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Food Protection Program Policies, Procedures and Guidelines

Issue: Shellfish at Farmer's Markets

No: SF-10

Background

Currently, the Massachusetts Regulation 105 CMR 500.000 and the *Supplemental Regulations for Fish and Fishery Products* at 105 CMR 500.020 and 500.021 prohibit 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 500.021(B)(2) and 322 CMR 7.01(3), (d) and (e) *Permits* currently prohibit the sale of shellfish from vehicles. The regulations restrict the retail sale of shellfish to fixed facilities in order to 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 500.020(E)).
- 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.