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Cottage Food Law Statutes:

Massachusetts



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Cottage Food Laws: Massachusetts

105 MA Code of Regs § 590.001(C) 105 MA Code of Regs § 590.010(F)

Current through Register 1537, December 20, 2024.

105 Mass. Reg. 590.001 – Purpose and Definitions.

(A) Adoption of 2013 Food Code. In addition to the provisions set forth in 105 CMR 590.001(B) through 590.018, the Department of Public Health hereby adopts and incorporates by reference the 2013 Food Code (not including Annexes 1 through 8), as amended by the Supplement to the 2013 Food Code, (2013 Food Code) published by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration, Washington, D.C. 20204 provided, however, that the Department does not adopt those provisions of the 2013 Food Code, which are specifically stricken or modified by 105 CMR 590.000.

(B) FC 1-1 Purpose. The purpose of 105 CMR 590.000 is stated within FC 1-101.10 2013 Food Code, FC 1-102.10 Food Safety, Illness Prevention, and Honest Presentation and FC 1-103.10 Statement.

(C) Definitions. For the purposes of 105 CMR 590.000, the following terms shall have the meanings hereinafter specified. These definitions shall be in addition to or a substitution for the same definition in 2013 Food Code section FC 1-201.10 entitled Definitions. Citations to the 2013 Food Code shall be referenced FC followed by the section number (e.g., FC 1-201.10).

(1) The following definitions replace, in their entirety, the definition provided for the same term in the 2013 Food Code:

Adulterated means the definition in M.G.L. c. 94, § 186, as it pertains to food.

Food Employee means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces, with the exception of farm workers handling uncut fruits and vegetables, unprocessed honey, pure maple products, or farm fresh eggs which are stored and maintained at 45 E F (7.2 E C) or below. This could include the owner, individual having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or any other person working in a food establishment. In health care



facilities, this includes those who set up trays for patients to eat, feed or assist patients in eating, give oral medications or give mouth/denture care. In daycare operations, schools and long-term care facilities, which are permitted food establishments, this includes those who prepare food for clients to eat, feed or assist clients in eating or give oral medications.

Food Establishment.

(1) Food establishment means an operation that:

(a) stores, prepares, packages, serves, vends food directly to the consumer, or otherwise provides food for human consumption such as a restaurant; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people not including farm trucks; market; vending location; conveyance used to transport people; institution; food bank; residential kitchen in a bed-and-breakfast operation; residential kitchen for a cottage food operation; and

(b) relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(2) Food establishment includes:

(a) An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(b) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(3) Food establishment does not include:

(a) An establishment that offers only prepackaged foods that are not time/temperature control for safety foods;

(b) An operation stand that only offers whole, uncut fresh fruits and vegetables, unprocessed honey, pure maple products, or farm fresh eggs which are stored and maintained at 45 E F (7.2 E C) or below;

(c) A food processing plant; including those that are located on the premises of a food establishment;



(d) A residential kitchen if only food that is not time/temperature control for safety food, is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law and if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority;

(e) A residential kitchen that prepares food for distribution to a charitable facility in accordance with M.G.L c. 94, § 328;

(f) An area where food that is prepared as specified in 105 CMR 590.001(C)(1): Food Establishment(3)(d) is sold or offered for human consumption;

(g) A residential kitchen, such as a family daycare provider; or a bed-and-breakfast operation that prepares and offers food to guests if the home is owner occupied, the number of available guest bedrooms does not exceed six, breakfast is the only meal offered, the number of guests served does not exceed 18, and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the FC-regulatory authority;

(h) A private home that receives catered or home-delivered food; and

(i) Cooking classes that are held for educational purposes only.

(2) The following definitions are provided in addition to those provided in the 2013 Food Code:

Accredited Program also means food protection manager certification programs that are recognized by the Department.

Board of Health means the appropriate and legally designated health authority of the city, town, or other legally constituted governmental unit within the Commonwealth having the usual powers and duties of the board of health of a city or town.

Business Days means Monday through Friday excluding legal holidays.

Caterer means any person who prepares food intended for individual portion service, transports and serves it at another location, or who prepares and serves food at a food establishment, other than one for which he or she holds a permit, for service at a single meal, party or similar gathering.



Commissioner means the Commissioner of the Massachusetts Department of Public Health or his or her designee.

Cottage Food Operation means a person who produces cottage food products only in the home kitchen of that person's primary domestic residence and only for sale directly to the consumer.

Cottage Food Products means non-time/temperature control for safety baked goods, jams, jellies, and other non-time/temperature control for food safety foods produced at a cottage food operation.

DEP means the Massachusetts Department of Environmental Protection.

Department means the Massachusetts Department of Public Health.

Director means the Director of the Food Protection Program.

Farmers Market means a public market or public market place located in a city or town that operates or occurs more than once per year for the primary purpose for Massachusetts farmers, from more than one farm, to vend food, crops and other farm related items that they have produced directly to the public or a public market or public market place used by farmers that is established by a municipality under M.G.L. c. 40, § 10, or operates on Department of Conservation and Recreation land by special permit under M.G.L. c. 132A, § 2F.

FC-Regulatory Authority means the definition of "regulatory authority" set forth in FC 1-201.10, which is the board of health.

Menu means a printed list or pictorial display of a food item or items and their price(s) that are available for sale from a food establishment, and includes menus distributed or provided outside of the establishment.

Menu Board means any list or pictorial display of a food item or items and their price(s) posted within or outside a food establishment.

Misbranded means the definition in M.G.L. c. 94, § 187 as it pertains to food.

Residential Kitchen means a kitchen in a private home.

Retail means sale to the ultimate consumer.

School Kitchen means the kitchen area used during the course of the regular school day to prepare or serve breakfast, lunch, or dinner to students in an



elementary, middle, high, charter, or innovation school operated by a public school district or board of trustees pursuant to M.G.L. c. 71. School Kitchen does not include:

- (1) Kitchens used by culinary arts programs;
- (2) Kitchens used exclusively for or by faculty or staff; or
- (3) Kitchens used to prepare or serve food outside of the regular school day.

Wholesale means sale to other than the ultimate consumer.

(3) In the 2013 Food Code, Paragraph (1) of the definition of "Drinking Water" is replaced with the following definition:

Drinking Water means water that meets the provisions of 310 CMR 22.00: Drinking Water.

105 Mass. Reg. 590.010 - Guidance on Retail Operations.

(A) Caterers.

(1) Base of Operations. Each caterer shall have as its base of operations a food establishment that shall comply with the provisions of 105 CMR 590.000, except that a facility holding a permit as a residential kitchen shall not serve as the base of operations for a caterer.

(2) Notification. Each caterer shall:

(a) Give written notice to the board of health of the city or town in which it plans to serve a meal prior to or within 72 hours after serving any meal elsewhere than in its own food service establishment; and

(b) If required by the board of health or its agent, provide the board with a copy of its food service establishment permit prior to serving a meal in a city or town other than the one in which its food service establishment is located.

(3) Contract Meals. A retail food establishment that delivers ready-to-eat meals to schools, senior centers and other institutional feeding sites is exempt from licensure as a wholesale food processor under M.G.L. 94, § 305C, if the retail food establishment meets the following criteria:

(a) Food is pre-ordered for a single meal;

(b) Meals are prepared and delivered for a specific meal, either in individual portions or in bulk portions intended for individual service or resale at a specific meal;

(c) Meals are fully cooked or prepared by the food establishment; and



(d) Meals are stored and delivered under required temperatures.

(B) Mobile Food Operations.

(1) Exempt Mobile Food Operations. No permit from the board of health is required if a mobile food operation:

(a) Transports only whole, uncut fresh fruits and vegetables, unprocessed honey, pure maple products, or farm fresh eggs which are stored and maintained at 45°F (7.2°C) or less; or

(b) Transports food as a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers or jobbers.

(2) Mobile Food Operation Approval.

(a) Except as specified 105 CMR 590.010(B)(1), a mobile food operation shall not sell or serve food unless it has been approved to do so and has obtained a valid permit from the board of health.

(b) A board of health shall review a permit application for a mobile food operation as specified by administrative guidelines of the Department. The Board may approve an application that conforms with the guidelines and applicable sections of the 2013 Food Code.

(c) A permit for a mobile food operation may be issued for a period of time which shall be determined by the board of health, and the permit shall state the inclusive dates, location(s), and any restrictions in the operation allowed.

(d) In addition to requirements set forth in FC 8-301.11, the operator of a mobile food operation shall obtain a permit to operate from each board of health in whose jurisdiction he or she sells his or her product.

(C) Temporary Food Establishments.

(1) Exempt Temporary Food Operations. No permit from the board of health is required if a temporary food establishment only sells whole, uncut fresh fruits and vegetables, unprocessed honey, pure maple products, or farm fresh eggs which are stored and maintained at 45°F (7.2°C) or less.

(2) Temporary Food Establishment Approval.

(a) Except as specified 105 CMR 590.010(C)(1), a temporary food establishment shall not sell or serve food unless it has been approved to do so and has obtained a valid permit from the board of health.



(b) A board of health shall review a permit application for a temporary food establishment, as specified by administrative guidelines of the Department. The board may approve an application that conforms with the guidelines and with applicable sections of the 2013 Food Code.

(c) A permit for a temporary food establishment may be issued for a period of time, which shall not exceed 14 consecutive days, and the permit shall state the inclusive dates, location, and any restrictions in the operations allowed.

(d) In the case of temporary food establishment, all violations shall be corrected within a maximum of 24 hours. If violations are not corrected within the time specified, the board of health or its agent, as determined by the Board, shall order the establishment to cease food operations immediately.

(D) Public Markets and Farmer Markets.

(1) **Exempt Market Operations.** No permit from the board of health is required to sell the following products from a public market or farmers market:

- (a) Whole, uncut fresh fruits and vegetables;
- (b) Unprocessed honey;
- (c) Pure maple products; or
- (d) Farm fresh eggs which are stored and maintained at 45 E F (7.2 E C) or less.

(2) **Market Operations Approval.**

(a) Except as specified 105 CMR 590.010(D)(1), a vendor at a public market or farmers market shall not sell or serve food unless it has been approved to do so and has obtained a valid permit from the board of health.

(b) The Department may provide guidance documents to assist with the approval of permit applications.

(E) Residential Kitchens: Bed-and-breakfast Operations.

(1) **Exempt Bed-and-breakfast Operations.** No permit from the board of health is required if a bed-and-breakfast operation that prepares and offers food to guests meets the following criteria:

- (a) The home is owner-occupied;
- (b) The number of available guest bedrooms does not exceed six;



- (c) Breakfast is the only meal offered;
- (d) The number of guests served does not exceed 18; and
- (e) The consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the board of health.

(2) Bed-and-breakfast Approval.

(a) Except as specified 105 CMR 590.010(E)(1), a bed-and-breakfast operation shall not sell or serve food unless it has been approved to do so and has obtained a valid permit from the board of health.

(b) Bed-and-breakfast operations that require a food establishment permit shall comply with the minimum requirements of 105 CMR 590.010(E), except they shall be exempt from FC 8-2 "Plan Submission and Approval" in which case only an intended menu shall be submitted to the board of health with their application for permit.

(c) Bed-and-breakfast operations which require a permit shall be inspected by the board of health upon application for an original permit, within the six months prior to renewal of a permit, and at least once a year for the enforcement of 105 CMR 590.000.

(d) Food preparation and protection: Residential kitchens in bed-and-breakfast operations.

1. Food shall be prepared and protected in accordance with 105 CMR 590.000.
2. Food, utensils and equipment shall be stored in a manner to avoid contamination.
3. The following food handling practices for time/temperature control for safety foods are prohibited: cooling and reheating prior to service, hot holding for more than two hours, and service of leftovers.
4. All food temperature requirements shall be met as contained in 105 CMR 590.000. Hot and cold holding equipment shall be provided to maintain time/temperature control for safety foods at temperatures required by 105 CMR 590.000.

(F) Residential Kitchens: Cottage Food Operations.



(1) Exempt Cottage Food Operations. No permit from the board of health is required if an on-farm or off-farm cottage food operation only sells:

- (a) Whole, uncut fresh fruits and vegetables;
- (b) Unprocessed honey;
- (c) Pure maple products; or
- (d) Farm fresh eggs which are stored and maintained at 45°F (7.2°C) or less.

(2) Cottage Food Operation Approval.

- (a) Except as specified 105 CMR 590.010(F)(1), a cottage food operation shall not sell or serve food unless it has been approved to do so and has obtained a valid permit from the board of health.
- (b) A board of health shall review a permit application for a cottage food operation, as specified by administrative guidelines of the Department. The board may approve an application that conforms with the guidelines and with applicable sections of the 2013 Food Code.

(G) Schools and USDA Nutrition Programs.

(1) Inspection of School Kitchens. Pursuant M.G.L. c. 111, § 223(g), school kitchens shall be inspected in accordance with, and with the frequency required by, state and federal law. Such inspections shall include, but not be limited to, the following:

(a) Not less than two routine inspections per year shall be conducted:

- 1. At least once every six months as required by FC 8-401.10(A); and
- 2. At least twice during each school year as required by 7 CFR 210.13(b).

(b) An additional school kitchen inspection or investigation shall be conducted whenever the FC-regulatory authority:

- 1. Receives a public complaint about the school kitchen, but this shall not include any complaint regarding any violation of 105 CMR 225.000: Nutrition Standards for Competitive Foods and Beverages in Public Schools; or
- 2. Is notified by the permit holder or the Department that food products used at the school kitchen are the subject of a recall notice.

(2) Non-traditional School Meal Program Approval.



(a) USDA requires all institutions that participate in the National School Lunch Program or School Breakfast Program to obtain two food safety inspections per school year. USDA does not require such meal programs to be licensed, and allows the scope of the food safety inspection to be determined by the board of health.

(b) If an institution does not operate a commercial kitchen permitted under 105 CMR 590.000, then the board of health may conduct an alternative inspection such as:

1. Inspecting a residential kitchen in a Residential Child Care Institution for compliance with 105 CMR 410.100: Kitchen Facilities.

2. Inspecting a satellite meal drop-off site in an office building for nuisances under M.G.L. c. 111, § 122.

(H) Leased Commercial Kitchens (Shared Kitchen or Incubator).

(1) Leased Commercial Kitchens are food preparation facilities that provide kitchen space and access to professional equipment on a lease or rental basis.

(2) Required Approvals.

(a) The lessor of a Leased Commercial Kitchen shall not rent or share the kitchen unless it has been approved to do so and has obtained a valid permit from the board of health. Each Leased Commercial Kitchen is subject to inspection and enforcement as a retail food establishment.

(b) Each lessee of a Leased Commercial Kitchen must obtain a retail or wholesale food permit from the board of health.

(I) Innovative Operations.

(1) Description. Innovative operations are non-traditional food establishments that are not listed in 105 CMR 590.008(F) (FC 8-304.25(A)(2).)

(2) Innovative Operation Approvals.

(a) Unless prohibited by 105 CMR 590.000, a board of health may approve a permit for an innovative operation, provided that it is in harmony with the general purpose and intent of 105 CMR 590.000.

(b) Each innovative operation permit shall be subject to general or specific provisions set forth by the board of health, which may impose conditions, safeguards and limitations on time or use.

