



Food Protection Program Policies, Procedures and Guidelines

Issue: Farmers' Markets

No: RF-08

While there is no regulatory definition for *farmers' 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 farmers' markets, which traditionally offered locally-grown produce and farm products, have expanded into retail food operations offering processed foods. Farmers' 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 farmers' markets include pies, cakes, breads, jams and jellies, candy, and baked goods.

While some farmers' markets are organized by a market manager (someone who assists vendors in coordinating permitting and other issues for the market), FPP recommends that LBoH issue retail establishment licenses to individual vendors, for enforcement purposes. License fees may be established as either a percentage of the annual fee charged for a regular food establishment permit based on the number of weeks the farmers' market is operating, or the LBoH may set a specific permit fee for a farmers' 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 farmers' 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

Farmers' markets are most often 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 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 farmers' 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 at which 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.

FPP is currently working with the Division of Marine Fisheries (DMF) and DAR to pilot the retail sale of *shellfish* at farmers' markets in collaboration with LBoH. Shellfish harvesters, including aquaculturists, must obtain approval from DMF and FPP in accordance with state statute and regulations. LBoH who have received applications for shellfish vendors should contact FPP prior to any local approval under 105 CMR 590.000.

Finfish and crustaceans may be sold at a farmers' market provided they are sold only from a vendor that holds a DMF retail seafood dealer permit in addition to the LBoH food permit. If the finfish and crustaceans at the farmers' 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 farmers' 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 farmers' 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 farmers' 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 farmers' market season. Cooking demonstrations with small samples of cooked food may be prepared and offered at the farmers' 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 on:

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