients; net weight of product with dual declaration of net weight if product weighs one pound or more; name and address of the manufacturer, packer, or distributor (if the company is not listed in the current edition of the local telephone book under the name printed on the label, the street address must also be included on the label); nutrition labeling unless exempted by federal regulation; all FDA certified colors; all ingredients that contain a major food allergen, regardless if they might otherwise be exempted from labeling by being a spice, flavoring, coloring or incidental additive; the term "Keep refrigerated" or "Keep frozen" (if product is perishable). All perishable or semi-perishable foods require open-dating and recommended storage conditions printed, stamped, or embossed on the retail package. Once an open-date has been placed on a product, the date may not be altered. Bulk, unpackaged foods that are available for consumer

(20) The requirement that food samples be cut and packaged in a licensed facility refers specifically to samples of prepared foods. The requirements regarding samples of fresh fruits and vegetables are less clear. Some local health departments allow for samples of non-Potentially Hazardous Foods that are prepared at the market using appropriate food safe practices: for example, slicing up carrots on a clean cutting board, with a dedicated knife, wearing gloves.

(21) Cooking demos, and the food samples that result, are not required to be prepared in a certified kitchen. Because they are intended for educational purposes and are not for sale, the only real requirement is that safe food handling practices be followed. CISA recommends that health department staff work towards developing trust with the farmers' market manager with a goal of easing the steps needed to hold a food-safe cooking demo.

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self-dispensing shall be labeled with the manufacturer's or processor's label that was provided with the food or a card, sign, or other method of notification. Bulk, unpackaged foods that are portioned to consumer specification need not be labeled if a health, nutrient content, or other claim is not made, however, ingredient and major food allergen information needs to be available to customers upon request. (22)

For additional information about:

- Opening and operating a farmer's market and wine sales at farmer's markets, contact the Massachusetts Department of Agricultural Resources at 617-626-1754.
- Food safety and sanitation, licensure and city/town requirements, contact the Local Board of Health,
- State regulations, contact the Massachusetts Food Protection Program at 617-983-6712.
- Shellfish at Farmer's Markets Pilot Program, contact Eric Hickey, Seafood Supervisor, Massachusetts Food Protection Program at 617-983-6774.

(22) See Appendix 5, "Massachusetts Minimum Requirements for Packaged-Food Labeling."

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State and Federal Permits Required for Farmers' Markets Vendors

Dairy

- Raw milk may not be sold at farmers' markets in Massachusetts.
- Vendors must hold a Milk Dealer's License, and the milk must be processed in a facility holding a milk plant permit. Details at: mass.gov/eea/agencies/agr/animal-health/dairy/milk-dealers-license-generic.html

Eggs

No permits or licenses required for shell eggs.

Fish

Vendor must hold a MA Division of Marine Fisheries (DMF) retail seafood dealer permit, which is issued for each retail location, or a retail seafood truck permit, which permits the vendor to use the truck at various locations. Details at: mass.gov/eea/agencies/dgf/dmf/commercial-fishing/dealer-permits/.

Fresh Produce

No permits or licenses required for raw, unprocessed produce.

Honey and Maple Syrup

No permits or licenses required for maple syrup or raw honey.

Meat

- Must be slaughtered in a USDA-approved facility, as evidenced by package stamp.
- No license or inspection required of the farm itself.

Poultry

- Must be slaughtered in a USDA-approved facility, or a state-approved facility for farms functioning under producer/grower poultry processor exemptions, as evidenced by package stamp.
- No license or inspection required of the farm itself, unless poultry is processed on-farm.

Processed Foods

- Non-Potentially Hazardous Foods (PHFs) may be produced in a Residential Kitchen. Residential Kitchen permits are granted by the health department in the town that the kitchen is located. Non-PHF include baked goods, confectioneries, jams, and jellies. See Appendix 2, "Residential Kitchens, Questions and Answers," produced by FPP, for details.
- All other foods must be produced in a commercial kitchen.

Shellfish

Vendor must hold a retail seafood dealer permit from MA Department of Marine Fisheries and the MA Department of Public Health. There is no retail truck permit currently available for shellfish. See Appendix 3, FPP policy "Shellfish at Farmers' Markets; No SF-10" for details.

Wine

Massachusetts has developed a special permitting process that allows the sale of wine at agricultural events and farmers' markets. See Appendix 4 for a short FAQ, or find more details at: mass.gov/eea/agencies/agr/markets/farmers-markets/farm-winery-sales-generic.html

POLICY FOR MASSACHUSETTS FARMERS' MARKETS

The Massachusetts Department of Agricultural Resources (MDAR) both promotes and regulates agriculture across the Commonwealth. Our goal is to work to increase sales opportunities and delivery of our farmers' products to all areas of the Commonwealth and beyond. Such broad availability is also intended to include people who otherwise may not have access to those products at the farms themselves, or through traditional retail outlets. Further, MDAR has a regulatory and statutory role in the sale of agricultural products at public markets. For these reasons and others, MDAR has determined that a uniform definition and minimum qualifications are necessary to optimally direct these efforts.

As farmers' markets have grown in Massachusetts and in an effort to maintain the benefit realized by our Commonwealth's farming interests, it has become increasingly important that such outlets are adequately defined. Accordingly this policy document is intended to provide basic guidance and definitions relative to farmers' markets in Massachusetts.

A *Massachusetts Farmers' Market* is a public market for the primary purpose of connecting and mutually benefiting Massachusetts farmers, communities, and shoppers while promoting and selling products grown and raised by participating farmers.

Minimum qualifications for a *Massachusetts Farmers' Market*:

- Two or more farmers primarily selling products grown, produced, or raised by the farmers
- The market has set hours of operation and operates on a regular schedule
- The products are clearly labeled as to origin
- The market complies with all applicable local, state, and federal laws and regulations
- The market must have, and abide by, a set of rules* that governs the operation of the market and, at a minimum, assures the primary purpose of a *Massachusetts Farmers' Market* as providing a direct marketing opportunity for Massachusetts farmers, foresters and fisheries and addresses the following:
 - Terms and conditions of sales, including pricing and labeling
 - Vendor eligibility and product source
 - Compliance by all vendors with local, state, and federal laws and regulations

MDAR strongly suggests that farmers' markets have a written grievance procedure and address market and vendor liability, including any insurance requirements in their policies or rules.

* Rules must be approved by MDAR if the market is applying for or receiving MDAR sponsored grant funds or intending to include the sale of wine by farm wineries at the market. However, all farmers' markets are expected to have rules that meet these minimum qualifications.

Residential Kitchens Questions and Answers

Massachusetts Department of Public Health

Bureau of Environmental Health

Food Protection Program

617-983-6712

305 South Street

Jamaica Plain, MA 02130

There are an increasing number of private citizens preparing food products in their home kitchens for sale. Massachusetts allows its residents to operate home-based businesses to produce low-risk foods, such as cakes, cookies, breads, and confectioneries. Currently, the Massachusetts Department of Public Health Food Protection Program receives more than 200 inquiries per year from citizens interested in starting home-based food businesses.

Home-based food businesses are allowed within specific regulatory limitations.
Retail Residential kitchen operations are restricted to sale directly to the consumer and are inspected and licensed by the local board of health. Wholesale operations may sell their products to retail stores, restaurants, etc., and are inspected and licensed by the Massachusetts Food Protection Program.

At the end of this brochure there is a listing of regulations pertaining to retail and wholesale residential kitchens, as well as information as to where to obtain copies.

The following are answers to some of the most commonly asked questions about residential kitchen operations.

What kinds of foods may be prepared in a residential kitchen?

Residential kitchens are strictly limited to the preparation of non-potentially hazardous foods (non-PHF), such as baked goods, confectioneries, jams and jellies. Non-PHF, such as cakes and cookies, which have PHF ingredients are acceptable.

What kinds of foods *may not* be prepared in a residential kitchen?

The preparation and sale of potentially hazardous foods (PHF) such as cream-filled pastries, cheesecake, custard and other foods which can support the growth of disease-causing bacteria are strictly prohibited.

In addition, perishable foods that require refrigeration, such as cut fruit and vegetables, tomato and barbecue sauce, pickled products, relishes and salad dressings are not permitted in residential kitchens.

In addition, all foods that are manufactured or packaged using processes that require state or federal control (e.g., acidification, hot fill, vacuum-packaging, etc) are prohibited. Garlic-in-oil products are not permitted.

What types of processing operations are prohibited in a residential kitchen?

Processing operations that are prohibited include: acidification, hot fill, thermal processing in hermetically-sealed containers, vacuum packaging, and curing/smoking. The only exception is jams and jellies that are thermal-processed in hermetically-sealed containers.

To evaluate the non-potentially hazardous status of a food, what type of laboratory analysis may a board of health or the Massachusetts Department of Public Health request?

For any food product, the board of health or the Massachusetts Department of Public Health may require laboratory documentation that the food has a final pH of 4.6 or below or a water activity of 0.85 or below.

When reporting results, the laboratory must reference the standardized testing procedure.

Residential kitchen operators must keep records of analysis of products on file for review.

Must a residential kitchen operator use a standard recipe for each batch of product?

Yes. Persons preparing food products must maintain a standardized recipe of the products used in the preparation of the food: listing all ingredients in order of weight. Any change in the recipe constitutes a recipe deviation, and new analysis may be required.

Are there any personnel, marketing or volume restrictions for residential kitchens?

Yes. First, only household members may be employed in the operation.

Second, the use of brokers, wholesalers, and warehouses by residential kitchen operators to store, sell, and distribute foods prepared in residential kitchens is prohibited.

Food products manufactured in Massachusetts residential kitchens may not be sold out-of-state (in interstate commerce), because the U.S. Food and Drug Administration does not recognize these foods as originating from an approved source.

Massachusetts Residential Kitchens

Regulations

Retail Sale:

- **105 CMR 590.000** Minimum Sanitation Standards for Food Establishments, Chapter X
 - **105 CMR 520.000** Massachusetts Labeling Regulations

Wholesale:

105 CMR 500.000 Good Manufacturing Practices

105 CMR 520.000 Massachusetts Labeling Regulations

Unofficial copies of all regulations are available at: <http://mass.gov/dph/fpp/regs.htm>

License Applications

A residential kitchen that wholesales its product is required to obtain a *License for Food Processing and/or Distribution at Wholesale* from the Massachusetts Department of Public Health

An application for a License to Manufacture and/or Distribute Food at Wholesale is available at <http://mass.gov/dph/fpp/pdf/foodapplication.pdf>

A Guidance document, "Notice for Applicants for a License to Manufacture/Distribute Food at Wholesale from a Residential Kitchen is available at <http://www.state.ma.us/dph/fpp/wfoapp.pdf>.

To obtain copies, contact a State Bookstore:

**Massachusetts State House
Beacon Street, Room 116
Boston, MA 022133**

or telephone:

**Boston: 617-727-2834
Springfield: 413-784-1376
Fall River: 508-646-1374**

If you have questions about retail residential kitchen operations and licensing, please contact your local board of health.

If you have questions about wholesale residential kitchen operations and licensing,
contact the: Massachusetts Department of Public Health
Center for Environmental Health
Food Protection Program
305 South Street
Jamaica Plain, MA 02130
617-983-6712.



Massachusetts Department of Public Health
 Bureau of Environmental Health
 305 South Street
 Jamaica Plain, MA 02130-3597
 (617) 983-6712 (617) 983-6770 - Fax

Food Protection Program Policies, Procedures and Guidelines

Issue: Shellfish at Farmer's Markets

No: SF-10

Background

Currently, the Massachusetts Regulation 105 CMR 533.000 *Fish and Fishery Products* prohibits the sale of shellfish at farmer's markets. However, the Massachusetts Department of Public Health (DPH) and the Massachusetts Division of Marine Fisheries (DMF) have agreed to establish a joint policy to allow wholesale shellfish dealers to obtain a Massachusetts retail seafood dealer permit and allow the sale of shellfish at farmer's markets.

The scope of the policy also includes aquaculturists who hold a wholesale dealer permit or aquaculturists who are supported, through a business relationship, by an existing licensed wholesale dealer. The vendors selling shellfish and/or other seafood products also are required to obtain a retail food permit from the local board of health (in accordance with Massachusetts 105 CMR 590.000 – *Minimum Sanitation Standards for Food Establishments*).

Massachusetts Regulations 105 CMR 533.007 *Fish and Fishery Products* and 322 CMR 7.01(3), (e) and (d) *Permits* currently prohibit the sale of shellfish from vehicles. The regulations restrict the retail sale of shellfish to fixed facilities in order establish an environment which will facilitate the recordkeeping of harvest areas and dates in the event of a foodborne illness outbreak or harvest closure order, and to prevent the sale of shellfish from vehicles that may sell in multiple locations.

In reference to *only* this farmer's market policy (SF-10) and in accordance with procedures outlined in this document, the Massachusetts DPH and DMF will allow wholesale dealers to sell shellfish at a farmer's market.

Wholesale dealers who sell shellfish at farmer's markets are required to hold a state "retail seafood dealer" permit, a permit which is jointly issued by the Massachusetts DMF and Massachusetts DPH. This permit may be approved by the Massachusetts DMF/DPH for multiple farmer's market locations and dates for one market season. In addition, a "retail food permit" (issued in accordance with 105 CMR 590.000) must be obtained from each local Board of Health in which the shellfish vendor intends to operate.

A local Board of Health may not license shellfish vendors at a farmer's market as a "mobile food operation," nor may the local Board of Health issue a retail food permit if the vendor does not have a state retail seafood dealer permit.

The Massachusetts DPH Food Protection Program (FPP) will provide technical assistance to industry and local Boards of Health who participate in the shellfish at farmer's market program.

Prior to final approval for a state retail food dealer permit, the FPP will conduct plan reviews and reviews of local Boards of Health vehicle inspections. After applying for the retail seafood dealer permit for the farmer's market, the vendor is also required to apply for a retail food permit (in accordance with 105 CMR 590.000) from the appropriate board of health.

The local Boards of Health have the primary responsibility for the enforcement of the state sanitary code at farmer's markets. The Massachusetts DPH and DMF may take further action to suspend or revoke permits or impose fines on retail/wholesale seafood dealer permit holders based on verification of the local Board of Health findings of non-compliance with 105 CMR 590.000. Failure to comply with all applicable regulations, permit conditions and the terms outlined regulation and in this policy (SF-10) may result in the suspension of a retail/wholesale dealer conditional permit to operate at farmer's markets. Local Boards of Health should immediately notify the Massachusetts DPH and/or the DMF of non-compliant operators, as well as the knowledge of shellfish vendors operating without valid current state permits.

Wholesale dealers (including aquaculturists) may apply for a state retail seafood dealer permit for farmer's markets if they have:

- A written operational and HACCP plan which has been reviewed by the Massachusetts Food Protection Program (FPP) and local Board of Health (BOH). This requirement is to ensure that the applicant has evaluated and minimized all food safety hazards associated with the activity.
- Complete documentation that :
 - (1) the FPP and BOH have determined that the applicant has a thorough record keeping system and identifies shellstock brought to market, sold at every market event, and returned to the facility after every event,
 - (2) the shellfish farmer has implemented operational and HACCP plans that control for food safety hazards. These plans must be reviewed and approved by the FPP and BOH,
 - (3) assures that the shellfish is transported in insulated and mechanical refrigeration, and
 - (4) the refrigeration, ice, or other approved temperature control is used at the farmer's market.

Additional materials required for approval include:

- Copy of the farmer's market contract that includes the market master contact information and telephone number.
- Seafood dealer emergency mobile telephone number.
- Vehicles used in the transport of wholesale seafood must be equipped with mechanical refrigeration, and be identified with the name and permit number of the permit holder (in accordance with 105 CMR 533.007).
- Other information requested by DMF and/or DPH

The local Board of Health retail food application review process must include (as applicable):

- Food source (approved sources). Applicants must hold a valid current wholesale dealer permit from the Massachusetts DMF. Any questions about the permit status may be directed to the Massachusetts DMF or DPH.
- Base of Operation (as noted on the wholesale dealer permit).
- The local Board of Health will determine what, if any, restrictions on food service and value-added service may be permitted by the vendors at the market, e.g., half shell/shucking for sampling and/or demonstration.
- Labeling: shellfish tags must be available and maintained for a minimum 90 days.
- Protection from contamination: including from the environment, people, other raw animal foods, ice source, toxic chemicals, dirty containers and the transportation vehicles.
- Protection from growth of micro-organisms (temperature control must be maintained at 41°F or below). Shellfish must be transported in insulated mechanical refrigeration. For display purposes at the farmer's market, potable ice or other adequate cooling devices may be used in lieu of mechanical refrigeration. Refrigeration units on vehicles are required. Note: shellfish that have been at markets may not be returned to grant sites after conclusion of the markets.
- Proper disposal of ice and melting ice water.
- Shellfish records (as evaluated by the local Board of Health and/or the FPP during the wholesale dealer inspections). Wholesale dealers must identify the shellfish harvested, sold and/or returned to the wholesale dealer location in ledgers, retain shellfish tags for a minimum of 90 days, and provide customers with receipts that identify the source and other harvest information as required by law.
- Cleanliness and maintenance of sanitary facilities, if the facilities are required by the local Board of Health
- Determination of the level of operator knowledge based on code compliance performance. Any questions related to compliance history of a particular applicant may be referred to the DPH Seafood Unit at: 617-983-6712.
- Certification as a food protection manager is recommended, but not required.

**AGRICULTURAL EVENT CERTIFICATION
FREQUENTLY ASKED QUESTIONS**

1. Who is the applicant?

The licensed farm-winery seeking to participate in the agricultural event is the applicant and must submit the agricultural event certification application to the Massachusetts Department of Agricultural Resources (MDAR).

2. What is MDAR's role in allowing a farm-winery to sell wine at an agricultural event?

MDAR's role is to approve events such as agricultural fairs, farmers' markets or other event as agricultural events in accordance with the provisions of Massachusetts General Laws Chapter 138, Section 15F.

3. Are other permits needed to sell wine at an agricultural event once it has been certified by MDAR?

After the application is approved by MDAR and the agricultural event is certified, the farm-winery will need to make an application with the local liquor/license control board that has jurisdiction over the event's location to obtain a license to allow the sale of wine.

4. Can another entity that is not licensed as a farm-winery sell Massachusetts wine at an approved agricultural event, (i.e. local wine shop)

The legislation allows the holders of farmer-winey licenses to sell wine at an agricultural event. It does not apply to any other entity.

5. Can a farm-winery sell wine on behalf of another farm-winery as well as its own wine?

A farm-winery may sell only wine produced by or for the farm-winery and sold under its own brand name.

6. Can an out-of-state winery sell at an approved agricultural event?

Any farm-winery that holds a farmer-winery license from Massachusetts or any other state may apply for a special license to sell at an approved Massachusetts agricultural event. However, an out of state winery may be subject to additional laws and regulations under M.G. L. c. 138.

7. Can beer or other spirits be sold?

No, the legislation allows only for the sale of wine by a farm-winery.

8. How long is the MDAR approval good for?

MDAR approval of the event is good for the dates listed in the application. If there are any substantial changes to the event (i.e. dates, times, location), the applicant shall notify MDAR immediately. Additionally, the application must be submitted annually for each event in which the farm-winery seeks to participate.

9. Is the sampling of wine allowed?

A farm-winery may provide, without charge, samples of wine to prospective customers who are at least twenty-one (21) years of age. No sample shall exceed one (1) ounce of wine and no more than five (5) samples shall be served to an individual prospective customer. All samples of wine shall be served by an agent, representative, or solicitor of the farm-winery and shall be consumed in the presence of such agent, representative or solicitor.

10. What are the specific steps to follow to request a permit to sell wine at an agricultural event?

The farm-winery should first obtain approval from the event manager of the agricultural event in which it would like to participate. Once this approval is obtained, the farm-winery submits a completed agricultural event certification application to MDAR. Upon certification of an agricultural event by MDAR, the farm-winery must comply with the local licensing requirements for requesting and obtaining a special license. Upon issuance of a special license, the farm-winery must submit a copy to the Alcoholic Beverages Control Commission (ABCC) at least seven (7) days prior to the event.

11. How long does it take to get MDAR certification of an agricultural event?

It generally takes ten (10) business days for MDAR to review a completed application and issue its decision on certification. The farm-winery must keep in mind that the local licensing authority is the entity issuing the special license and each city and town has its own time frame for such licenses. A farm-winery must also submit a copy of its special license to the ABCC at least seven (7) days prior to the event. Therefore, MDAR recommends that the farm-winery be aware of all the time constraints when determining the events in which it will participate.

12. Must a separate application be submitted for a winter and summer farmers market if they are sponsored by the same organization?

Yes. You will need to fill out a separate application for each of the farmers markets because they are different “agricultural events” under the statute. Although they are sponsored by the same organization, the locations may be different and dates on which the events are held are different.

13. What is meant by competitive agriculture?

The competitive agriculture question is related to fairs. In order to be a fair that can be deemed an agricultural event, there must be competitive agriculture, i.e. there are prizes awarded for competitions involving things such as animals and/or produce. The competitive agriculture question does not relate to all agricultural events (i.e. farmers markets). If the event is not a fair and the competitive agriculture question is not applicable, you would simply check the N/A box on the application.

14. Is there a fee for the special license and, if so, how much is it and what does it cover?

A city or town can charge a fee for the special license but it cannot exceed \$50.00. The fee is for the special license that would be issued to the farm-winery for the “agricultural event”, which can be held on multiple dates/times but is still considered a single “event” for the purposes of the statute. It would be up to the licensing board as to whether they want to issue the special license for all of the dates and times requested but each date/time should not be considered a separate “event” for the purposes of the statute.

Minimum Requirements for Packaged-food Labeling

The Massachusetts Food Protection Program has prepared this guide to help you develop a food label that complies with Massachusetts and federal labeling requirements. For additional information, please refer to the resources listed on the back panel.

Foods that Require Labeling

All packaged foods must be labeled in accordance with Massachusetts and federal labeling regulations, including all foods intended for retail sale that are manufactured in licensed residential kitchens.



For interpretations and assistance with labeling regulations, please contact:

Food Protection Program
Bureau of Environmental Health
Massachusetts Department of Public Health
305 South Street
Jamaica Plain, MA 02130

Phone: 617-983-6712
Fax: 617-983-6770
TTY: 617-624-5286
Web: www.mass.gov/dph/fpp

Or the U.S. Food and Drug Administration
<http://www.cfsan.fda.gov/label.html>
Office of Nutritional Products, Labeling, and Dietary Supplements: 301-436-2371

Minimum Information Required on a Food Label

The Massachusetts and federal labeling regulations require the following information on every food label:

- Common or usual name of the product.
 - **All** ingredients listed in descending order of predominance by weight, and a complete listing of sub-ingredients.
- Example of a sub-ingredient:* Flour (bleached wheat flour, malt barley, flour, niacin, iron, potassium thiamine, thiamine mononitrate, riboflavin).

- Net weight of product.

Dual declaration of net weight, if product weighs one pound or more.

Example: 1 pound [16 oz.]

- "Keep refrigerated" or "Keep frozen" (if product is perishable).

- All perishable or semi-perishable foods require open-dating and recommended storage conditions printed, stamped, or embossed on the retail package.
- Once an open-date has been placed on a product, the date may not be altered.

- Name and address of the manufacturer, packer, or distributor. If the company is not listed in the current edition of the local telephone book under the name printed on the label, the street address must also be included on the label.

- Nutrition labeling.

- If a food product has a standard of identity, the food must meet the standard in order to be offered for sale under that product name.
- All FDA certified colors.

Example: FD&C Yellow #5, FD&C Red #3

Massachusetts Open-dating Regulation

To comply with the Massachusetts open-dating labeling regulation, a "sell-by" or "best-if-used-by" date is required if the product has a recommended shelf life of fewer than 90 days.

Foods exempt from this requirement include: fresh meat, poultry, fish, fruits, and vegetables offered for sale unpackaged or in containers permitting sensory examination, and food products pre-packaged for retail sale with a net weight of less than 1½ ounces.

Foods may be sold after the open-date if the following conditions are met:

- It is wholesome and good quality.
- The product is segregated from food products that are not "past date," and the product is clearly marked as being "past date."

Health Claims

Health claims allowed by the FDA on a label are limited to the following relationships between diet and disease:

1. Calcium and reduced risk of osteoporosis.
2. Sodium and increased risk of hypertension.
3. Dietary saturated fat and cholesterol and increased risk of heart disease.
4. Dietary fat and increased risk of cancer.
5. Fiber-containing grain products, fruits, and vegetables and reduced risk of cancer.
6. Fruits/vegetables and reduced risk of cancer.
7. Fruits, vegetables, and grain products that contain fiber, particularly soluble fiber and reduced risk of heart disease.
8. Soluble fiber from certain foods and reduced risk of heart disease.
9. Folic acid and reduced risk of neural tube defects.
10. Soy protein & reduced risk of heart disease.
11. Stanols/sterosols and reduced risk of heart disease.²
12. Dietary non-cariogenic carbohydrate sweeteners and reduced risk of tooth decay.

Food Allergen Labeling

The Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) addresses the labeling of foods that contain any of the eight major food allergens.

FALCPA defines "major food allergens" as
Milk
Egg
Peanuts
Soybeans
Fish
Crustacean Shellfish
Tree Nuts
Wheat

All ingredients that contain a major food allergen must be labeled, even if they are exempted from labeling by being a spice, flavoring, coloring or incidental additive.

FALCPA requires the labeling of food allergens in one of two ways.

1. In the ingredient statement, include the common or usual name of the food source, followed by the name of the allergen in parentheses. For example: Ingredients: Flour (**wheat**), whey (**milk**)
2. After the ingredient statement, place the word, "Contains:" followed by the name of the food allergen. For example: Contains: Wheat, Milk

FALCPA requires that:

- For Tree Nuts, the specific type of nut must be declared.
Example: almonds, pecans, walnuts
- For Fish and Crustacean Shellfish, the species must be declared.
Example: cod, salmon, lobster, shrimp

FALCPA's requirements apply to all packaged foods sold in the United States, including both domestically manufactured and imported foods.

Resource Information on Labeling

Principal display panel

105 CMR 520.101
21 CFR 101.0

Information panel

105 CMR 520.102
21 CFR 101.2

Identity labeling of food

105 CMR 520.103
21 CFR 101.3

Nutrition labeling

105 CMR 520.109
21 CFR 101.9

Misbranding of food

105 CMR 520.118
MGL C. 94 sec. 187
21 CFR 101.18

Mandatory labeling information

105 CMR 520.020
Natural and organic labeling

105 CMR 520.116

Trans Fat

<http://www.cfsan.fda.gov/~dms/transgui.html>

Allergens
Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) (Public Law 108-282) Guidance for Industry
<http://www.cfsan.fda.gov/~dms/alrguid4.html>

NOTE: This brochure is only a guide.

Since regulations are amended from time to time, it is the responsibility of licensees to know and abide by all current labeling regulations. Always consult official Massachusetts and federal regulations to ensure labels are in full compliance.

Massachusetts Minimum Requirements for Packaged-Food Labeling



WHEAT BREAD

Ingredients: Flour (bleached wheat flour, malt barley, flour, niacin, iron, potassium thiamine, thiamine mononitrate, riboflavin, folic acid), Sugar, Eggs, Water, Milk, Margarine (liquid soybean oil, partially hydrogenated soybean oil, water, salt, whey, soybean lecithin, vegetable mono & diglycerides, sodium benzoate as a preservative, potassium caseinate [a milk protein], artificially colored, FD&C Red #3, artificially flavored, vitamin A, dalmitate added), Yeast, Salt
Contains: Wheat, Eggs, Milk, Soy

Sell by: 9/22/08
Net Weight: 1 pound (16 oz.)

The Bakery
412 Main Street
Anytown, MA 01234

