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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." 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)).

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, 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.

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. 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 establishment 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.

The LBOH must assess the facilities available to the farmer's market, and prohibit any food-handling 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. 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

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.

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

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 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."

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.

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.

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.

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 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.

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.

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.

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. 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.

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.

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.

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.

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 sub-ingredients; 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 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.

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 the Seafood Supervisor, Massachusetts Food Protection Program at 617-983-6712.

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 barbeque 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.**

