

105 CMR: DEPARTMENT OF PUBLIC HEALTH

105 CMR 590.000: STATE SANITARY CODE CHAPTER X – MINIMUM SANITATION STANDARDS FOR FOOD ESTABLISHMENTS

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590.001: Adoption of Federal Edition of the Federal *1999 Food Code*

In addition to the provisions set forth in 105 CMR 590.002 through 590.021, the Department of Public Health hereby adopts and incorporates by reference the federal *1999 Food Code* (not including Annex 1-7) 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 federal *1999 Food Code*, which are specifically stricken or modified by 105 CMR 590.000.

Copies of the federal *1999 Food Code* are available on-line:

federal *1999 Food Code* in HTML or PDF versions (1Mb; 1.2Mb uncompressed) and Word Perfect 6/7/8 version compressed in self-extracting zip format (523Kb; 2Mb uncompressed) are available on-line and can be downloaded from the following FDA website: <http://vm.cfsan.fda.gov/~dms/foodcode.html#get99>

Copies of the federal *1999 Food Code* may also be ordered from:

The State Book Store, Room 116, Massachusetts State House, Boston, Massachusetts, 617-727-2834, the Western Office of the Secretary of the Commonwealth, 436 Dwight Street, Springfield, MA, 413-784-1376, or the Southeast District of the Secretary of the Commonwealth at 218 South Main Street, Suite 206, Fall River, MA, 508-646-1374. Additional information on purchasing the *1999 Food Code* and Massachusetts State Regulations is available online at the Secretary of the Commonwealth's Homepage: www.state.ma.us/sec.

National Technical Information Service (NTIS). For ordering options, call NTIS at 1-800-553-6847 or 703-605-6000.

To order directly on-line, go to the NTIS website at <http://www.ntis.gov/yellowbk/lnty831.htm>.

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Or write to: National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Spiral bound order number: PB99-115925.

Electronic Edition on CD-ROM (also includes the Adobe Reader, Draft HACCP Guide, and Plan Review Manual) order number: PB99-500506; Electronic Edition on Diskette order number: PB99-501033; WordPerfect on Diskette order number: PB99-501025.

590.002: Purpose and Definitions – Federal 1999 Food Code Chapter 1

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

(B) 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 federal 1999 *Food Code* section 1-201.10 entitled Definitions. Citations to the federal 1999 *Food Code* shall be referenced FC followed by the section number (e.g. FC 1-201.10). Some paragraphs of the federal 1999 *Food Code* (FC) are repeated to give context to the supplemental provisions. Provisions of the federal 1999 *Food Code*, which are repeated in their entirety in 105 CMR 590.000, will be referenced as (FC).

Adulterated means the definition in M.G.L. c. 94, § 186.

Bed and Breakfast Establishment means a private owner-occupied house where four or more rooms are let and a breakfast is included in the rent.

Bed and Breakfast Home means a private, owner-occupied house where three or fewer rooms are let and a breakfast is included in the rent.

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.

Bottled Drinking Water means, in addition to the definition set forth in the federal 1999 *Food Code*, the definition in 105 CMR 570.000: *The Manufacture, Collection, and Bottling of Water and Carbonated Nonalcoholic Beverages*.

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 holds a permit, for service at a single meal, party or similar gathering.

Commissioner means the Commissioner of the Massachusetts Department of Public Health.

Continental Breakfast means a breakfast meal restricted to the following foods:

- (1) Beverages such as coffee, tea and fruit juices;
- (2) Pasteurized Grade A milk;
- (3) Fresh fruits;
- (4) Frozen and commercially processed fruits;
- (5) Baked goods, such as pastries, rolls, breads, and muffins which are non-potentially hazardous food;
- (6) Cereals;
- (7) Homemade or commercial jams, jellies, honey and maple syrup;
- (8) Pasteurized Grade A creams and butters, non-dairy creamers or similar products;
- (9) Commercially manufactured hard cheeses, commercially manufactured cream cheese and commercially manufactured yogurt.

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Critical Item means, in addition to the definition set forth in the federal *1999 Food Code*, any other violation of 105 CMR 590.000 so designated by the board of health after written notice to the permit holder that the violation has the potential to seriously affect the public health.

DEP means the Massachusetts Department of Environmental Protection.

Department means the Massachusetts Department of Public Health.

Director means the Director of the Division of Food and Drugs.

Drinking Water means water that meets 310 CMR 22.00: *Drinking Water*.

FC-Regulatory Authority means for the purpose of 105 CMR 590.000, in addition to the definition set forth in FC 1-201.10, the board of health.

Food Code Interventions means the following set of preventive measures:

- (1) Demonstration of Knowledge
- (2) Employee Health
- (3) Hands as a Vehicle of Contamination
- (4) Time-temperature Relationships
- (5) Consumer Advisory

Food Employee means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces. 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 day care operations, schools and long term care facilities, which are licensed 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 stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:
 - (a) Such as a restaurant; satellite or catered feeding location when these locations are equipped with facilities to prepare, store or serve food; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; retail bakery; vending location; institution; food bank; residential kitchens in bed and breakfast homes and bed and breakfast establishments; residential kitchens for retail sale and,
 - (b) That 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. ^(FC)
- (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 ^(FC)
 - (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) A produce stand that only offers whole, uncut fresh fruits and vegetables;
 - (b) A food processing plant;
 - (c) A kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale;
 - (d) A kitchen in a private home that prepares food for distribution to a charitable facility in accordance with M.G.L. c. 94, § 328;

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- (e) An area where food that is prepared as specified in 105 CMR 590.002: Food Establishment(3)(c) is sold or offered for human consumption;
- (f) A kitchen in a private home, such as a family day-care provider; or a bed and breakfast home that serves only a continental breakfast; or,
- (g) A private home that receives catered or home-delivered food. ^(PC)

Food Processing Plant means in addition to the definition set forth in FC 1-201.10, the definition of Food Processing Operation in 105 CMR 500.000.

Full Breakfast means a breakfast meal including foods other than those listed in 105 CMR 590.002: Continental Breakfast.

Major Food Allergen means:

- (1) Milk, eggs, fish (such as bass, flounder, or cod), crustaceans (such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; and
- (2) A FOOD ingredient that contains protein derived from a FOOD named in 105 CMR 590.002: Major Food Allergen(1).

Major Food Allergen does not include:

- (a) Any highly refined oil derived from a FOOD specified in 105 CMR 590.002 Major Food Allergen(1) or any ingredient derived from such highly refined oil; or
- (b) Any ingredient that is exempt under the petition or notification process specified in the federal Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282).

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.

Menu Item means any individual food item, or combination of food items, listed or displayed on a menu board or menu.

Misbranded Food means the definition in M.G.L. c. 94, § 187.

Residential Kitchen means a kitchen in a private home.

Risk Factors

- (1) Risk Factors mean improper practices or procedures, which have been identified by the Centers for Disease Control and Prevention (CDC), through epidemiological data as the most prevalent contributing factors of foodborne illness or injury.
- (2) Risk Factors include:
 - (a) Poor personal hygiene;
 - (b) Food from unsafe source;
 - (c) Inadequate Cooking;
 - (d) Improper holding temperatures; and
 - (e) Contaminated equipment.

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.

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590.003: Management and Personnel – Federal 1999 Food Code Chapter 2

(A) FC 2-101.11 Assignment*. The first paragraph in FC 2-101.11 is stricken and replaced by the following:

(1) The permit holder shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of the operation. The owner or person(s) in charge shall designate an alternate person to be in charge at all times when they cannot be present. The alternate, when acting as the person in charge shall be responsible for all duties specified in FC 2-103.11 and must be adequately trained by the person in charge to ensure that the establishment operates in compliance with 105 CMR 590.000.

(2) In addition to the provisions in 105 CMR 590.003(A)(1), effective one year from the date of promulgation of 105 CMR 590.000 each food establishment shall employ at least one full-time equivalent (FTE) person in charge who shall be an on-site manager or supervisor and is at least 18 years of age and who by being a certified food protection manager has shown proficiency of required information through passing a test that is part of an accredited program recognized by the Department.

(3) 105 CMR 590.003(A)(2) shall not apply to:

- (a) Temporary food establishments operated by non-profit organizations such as, but not limited to, school sporting events, firemen's picnics, grange and church suppers and fairs;
- (b) Daycare operations which serve only snacks;
- (c) Food establishments restricted to the sale of pre-packaged food and limited preparation of non-potentially hazardous food and meat and poultry products processed under U.S.D.A supervision with a nitrite level of at least 120 PPM and a minimum brine concentration of 3.5%;
- (d) Satellite feeding sites, which receive prepared meals from commissaries for immediate service.

(4) Documentation that at least one full-time equivalent person in charge has demonstrated knowledge of food safety as specified in 105 CMR 590.003(A)(2) shall be prominently posted in the establishment next to the food establishment permit. Such documentation shall be removed when the individual(s) is no longer employed on-site by the establishment.

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(5) If a person in charge, after attending a training program, fails to pass the certification examination after two attempts, the permit holder may request a variance for this individual based on:

(a) Signed documentation from the instructor that the person in charge participated in a food safety training program, provided that the instructor's qualifications and course content meet the standards provided in the Department's *Massachusetts Guideline for Training and Testing*, and

(b) The facility being in full compliance with 105 CMR 590.000.

(6) If the person(s) in charge with demonstrated knowledge of food safety is transferred, terminated or terminates employment, the owner/permit holder shall notify the board of health in writing and have 60 days to employ a replacement. The local board of health may grant an extension not to exceed an additional 60 days to comply with this requirement if deemed necessary.

(B) FC 2-102.11 Demonstration*. The first paragraph in FC 2-102.11 is stricken and replaced by the following:

Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the FC-regulatory authority knowledge of foodborne disease prevention, application of the Hazard Analysis Critical Control Point principles, and the requirements of the federal *1999 Food Code*. The person in charge shall demonstrate this knowledge by compliance with the federal *1999 Food Code* and, by being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program recognized by the Department. The areas of knowledge include:^(FC)

- (1) Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;
- (2) Explaining the responsibility of the person in charge for preventing the transmission of foodborne disease by a food employee who has a disease or medical condition that may cause foodborne disease;
- (3) Describing the symptoms associated with the diseases that are transmissible through food;
- (4) Explaining the significance of the relationship between maintaining the time and temperature of potentially hazardous food and the prevention of foodborne illness;
- (5) Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish;
- (6) Stating the required food temperatures and times for safe cooking of potentially hazardous food including meat, poultry, eggs, and fish;
- (7) Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of potentially hazardous food;
- (8) Describing the relationship between the prevention of foodborne illness and the management and control of the following:
 - (a) Cross contamination,
 - (b) Hand contact with ready-to-eat foods, and
 - (c) Handwashing.
- (9) Maintaining the food establishment in a clean condition and in good repair;
- (10) Explaining the relationship between food safety and providing equipment that is:
 - (a) Sufficient in number and capacity, and
 - (b) Properly designed, constructed, located, installed, operated, maintained, and cleaned;
- (11) Explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment;
- (12) Identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from backflow and precluding the creation of cross-connections;
- (13) Identifying poisonous or toxic materials in the food establishment and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to law;
- (14) Identifying critical control points in the operation from purchasing through sale or service that when not controlled may contribute to the transmission of foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of the federal *1999 Food Code*;

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- (15) Explaining the details of how the person in charge and food employees comply with the HACCP plan if a plan is required by the law, the federal *1999 Food Code*, or an agreement between the FC-regulatory authority and the establishment; and
- (16) Explaining the responsibilities, rights, and authorities assigned by the federal *1999 Food Code* to the:
- (a) Food employee,
 - (b) Person in charge, and
 - (c) FC-regulatory authority.
- (17) No later than February 1, 2011:
- (a) Describing FOODS identified as MAJOR FOOD ALLERGENS and describing the symptoms that MAJOR FOOD ALLERGENS could cause in a sensitive individual who has an allergic reaction; and
 - (b) Ensuring that employees are properly trained in food allergy awareness as it relates to their assigned duties.

(C) FC 2-201.11(A) Health Status – Employee is Ill*. FC 2-201.11(A) is stricken and replaced by the following:

Is diagnosed with an illness due to:

- (1) *Salmonella Typhi*,
- (2) *Shigella spp.*,
- (3) *Escherichia coli* O157:H7 and other Enterohemorrhagic *Escherichia coli* (EHEC),
- (4) Hepatitis A virus,
- (5) *Entamoeba histolytica*,
- (6) *Campylobacter spp.*,
- (7) *Vibrio cholera spp.*,
- (8) *Cryptosporidium parvum*,
- (9) *Giardia lamblia*,
- (10) Hemolytic Uremic Syndrome,
- (11) *Salmonella spp.* (non-typhi)
- (12) *Yersinia enterocolitica*,
- (13) *Cyclospora cayetanensis*, and
- (14) Any other disease transmissible through food so designated by the Division of Communicable Diseases of the Department in 105 CMR 300.000: *Reportable Diseases and Isolation and Quarantine Requirements*.

(D) FC 2-201.12 Exclusions and Restrictions.* FC 2-201.12(A) through (D) is stricken and replaced by the following:

The person in charge shall:

- (1) Exclude a food employee from a food establishment if the food employee is diagnosed with an infectious agent specified under 105CMR 590.003(C)(1) through (4),^(FC)
- (2) Except as specified under 105 CMR 590.003(D)(3) or (4), restrict a food employee from working with exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles, in a food establishment if the food employee is:
 - (a) Suffering from a symptom specified under FC 2-201.11(B), or^(FC)
 - (b) Not experiencing a symptom of acute gastroenteritis specified under FC 2-201.11(B)(1) but is diagnosed with an infectious agent specified under 105 CMR 590.003(C)(5) through (14).
- (3) If the population served is a highly susceptible population, exclude a food employee who:
 - (a) Is experiencing a symptom of acute gastrointestinal illness specified under FC 2-201.11(B)(1) and meets a high-risk condition specified under FC 2-201.11(D)(1) through (3),^(FC)
 - (b) Is not experiencing a symptom of acute gastroenteritis specified under FC 2-201.11(B)(1) but is diagnosed with an infectious agent specified under 105 CMR 590.003(C).
 - (c) Had a past illness from *S. Typhi* within the last three months, or^(FC)
 - (d) Had a past illness from *Shigella spp.* or *E.coli* O157:H7 within the last month; and^(FC)

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- (4) For a food employee who is jaundiced:
 - (a) If the onset of jaundice occurred within the last seven calendar days, exclude the food employee from the food establishment, or ^(FC)
 - (b) If the onset of jaundice occurred more than seven calendar days before:
 - 1. Exclude the food employee from a food establishment that serves a highly susceptible population, or ^(FC)
 - 2. Restrict the food employee from activities specified under 105 CMR 590.003(D)(2).

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(E) FC 2-201.13 Removal of Exclusions and Restrictions.

- (1) FC 2-201.13(A) is stricken and replaced by the following: The person in charge may remove an exclusion specified under 105 CMR 590.003(D)(1) if:
- (a) The person excluded as specified in 105 CMR 590.003(D)(1) provides to the board of health written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant, that specifies that the restricted person is free of the infectious agent of concern as specified in 105 CMR 590.017; and
 - (b) The person in charge obtains approval from the FC-regulatory authority.^(FC)
- (2) FC 2-201.13(B) is stricken and replaced by the following: The person in charge may remove a restriction specified in 105 CMR 590.003(D)(2)(a) if the restricted person:
- (a) Is free of the symptoms specified under FC 2-201.11(B) and no foodborne illness occurs that may have been caused by the restricted person,
 - (b) Is suspected of causing foodborne illness but:
 1. Is free of these symptoms under FC 2-201.11(B), and^(FC)
 2. Provides to the board of health written medical documentation from a physician licensed to practice medicine, nurse practitioner or physician assistant, that specifies that the restricted person is free of the infectious agent that is suspected of causing the person's symptoms or causing foodborne illness, as specified in 105 CMR 590.017; and
 3. The person in charge obtains approval from the FC-regulatory authority.
 - (c) Provides written medical documentation from a physician licensed to practice medicine, nurse practitioner or physician assistant, stating that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis.^(FC)
- (3) The person in charge may remove a restriction specified in 105 CMR 590.003(D)(2)(b) if:
- (a) The restricted person provides to the board of health written medical documentation from a physician licensed to practice medicine, nurse practitioner or physician assistant, that specifies that the restricted person is free of the infectious agent that is suspected of causing the person's symptoms or causing foodborne illness, as specified in 105 CMR 590.017; and
 - (b) The person in charge obtains approval from the FC-regulatory authority.
- (4) FC 2-201.13(C) is stricken and replaced by the following: The person in charge may remove an exclusion specified in 105 CMR 590.003(D)(3) if:
- (a) The excluded person provides to the board of health written medical documentation from a physician licensed to practice medicine, nurse practitioner or physician assistant that specifies that the person is free of:
 1. The infectious agent of concern as specified in 105 CMR 590.017, or
 2. Jaundice as specified under 105 CMR 590.003(E)(5) if hepatitis A virus is the infectious agent of concern; or
 - (b) If the person is excluded under 105 CMR 590.003(D)(3)(a), stating that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis; and
 - (c) The person in charge obtains approval from the FC-regulatory authority.
- (5) FC 2-201.13(D) is stricken and replaced by the following: The person in charge may remove a restriction or exclusion specified in 105 CMR 590.003(D)(4)(a) or (b) if:
- (a) The excluded or restricted person provides written medical documentation from a physician licensed to practice medicine, nurse practitioner, or physician assistant, that specifies that the person is free of hepatitis A virus as specified in 105 CMR 590.017(B)(4); and
 - (b) The person in charge obtains approval from the FC-regulatory authority.

(F) FC 2-201.14 Responsibility of a Food Employee or an Applicant to Report to the Person in Charge.* FC 2-201.14 is stricken and replaced by the following:

A food employee or a food employee applicant to whom a conditional offer for employment has been made shall:

- (1) In a manner specified under FC 2-201.11, report to the person in charge the information specified under 105 CMR 590.003(C) and FC 2-201.11(B) through (D); and

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(2) Comply with exclusions and restrictions that are specified in 105 CMR 590.003(D)(1) through (4).

(G) FC 2-201.15 Reporting by the Person in Charge.* FC 2-201.15 is stricken and replaced by the following:

The person in charge shall notify the FC-regulatory authority that a food employee is diagnosed with an illness due to an infectious agent specified under 105 CMR 590.003(C).

590.004: Food-- federal 1999 Food Code Chapter 3

(A) FC 3-201.11(B) Food Prepared in a Private Home.* FC 3-201.11(B) shall be stricken and replaced by the following:

Food prepared in a private home may not be used or offered for human consumption in a food establishment except as provided in 105 CMR 590.000.

(B) FC 3-201.11(C) Packaged Food, Labeling. FC 3-201.11(C) Packaged Food, Labeling shall be stricken and replaced by the following:

Packaged food shall be labeled in accordance with applicable law and as specified under FC 3-202.17 and FC 3-202.18.

(C) FC 3-201.16(A) Wild Mushrooms, Prohibited.* FC 3-201.16(A) is stricken and replaced by the following:

Except as specified in FC 3-201.16(B), mushroom species picked in the wild may not be received for sale or service unless obtained from sources where each mushroom is individually inspected and found to be safe by an approved mushroom identification expert and the mushrooms are packaged and labeled with the name of the harvester, packer, and the mushroom species.

(D) FC 3-202.14(C) Frozen Milk Products. FC 3-202.14(C) Frozen Milk Products, is stricken and replaced by the following:

Frozen milk products such as ice cream, shall be obtained pasteurized in accordance with applicable law.

(E) FC 3-301.11(B) Bare Hand Contact with RTE Food.* FC 3-301.11(B) shall be stricken and replaced by the following:

Except when washing fruits and vegetables as specified under FC 3-302.15 or when in compliance with the Department's policy on alternative procedures for bare hand contact with ready-to-eat food, food employees may not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves or dispensing equipment.

Single-use natural rubber latex gloves are not recommended in food establishments.

(F) FC 3-501.16(C)(2) Potentially Hazardous Food, Hot and Cold Holding.* FC 3-501.16(C)(2) shall be stricken and replaced by the following:

By March 1, 2005, equipment shall be upgraded and replaced to maintain food at a temperature of 41°F (5°C) or less except that in-use food preparation line refrigeration equipment shall be upgraded or replaced to maintain food at a temperature of 41°F (5°C) or less by March 1, 2010.

(G) FC 3-501.17 Ready-to-Eat, Potentially Hazardous Food, Date Marking* and FC 3-501.18 Ready-to-Eat, Potentially Hazardous Food, Disposition.* FC 3-501.17 and FC 3-501.18 shall be stricken.

(H) FC 3-501.19 Time as a Public Health Control, Variance Requirement.* In addition to requirements set forth in FC 3-501.19, a variance must be obtained from the board of health.

(I) FC 3-601.11 Standards of Identity. FC 3-601.11 Standards of Identity is stricken and replaced by the following:

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Packaged food shall comply with standard of identity requirements in accordance with applicable law.

(J) FC 3-602.11(B)(2) Labeling of Ingredients.* FC 3-602.11(B)(2) shall be designated as a critical item if there is one or more undeclared allergenic ingredient(s) in the ingredient statement, which would result in a Class I or II recall.

(K) FC 3-603.11 Consumption of Animal Foods that are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens.* Enforcement of FC 3-603.11 will be implemented January 1, 2001.

590.005: Equipment Utensils and Linen - federal 1999 Food Code Chapter 4

590.006: Water, Plumbing and Waste - federal 1999 Food Code Chapter 5

(A) FC 5-101.13 Bottled Drinking Water.* FC 5-101.13 Bottled Drinking Water* shall be stricken and replaced by the following:

bottled drinking water used or sold in a food establishment shall be obtained from sources, which comply with all applicable laws.

(B) FC 5-102.11 Standards.* In addition to requirements in FC 5-102.11, water from a public water system shall meet requirements set forth in 310 CMR 22.00: *Drinking Water*

590.007: Physical Facilities - federal 1999 Food Code Chapter 6

590.008: Poisonous or Toxic Materials - federal 1999 Food Code Chapter 7

590.009: Special Requirements

(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) Notify the board of health of the city or town in which it plans to serve a meal prior to serving any meal elsewhere than in its own food service establishment and shall give written notice to the board of health on a form provided by the board or the Department either prior to or within 72 hours after serving a meal elsewhere than 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 establishment permit prior to serving a meal in a city or town other than the one in which its food establishment is located.

(B) Mobile Food Operations.

(1) Mobile food operations shall comply with the requirements of the federal 1999 *Food Code* and other applicable provisions of 105 CMR 590.000 except as otherwise provided in 105 CMR 590.009(B). The board of health may impose additional requirements and restrictions to protect against health hazards related to the conduct of the mobile food operation and may prohibit the sale of some or all potentially hazardous foods.

(2) Mobile food operations not equipped with an adequate water and waste system to facilitate hand-washing and the cleaning and sanitizing of utensils shall be limited to the preparation and service of frankfurters and non-potentially hazardous foods and to the sale of pre-packaged food prepared at a food processing establishment licensed in accordance with 105 CMR 500.000, except that pre-packaged food may be prepared by the mobile food operator at a licensed food establishment for which he or she holds a permit in accordance with 105 CMR 590.000.

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- (3) Mobile food operations equipped with an adequate water and waste system to facilitate hand-washing and the cleaning and sanitizing of utensils may prepare potentially hazardous foods requiring limited preparation for immediate service, provided that any advanced food preparation, if necessary, is conducted by the mobile operator in a licensed food establishment.
- (4) Mobile food operations shall provide only single-service articles for use by the consumer.
- (5) Condiments, cream and sugar shall be served only from a sanitary dispenser or in individually wrapped servings.
- (6) Mechanical refrigeration or insulated containers with ice or gel packs must be used to maintain product temperature for pre-packaged, ready-to-eat foods which are required to be held at or below 45°F (7°C) or 41°F (5°C). The storage of packaged food in contact with water or undrained ice is prohibited. Wrapped ready-to-eat foods such as sandwiches shall not be stored in direct contact with ice. Effective July 1, 2005, all mobile food operations selling or distributing ready-to-eat PHFs must be equipped with mechanical refrigeration that can maintain PHFs at or below 41°F (5°C).
- (7) Bulk food shall not be used unless purchased from an approved source. Bulk PHFs, with the exception of frozen desserts, must be sold or served on the same day as purchased. All hot food shall be discarded if not used or sold by the end of the day.
- (8) A convenient hand-washing facility must be available on site for employee hand-washing whenever handling unpackaged foods. This facility shall consist of at least sufficient warm running water, soap and individual paper towels. The board of health may approve the use of chemically treated towelettes in lieu of hand-washing facilities if only frankfurters, non-potentially hazardous foods and non-perishable foods are served and there is no bare-hand contact. Chemically treated towelettes must be made available for use by customers in self-service operations.
- (9) A sign shall be provided at consumer self-service operations, which states that the use of bare hands by consumers for self-service is prohibited by state law.
- (10) Equipment.
- (a) Equipment shall be located and installed in a way that prevents food contamination and that also facilitates cleaning the equipment and establishment.
- (b) Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Effective shields for such equipment shall be provided, as necessary, to prevent contamination. Mobile food operations, which cook or reheat unpackaged food for hot holding shall be fully enclosed unless equipped with air curtains to prevent the contamination of food and food contact surfaces with environmental contaminants.
- (c) Ware-washing facilities, when required, shall be available in accordance with the FC for cleaning in-use utensils and food contact surfaces.
- (11) Operators of mobile food operations shall obtain the use of adequate and suitable toilet facilities where handwashing facilities are available.
- (12) Mobile food operations shall operate from a fixed, licensed food establishment or food processing plant and shall report at least daily to such locations for all food, water and supplies and for all cleaning and servicing operations. Mobile food operators shall retain the list of ingredients and the receipt for all bulk foods, which must indicate the name of the food item, the date purchased and the name of the approved food source licensed in accordance with 105 CMR 500.000.
- (13) Servicing areas shall be provided with overhead protection except that areas used only for the loading of water, packaged food or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, need not be provided with overhead protection.
- (14) Mobile food operations shall have identification, *i.e.*, person's name and/or business name, city and telephone number in letters not smaller than three inches, on the left and right door panels of the vehicle or on the left and right sides of the trailer or pushcart.

(C) Temporary Food Establishments.

- (1) A temporary food operation shall comply with all applicable requirements of the federal *1999 Food Code*, except as otherwise provided in this 105 CMR 590.009(C). The board of health may impose additional requirements to protect against health hazards related to the conduct of the temporary food operation, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of 105 CMR 590.000 pursuant to the provisions of 105 CMR 590.010(H).

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- (2) Whenever a temporary food establishment is permitted to prepare exposed foods without complying with all the requirements of 105 CMR 590.000, the following requirements are applicable. Only those foods requiring limited preparation, such as hamburgers and frankfurters that only require seasoning and cooking, shall be prepared or served. The preparation of other potentially hazardous foods including pastries filled with cream or synthetic cream, custards, and similar products and salads or sandwiches containing Meat, poultry, eggs or fish is prohibited. This prohibition does not apply to the service of any potentially hazardous food that has been prepared and packaged under conditions meeting the requirements of 105 CMR 590.000, is packaged in individual servings, is stored at or below 45°F (7°C)/ 41°F (5°C) or at or above 140°F (60°C) in facilities meeting the federal 1999 *Food Code* requirements for storage, display and transportation and is served directly in the unopened container in which it was packaged.
- (3) Temporary food establishment operators shall comply with the mandatory food protection management certification requirement in accordance with 105 CMR 590.003, except that the board of health may waive the requirement if the sponsor of a temporary event has employed at least one (FTE) person in charge in accordance with 105 CMR 590.003(A), who is:
- (a) Not a vendor; and
 - (b) Responsible for monitoring safe food handling practices and initiating corrective actions to ensure compliance with 105 CMR 590.000.
- (4) Ice that is consumed or that contacts food shall be made under conditions meeting the requirements of FC 3-202.16 and FC 3-303. The ice shall be in chipped, crushed, or cubed form and in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until it is dispensed in a way that protects it from contamination.
- (5) A convenient handwashing facility must be available for employee handwashing whenever handling unpackaged foods. This facility shall consist of at least sufficient warm running water, soap and individual paper towels. The board of health may approve the use of chemically treated towelettes in lieu of handwashing facilities if:
- (a) Only frankfurters, non-potentially hazardous foods or non-perishable foods are prepared and served and there is no bare-hand contact, or
 - (b) If other foods are served and there is no bare-hand contact.
- (6) Equipment.
- (a) Equipment shall be located and installed in a way that prevents food contamination and that also facilitates cleaning the equipment and establishment.
 - (b) Food contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Effective shields for such equipment shall be provided, as necessary, to prevent contamination.
 - (c) Warewashing facilities, when required, shall be available in accordance with federal 1999 *Food Code* Chapter 4 for cleaning in-use utensils and food contact surfaces.
- (7) All temporary food establishments without effective facilities for cleaning and sanitizing tableware shall provide only single-service articles for use by the consumer.
- (8) Enough potable water shall be available in the operation for food preparation, for cleaning and sanitizing utensils and equipment, and for handwashing. A heating facility capable of producing enough hot water for these purposes shall be provided on the premises.
- (9) Mechanical refrigeration or insulated containers with ice or gel packs must be used to maintain product temperature for pre-packaged, ready-to-eat foods, which are required to be held at or below 41°F (5°C)/45°F (7°C). The storage of packaged food in contact with water or undrained ice is prohibited. Wrapped ready-to-eat foods such as sandwiches shall not be stored in direct contact with ice.
- (10) Potentially hazardous food, which is reheated for hot holding, shall be discarded if not used or sold by the end of the day. Temporary food operations designed to dispense hot foods shall be provided with suitable units to rapidly heat foods and to keep such food hot until served.
- (11) All sewage, including liquid waste, shall be disposed of according to law.
- (12) Floors, Walls and Ceilings of Food Preparation Areas.
- (a) Floors shall be constructed of concrete, asphalt, tight wood, or other similar cleanable material kept in good repair. Dirt or gravel, when graded to drain, may be used as subflooring when covered with clean, removable platforms or duckboards, or covered with wood chips, shavings or other suitable materials effectively treated to control dust.

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(b) Walls and ceilings shall be made of wood, canvas, or other material that protects the interior of the establishment from the weather, dust and debris.

(c) Walls and ceilings of food preparation areas shall be constructed in a way that prevents the entrance of insects. Doors to food preparation areas shall be solid or screened and shall be self-closing. Screening material used for walls, doors, or windows shall be at least 16 mesh to the inch.

(d) Counter-service openings shall not be larger than necessary for the particular operation conducted. These openings shall be provided with tight-fitting solid or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Counter-service openings shall be kept closed, except when in actual use.

(e) 105 CMR 590.009(3)(12)(c) and (d) do not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting conditions.

(D) Residential Kitchens.

(1) Residential Kitchens in Bed and Breakfast Homes and Bed and Breakfast Establishments.

(a) All bed and breakfast homes serving full breakfast and bed and breakfast establishments serving full or continental breakfast shall require a food establishment permit and shall comply with the minimum requirements of 105 CMR 590.009(D) as well as the Administration and Enforcement sections (105 CMR 590.010 through 590.021), except they shall be exempt from 105 CMR 590.043, "Plan Submission and Approval" in which case only an intended menu shall be submitted to the board of health with their application for permit. However, bed and breakfast establishments with ten guestrooms or more shall comply with all provisions of 105 CMR 590.000.

(b) Bed and breakfast homes and bed and breakfast establishments, which require a permit, shall be inspected by the board of health upon application for an original permit and within the six months prior to renewal of a permit, and as often as necessary for the enforcement of 105 CMR 590.000.

(c) Food preparation and protection: Residential kitchens in bed and breakfast homes and bed and breakfast establishments.

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 potentially hazardous 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 potentially hazardous foods at temperatures required by 105 CMR 590.000.

(2) Residential Kitchens: Retail Sale.

(a) A food establishment permit shall be required if food is prepared in or distributed from a residential kitchen for retail sale except as exempted under the definition of food establishment in 105 CMR 590.002 and shall comply with the minimum requirements of 105 CMR 590.009(D) as well as the Administration and Enforcement (105 CMR 590.010 through 590.021), except they shall be exempt from 105 CMR 590.043, "Plan Submission and Approval" in which case only an intended list of food to be prepared or distributed shall be submitted to the board of health with their application for permit. In addition, the following requirements shall be met:

(b) Food Preparation and Protection: Residential Kitchen for Retail Sale.

1. Only non-potentially hazardous foods and foods which do not require refrigeration and a variance in accordance with 105 CMR 590.010(H) shall be prepared in or distributed from a residential kitchen for retail sale to the public except as exempted under the definition of food establishment in 105 CMR 590.002. Ingredients that are potentially hazardous foods, such as milk, cream, and eggs, may be used in food preparation for the public provided that the final product is not a potentially hazardous food.
2. Wholesale operations requiring a food processor registration by the Department shall not be conducted in an establishment holding a residential kitchen permit.
3. Only immediate family members residing in the household may prepare food for retail sale in a residential kitchen.

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(3) General Requirements for All Residential Kitchens.

(a) Food Supplies. Food shall be obtained from approved sources, shall be in sound condition, and be safe for human consumption. Foods, which do not comply with 105 CMR 590.000, shall not be served to the public and shall either be stored separately or labeled for private use. A separate shelf or portion thereof within a refrigerator shall be an acceptable form of separate storage. In addition to requirements set forth in FC 3-201.11(C), packaged food shall also meet requirements set forth in 105 CMR 520.000: *Labeling*.

(b) Personal Health and Hygiene. Food employees shall conform to employee health and hygiene requirements in 105 CMR 590.000.

(c) Handwashing. A soap dispenser and disposable towels for use in handwashing shall be provided at the kitchen sink. This sink shall not be used for handwashing after toilet use but may be used for food preparation and warewashing provided it is cleaned and sanitized prior to and between use.

(d) Toilet Room. A toilet room shall be available for use by food employees. Toilet rooms opening to the kitchen or dining area shall have adequate ventilation. Ventilation may be provided by window(s) or by mechanical means. A soap dispenser and disposable towels shall be provided for handwashing in toilet rooms used by food employees.

(e) Equipment and Utensil Design And Construction. All equipment and utensils shall be constructed of safe materials and maintained in good repair.

(f) Food-Contact Surfaces. All food contact surfaces, counters, sinks and work surfaces in the establishment shall be smooth, non-absorbent and easily cleanable.

(g) Cleaning and Sanitizing.

1. Food contact surfaces of equipment, tableware and utensils shall be cleaned and sanitized prior to food preparation for the public and after each use in accordance with 105 CMR 590.000.

2. For manual cleaning and sanitizing of cooking equipment, utensils and tableware, three compartments shall be provided and used; or a two compartment sink may be used if single service tableware is provided, or when an approved detergent sanitizer is used in accordance with FC 4-501.114 and FC 4-301.12. The board of health may allow the use of compartments other than sinks, such as tubs and basins.

3. A domestic or home style dishwasher may be used provided the following performance criteria are met:

a. The dishwasher must effectively remove physical soil from all surfaces of dishes, equipment and utensils.

b. The operator shall provide and use daily a maximum registering thermometer or a heat thermal label to determine that the dishwasher's internal temperature is a minimum of 150°F after the final rinse and drying cycle. Records of this testing shall be kept on file for 30 days.

c. The dishwasher must be installed and operated according to manufacturer's instructions for the highest level of sanitization possible when sanitizing residential kitchen facilities' utensils and tableware; a copy of the instructions must be available on the premises at all times.

4. There shall be sufficient area or facilities such as portable dish tubs and drain boards for the proper handling of soiled utensils prior to washing and of cleaned utensils after sanitization so as not to interfere with safe food handling, handwashing and the proper use of dishwashing facilities. Equipment, utensils and tableware shall be air-dried.

(h) Insect Proof/Rodent Proof.

1. Food service preparation and storage areas shall be constructed and maintained to prevent the entry of pests and other vermin.

2. Pesticides and rodenticides shall be applied according to law.

(i) Premises.

1. Pets may be present on the premises, but shall be kept out of food preparation and dining areas during food preparation and service to the public.

2. Laundry facilities may be present in the kitchen, but shall not be used during food preparation and service to the public.

3. Cooking facilities in the kitchen shall not be available to guests.

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- (j) Garbage Receptacles. Impervious receptacles shall be provided for storage of garbage and refuse.
 - (k) Water Supply. Hot and cold water under pressure shall be provided and shall be from an approved source.
 - (l) Sewage. Sewage shall be disposed of through an approved system that is:
 1. A public sewage treatment plant; or
 2. An individual sewage disposal system that is sized, constructed, maintained, and operated according to law.
- (E) Anti-Choking Procedures in Food Service Establishments. Pursuant to M.G.L. c. 94, § 305D, each food service establishment having a seating capacity of 25 persons or more shall:
- (1) Have on its premises, while food is being served, an employee trained in manual procedures approved by the department to remove food lodged in a person's throat; and
 - (2) Make adequate provision for insurance to cover employees trained in rendering such assistance.
- (F) Tobacco Products: Notice and Sale.
- (1) In conformance with M.G.L. c. 270, § 6 and §6A, a food establishment shall not sell cigarettes, chewing tobacco, snuff or tobacco in any of its forms or cigarette rolling papers to any person under the age of 18. In conformance with M.G.L. c. 64C, § 10, a food establishment, in which a vending machine for the sale of cigarettes or tobacco is located, shall not permit a person under the age of 18 to use such machine.
 - (2) In conformance with M.G.L. c. 270, § 7, in any food establishment in which cigarettes are sold by means other than a vending machine, a copy of a notice meeting the requirements shall be conspicuously posted by the owner, operator, manager or other person having control of the establishment.
 - (a) For the cash register which receives the greatest volume of single cigarette package sales. The department shall prepare and distribute without charge a notice to be posted by food establishments, which states that the sale of cigarettes and other tobacco products to persons under the age of 18 is prohibited. Such notice must be posted in a manner so that it may be readily seen by a person standing at or approaching the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor. As an alternative to the notice provided by the department, local boards of health may distribute a notice, which meets the requirements of this section and receives prior approval from the department. Any notice distributed by a local board of health shall meet the following requirements:
 1. The notice shall be at least 48 square inches;
 2. The notice shall use at least two contrasting colors, drawings or pictures as illustrations;
 3. The notice shall generally state that the sale of cigarettes to persons under 18 years of age is prohibited, and at a minimum shall include the following wording contained in M.G.L. c. 270, § 6:
Whoever sells a cigarette, chewing tobacco, snuff or any tobacco in any of its forms to any person under the age of 18 or, not being his parent or guardian, gives a cigarette, chewing tobacco, snuff or tobacco in any of its forms to any person under the age of 18 shall be punished by a fine of not less than \$100 for the first offense, and not less than \$200 for a second offense and not less than \$300 for any third or subsequent offense;
 4. The design of the notice and the type of print shall be sufficient to permit the notice to be easily read from a distance of five feet. Print specified in 105 CMR 590.009(F)(2)(a)3. shall be at least 17-point type.
 - (b) For all other cash registers that sell cigarettes: The Department shall prepare and distribute without charge a notice to be attached on the cash register which is no larger than nine square inches, and includes at a minimum the statement that the sale of cigarettes or any tobacco product to persons under 18 years of age is prohibited. Such notice must be posted in a manner so that it may be readily seen by a person standing at or approaching the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view.

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(3) In conformance with M.G.L. c. 64C, § 10, every vending machine for the sale of cigarettes or tobacco located in a food establishment shall have attached on the front of the machine a notice furnished by the commissioner of Revenue reading "Persons under 18 are prohibited from using this machine."

(G) Food Allergy Awareness Requirements. Food establishments that cook, prepare, or serve food intended for immediate consumption either on or off the premises shall comply with the following requirements.

(1) Poster. No later than October 1, 2010, such food establishments shall prominently display in the employee work area a poster approved by the Department, no smaller than 8.5 by 11 inches, relating to major food allergens. The poster shall include the following information:

- (a) Major food allergens;
- (b) Health risks of food allergies;
- (c) Procedure to follow when a customer states that he or she has a food allergy; and
- (d) Emergency procedure to follow if a customer has an allergic reaction to a food.

(2) Notice on printed menus and menu boards. Such food establishments shall include on all printed menus and menu boards a clear and conspicuous notice requesting a customer to inform the server before placing an order, about the customer's allergy to a major food allergen. The notice shall state: Before placing your order, please inform your server if a person in your party has a food allergy.

(a) Effective Date. The notice must be included on printed menus and on indoor and outdoor menu boards, including drive-through menu boards, no later than October 1, 2010.

(b) Menu Boards.

1. All notices on menu boards must be easily readable from the point of service at which food is ordered. On the menu board itself, the font size of the notice must be equal to or greater than the font size of the smallest menu item listed on the menu board.

2. In lieu of placing the notice directly on the indoor or outdoor menu board itself, the food establishment may post the notice adjacent to the menu board or at each point of service where food is ordered. Such notice must be securely posted in a manner so that it may be easily seen and read from a distance of five feet by a person standing at or approaching the point of service, shall directly face the purchaser, and shall not be obstructed from view.

(3) Food Allergen Awareness Training.

(a) By February 1, 2011, such food establishments shall have on staff a certified food protection manager who has been issued a Massachusetts certificate of allergen awareness training by an allergen awareness training verification program recognized by the Department. The certificate will be valid for five years.

(b) The certified food protection manager shall:

1. Demonstrate knowledge of MAJOR FOOD ALLERGENS by posting the Massachusetts food allergen awareness training certificate; and
2. Ensure that employees are properly trained in food allergy awareness as it relates to their assigned duties.

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(4) Exemptions.

(a) Public and private schools, educational institutions, summer camps, childcare facilities, and other child care programs approved to participate in USDA Child Nutrition Programs are exempt from 105 CMR 590.009(G), with the exception of 105 CMR 590.009(G)(3)(b)2., provided that they have:

1. Written policies and procedures for identifying, documenting, and accommodating students with food allergies, and
2. Documentation verifying participation in food allergen training recognized by the Massachusetts Department of Elementary and Secondary Education and the Massachusetts Department of Public Health.

(b) Food service operations in institutional settings in which food is prepared and/or served to a specific population (for example, hospitals, non-profit organizations, Older American Act Elderly Nutrition programs, and charitable food facilities) that have written procedures for identifying, documenting, and accommodating their clients with food allergies are exempt from 105 CMR 590.009(G)(2).

(c) Temporary food establishments operated by non-profit organizations are exempt from 105 CMR 590.009(G).

590.010: Code Applicability – Federal 1999 Food Code Chapter 8-1

(A) Scope. FC 8-1 through 8-5 and 105 CMR 590.010 through 590.021 shall cover the administration and enforcement of 105 CMR 590.000 in lieu of 105 CMR 400.000: *The State Sanitary Code, Chapter I: General Administrative Procedures.*

(B) Local Enforcement. Unless otherwise expressly provided in 105 CMR 590.010, each board of health is responsible for the administration and enforcement of 105 CMR 590.000 and may enforce 105 CMR 590.000 by suspension or revocation of permits in accordance with 105 CMR 590.014 or otherwise at law or in equity in the same manner that local rules and regulations are enforced.

(C) Food Establishments Outside Jurisdiction of Board of Health. Food from a food establishment outside the jurisdiction of the board of health of any particular city, town or other legally constituted governmental unit may be sold or served within such municipality if such food establishment complies with the provisions of 105 CMR 590.000. To determine the extent of compliance with such provisions, the board of health may accept reports of the responsible authorities in the other jurisdiction where such food establishment is located or from the Director, or may inspect such establishment accompanied by the responsible authorities in the other jurisdiction.

(D) State Enforcement.

(1) If as a result of any study, inspection, or survey made by the Department, the Commissioner or his authorized representative determines that compliance with 105 CMR 590.000 has not been effected, he shall, in writing, notify the appropriate board of health of such determination, allotting a reasonable time in which compliance shall be effected, and requesting that the board of health, in writing, notify the Commissioner of what action will be and has been taken, to effect compliance with 105 CMR 590.000.

(2) If the Commissioner is not so notified, or if after notification he determines that action sufficient to effect compliance with the provisions of 105 CMR 590.000 has not been taken, the board of health shall be deemed to have failed to effect compliance with 105 CMR 590.000.

(3) Whenever any board of health has failed after a reasonable length of time to enforce 105 CMR 590.000, the Department may enforce 105 CMR 590.000 in any way that a local board of health is authorized to act to effect compliance.

(4) Notwithstanding any other provision of 105 CMR 590.000, if the Department determines that an imminent health hazard exists resulting from the operation of a food establishment it may without prior notice to the board of health take whatever action is necessary to effect compliance with 105 CMR 590.000.

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(E) Interpretation of 105 CMR 590.000. The Director may issue written interpretations and guidelines as necessary to promote uniform application of 105 CMR 590.000. Upon the written request of a board of health or permit holder, the Director may investigate and/or advise on particular questions regarding interpretations of 105 CMR 590.000.

(F) Reporting Requirements for Local Boards of Health.

(1) The board of health shall submit to the department by July 31st each year, the following information:

- (a) Total number of licensed food establishments by category;
- (b) Number of yearly inspections by category;
- (c) Number of reinspections by category;
- (d) Number of hearings;
- (e) Number of license suspensions;
- (f) Number of license revocations;
- (g) Number of foodborne illness complaints investigated (including the number of cases involving more than two persons and the total number of persons involved);
- (h) Number of general complaints investigated;
- (i) A copy of any local ordinances relative to food establishment operations;
- (j) Number and types of variances issued;
- (k) Total number of food sanitarians; and,
- (l) Other information as requested.

The Department shall supply a form on which to submit the required information.

(2) Upon request of either the Department of Public Health or the Department of Elementary and Secondary Education, the board of health shall report the results of each school kitchen inspection and investigation, including any violations and steps to remediate the violations, pursuant to M.G.L. c. 111, § 222(g).

(G) Inspector Training.

(1) Any person conducting food inspections for the board of health shall be knowledgeable in foodborne disease prevention, application of the hazard analysis critical control point principles, and the requirements of 105 CMR 590.000 as they relate to food establishments in their city or town.

(2) Effective one year from the date of promulgation of 105 CMR 590.000, any individual conducting food inspections shall demonstrate the knowledge referenced in 105 CMR 590.010(G)(1) by:

- (a) Passing a certified food protection manager or certified food safety professional test that is part of an accredited program recognized by the Department and completing food safety inspection training recognized by the Department, or;
- (b) Being a registered sanitarian or certified health officer who has completed food safety inspection training recognized by the Department.

(H) Variances. In addition to requirements set forth in FC 8-103:

(1) Any variance granted by the board of health shall be in writing. A copy of any such variance shall, while it is in effect, be available to the public at all reasonable hours in the office of the clerk of the city or town, or in the office of the board of health. Copies of all variances shall be provided to the Director upon request.

(2) Any variance may be subject to such qualification, revocation, suspension, or expiration as the board of health expresses in its grant, except that no variances shall be given after a major remodeling of the premises of a food establishment. A variance may otherwise be revoked, modified, or suspended, in whole or in part, only after the holder thereof has been notified in writing and has been given an opportunity to be heard in conformity with the requirements for an order and hearing in 105 CMR 590.015.

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590.011: Plan Submission and Approval – Federal 1999 Food Code Chapter 8-2

Plan Approval or Disapproval. In addition to requirements set forth in FC 8-201 Facility and Operating Plans:

Plan approval shall be granted or denied within 30 calendar days after the submission of said plans. If the board of health does not approve or disapprove said plans within such time, the plans shall be deemed to have been approved. Approval shall be denied only if such plans establish that the proposed food establishment will violate the provisions of 105 CMR 590.000 or other applicable laws, ordinances, or regulations. Disapproval of such plans shall be deemed an order to which the procedure provided in 105 CMR 590.015 shall apply.

590.012: Permit to Operate – Federal 1999 Food Code Chapter 8-3

(A) Mobile Food Operations. In addition to the requirements set forth in FC 8-301.11 Prerequisite for Operation:

The operator of a mobile food operation shall obtain a permit to operate from each board of health in whose jurisdiction he sells his product.

(B) FC 8-302.12 Application Form, Approved. FC 8-302.12 Form of Submission shall be stricken and replaced by the following:

A person desiring to operate a food establishment shall submit to the FC-regulatory authority a written application for a permit on a form provided by the board of health and approved by the department.

(C) FC 8-3 Permit Form. In addition to requirements set forth in FC 8-3 Permit to Operate:

(1) There shall be one permit form issued to each food establishment. The permit shall indicate:

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- (a) Whether the permit is annual, seasonal or temporary; and
 - (b) Each of the following operations permitted:
 - 1. Food Service (*i.e.* handling of unpackaged or exposed food intended for individual service such as sit-down and take-out operations in restaurants, sandwich operations in retail markets and convenience stores, coffee and pastry shops, institutional kitchens);
 - 2. Retail Food (*i.e.* handling of pre-packaged foods or the handling of unpackaged or exposed food not intended for individual service such as retail grocery and convenience stores which sell pre-packaged foods, seafood and meat markets, bakeries and bulk deli operations);
 - 3. Residential kitchen for retail sale;
 - 4. Residential kitchen for bed and breakfast;
 - 5. Mobile/Pushcart;
 - 6. Temporary food establishment;
 - 7. Caterer; and/or
 - 8. Other as described on application.
 - (2) The permit shall state:
 - (a) The name and address of the food establishment;
 - (b) The name of the permit holder;
 - (c) The date of expiration;
 - (d) Any restrictions on the type of operations allowed.
- (D) Temporary Food Establishment Permits. A permit for a temporary food establishment may be issued for a period of time, which shall not exceed 14 days, and the permit shall state the inclusive dates, location, and any restrictions in the operations allowed.
- (E) Mobile Food Operation Permits. A permit for a mobile food or pushcart 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.
- (F) Copies of Permit. The permit shall be made out in duplicate. One copy shall be given to the applicant, and one shall be placed on file with the board of health.
- (G) Expiration and Renewal of Permit.
 - (1) A permit shall expire no later than one year from the date issued.
 - (2) An annual food establishment permit may be renewed by applying at least 30 days prior to the expiration of the permit on a form provided by the FC-regulatory authority.
- (H) Conditions for Issuance.
 - (1) FC 8-303.20 is stricken and replaced by the following: The board of health may renew a permit for an existing food establishment or may issue a permit to a new owner of an existing food establishment after a properly completed application is submitted, reviewed, and approved, the fees are paid, and an inspection shows that the establishment is in compliance with 105 CMR 590.000. In the case of a renewal application, the inspection must have been conducted within the time interval established by the board of health pursuant to FC 8-401.10 and 105 CMR 590.013(A).
 - (2) Refusal to Issue a License: Grounds and Notice of Refusal. The board of health may refuse to issue a permit, initial or renewal, based on one or more of the following grounds. Each of the following grounds shall constitute full and adequate grounds to refuse to issue a permit. The notice of refusal shall provide the grounds upon which the denial is based and shall notify the applicant of the right to a hearing provided in 105 CMR 590.015(B).
 - (a) Failure to submit a permit application in accordance with the board of health's procedures;
 - (b) Failure to submit the required permit fee;
 - (c) Denial of entry of agents of the board of health or the Department or any attempt to impede the work of a duly authorized agent of the board of health or the Department;
 - (d) Providing false or misleading statements to the board of health or the Department;
 - (e) The applicant operated the facility without a permit;

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- (f) The applicant or, if the applicant is a corporation, a corporate officer or the owner of the facility, has been convicted of, plead guilty or *no lo contendere* to, or has, in a judicial proceeding, admitted facts sufficient to find that s/he is guilty of a crime relating to the processing, storage, distribution or sale of food in connection with the business;
- (g) The applicant or, if the applicant is a corporation, a corporate officer or the owner of the facility has engaged in conduct that endangers the public health;
- (h) Failure to pay any federal, state, or local taxes as required by law, pursuant to M.G.L. c. 62C, § 49A;
- (i) Failure to comply with local regulations/ordinances related to the operation of the facility;
- (j) Failure to comply with provisions of 105 CMR 590.000;
- (k) Such other reasons not stated in 105 CMR 590.012(H)(2)(a) through (j), which pose a risk to public health and safety.

(I) FC 8-304.10 Responsibilities of the FC-Regulatory Authority. FC8-304.10 is stricken and replaced by the following:

- (1) At the time a permit is first issued, the FC-regulatory authority shall provide to the permit holder instructions on how to obtain the federal *1999 Food Code* and 105 CMR 590.000 so that the permit holder is notified of the compliance requirements and the conditions of retention, as specified under FC 8-304.11, that are applicable to the permit.
- (2) Failure to provide the information specified in 105 CMR 590.012(I)(1) does not prevent the FC-regulatory authority from taking authorized action or seeking remedies if the permit holder fails to comply with 105 CMR 590.000 or an order, warning, or directive of the FC-regulatory authority.

(J) Notification of Changes. In addition to requirements set forth in FC 8-304.11 Responsibilities of the permit holder, the permit holder shall:

- (1) Notify the board of health within 48 hours after any change in ownership, and at least 30 days prior to any change of the name, location of the food establishment or addition of a new operation and shall promptly submit to the board of health an application for a new or amended permit, together with written documentation reflecting such change.
- (2) Submit plans in accordance with 105 CMR 590.011 any time an establishment is being remodeled or a new operation added and shall promptly submit to the board of health an application if a new or amended permit is required.

590.013: Inspection and Correction of Violations – federal 1999 Food Code Chapter 8-4

(A) FC 8-401.10 (B)(2) Risk-Based Inspection Schedule. FC 8-401.10(B)(2) is stricken and replaced by the following:

The FC-regulatory authority may increase the interval between inspections beyond six months if the food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule approved by the department that is being uniformly applied throughout the jurisdiction and at least once every six months the establishment is contacted by telephone or other means by the FC-regulatory authority to ensure that the establishment manager and the nature of food operation are not changed; provided, however, that the FC-regulatory authority may not increase the interval between inspections beyond six months for any school kitchen; or

(B) Frequency of Inspections: Bed and Breakfasts and School Kitchens.

- (1) Bed and breakfast homes and bed and breakfast establishments holding permits shall be inspected at least once a year and as often as necessary for the enforcement of 105 CMR 590.000.
- (2) 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:

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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.

(C) Frequency of Inspections: Vending Machine Operations. Vending machine operations shall be inspected by the Department as often as necessary for the enforcement of 105 CMR 590.000.

(D) FC 8-402.11 Allowed at Reasonable Times. FC 8-402.11 shall be stricken and replaced by the following: No prior notice of an inspection is required so long as the FC-regulatory authority presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the FC-regulatory authority to determine if the food establishment is in compliance with the federal *1999 Food Code* by allowing access to the establishment, allowing inspection, and providing information and records specified in the federal *1999 Food Code* and to which the FC-regulatory authority is entitled according to law, during the food establishments hours of operation and other reasonable times.

(E) FC 8-403.10 Documenting Information and Observations. FC 8-403.10 and FC 8-403.20 are stricken and replaced by the following:

(1) Whenever an inspection of a food establishment is made, the findings shall be recorded on a printed inspection report form, which shall summarize the requirements of 105 CMR 590.000/federal *1999 Food Code*. A prototype of an inspection form, which meets the requirements of 105 CMR 590.013(E), may be obtained from the Department. A board of health may use this form or, subject to approval by the Department, any form consistent with this prototype. Each board of health shall submit the form it adopts to the Department.

(2) If an inspection reveals that a food establishment does not comply with 105 CMR 590.000, the board of health or its agent shall notify the permit holder or person in charge of the violations and shall order the permit holder to correct the violations. The inspection report may, if so stated, constitute an order to correct, or the board of health or its authorized agent may issue a separate order. If the inspection report left at the time of the inspection constitutes an order to correct, the agent shall notify the board of health within three days that an order was served. An order to correct shall include, but need not be limited to the following:

(a) Administrative information about the food establishment and the inspection including but not limited to:

1. The food establishment's legal identity, street and mailing addresses, permit holder's name and address, type of establishment and operation as specified under 105 CMR 590.012(C), inspection date, type of inspection and other information such as type of water supply and sewage disposal, status of the permit, and personnel certificates that may be required; and
2. The name of the inspector;
3. The date and time of the inspection;
4. The time frame for correction of the violations as specified under FC 8-404.11, FC 8-405.11, and FC 8-406.11;
5. The signature of a member of the board of health or its agent; and
6. The signature of the person in charge of the food establishment at the time of the inspection, or other proof of service of the order.

(b) Specific factual observations of violative conditions or other deviations from the federal *1999 Food Code* that require correction by the permit holder including but not limited to:

1. Nonconformance with specific provisions of the federal *1999 Food Code*;
2. Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of the federal *1999 Food Code* specified under 105 CMR 590.003(A);
3. Failure of food employees and the person in charge to demonstrate their knowledge of their responsibility to report a disease or medical condition as specified under 105 CMR 590.003(H) through (I);

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4. Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the FC-regulatory authority as specified under FC 8-103.12;
 5. Failure of the person in charge to provide records required by the FC-regulatory authority for determining conformance with a HACCP plan as specified under FC 8-201.14;
 6. Nonconformance with critical limits of a HACCP plan; and
 7. A determination by the inspector whether any of the violations create an imminent health hazard.
- (c) A statement that the order when signed constitutes an order of the board of health to correct any violations of 105 CMR 590.000 that are indicated on the order within the time periods designated. It shall be within the discretion of the board of health whether the order shall be signed by the board of health or its agent.
- (d) A statement that failure to comply with any time limits for correction may result in suspension or revocation of the food establishment permit and cessation of food establishment operations.
- (e) A statement informing the permit holder of his right to a hearing before the board of health, his responsibility to request the hearing in writing within ten days of receipt of the notice, and the address of the board of health.
- (3) The FC-regulatory authority shall track the results of each school kitchen inspection and investigation, including any violations and steps to remediate the violations, pursuant to M.G.L. c. 111, § 222(g).

(F) Food Safety Training. The local board of health may issue an order to the permit holder to provide additional food safety training to the person in charge, if after an order for correction has been issued, violations relating to federal 1999 *Food Code* interventions and foodborne illness risk factors are documented during a reinspection.

(G) FC 8-403.50 Public Information. FC 8-403.50 is stricken and replaced by the following: All reports and information collected or received by the Department pursuant to M.G.L. c. 111, § 222(g), the completed inspection report form and other related enforcement documents are public records as defined in M.G.L. c. 4, § 7 clause 26th and shall be made available for public disclosure, unless exempted by law, to any person who requests them pursuant to M.G.L. c. 66, § 10.

(H) Record Retention. All inspection report forms and other related enforcement documents shall be maintained by the board of health for a minimum of five years or longer if otherwise required by law.

(I) Correction of Violations – Temporary Food Establishments. In the case of temporary food establishments, 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 of health, shall order the establishment to cease food operations immediately.

590.014: Permits-Suspension and Revocation

(A) Summary Suspension of Permit/Emergency Closure without a Prior Hearing.

- (1) In accordance with M.G.L. 111, § 30, the board of health or its authorized agent, as determined by the board of health, may, without a prior hearing, suspend a permit to operate a food establishment or to operate one or more particular operations if an imminent health hazard is found to exist.
- (2) A permit may be summarily suspended without providing prior written notice, notice of a hearing, or a hearing, provided that the right to a hearing is afforded within three business days of the request.
- (3) A summary suspension order shall be in writing and shall be posted at a public entrance to the food establishment and a copy provided to the permit holder of the food establishment, pursuant to 105 CMR 590.015(2). The order summarily suspending the permit or specific operation of the permit holder shall be immediately effective upon posting of the order at the food establishment by an authorized agent of the board of health.

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- (4) The summary suspension order shall state:
 - (a) The name and location of the food establishment and the name and address of the permit holder;
 - (b) That the board of health or its authorized agent, as determined by the board of health, has determined that an imminent health hazard exists, which requires the immediate suspension of the food establishment permit or the operation of one or more particular operations at the food establishment;
 - (c) The specific violation(s) that lead to the determination that an imminent health hazard exists;
 - (d) That all operations or one or more particular operations of the food establishment shall immediately cease and desist;
 - (e) That the emergency closure shall remain in effect until conditions cited in the order of closure are corrected and the corrections are confirmed by the board of health or its authorized agent, as determined by the board of health, through reinspection and other means as appropriate.

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- (f) That a written request for a hearing shall be filed with the board of health by the permit holder within ten days of receipt of the summary suspension order.
 - (g) That the person has the right to inspect and obtain copies of all relevant inspection reports, orders, notices, and other documentary evidence in the possession of the board of health and has the right to be represented at any hearing.
 - (h) The name and address of the board of health to where the written request for a hearing shall be sent.
 - (i) The signature of a member of the board of health or its authorized agent, as determined by the board of health.
- (5) The board of health shall hold a hearing within three business days after receipt of a written request for a hearing.
- (6) If no hearing is requested, the summary suspension shall remain in effect until the board of health or its authorized agent, as determined by the board of health, determines that all conditions cited in the summary suspension order are corrected.
- (7) The board of health or its authorized agent, as determined by the board of health, may end the summary suspension at any time if reasons for the suspension no longer exist.
- (B) Suspension of a Permit with Notice.
- (1) The board of health or its authorized agent, as determined by the board of health, may issue a notice to suspend a permit to operate a facility licensed under 105 CMR 590.000 or one or more particular operations of the facility. Each of the following grounds shall constitute full and adequate grounds to suspend a permit.
- (a) Failure to comply with the requirements of 105 CMR 590.000;
 - (b) Denial of entry to agents of the board of health or the Department or attempts to impede the work of a duly authorized agent of the board of health or the Department;
 - (c) Providing false or misleading statements or documents to the board of health or the Department or agents thereof, or keeping any misleading or false records or documents intended to satisfy the requirements of 105 CMR 590.000;
 - (d) The permit holder or, if the permit holder is a corporation, a corporate officer or the owner of the facility, has been convicted of, plead guilty or *no lo contendere* to, or has, in a judicial proceeding, admitted facts sufficient to find that s/he is guilty of a crime relating to the operation of a food establishment;
 - (e) The permit holder, or if the permit holder is a corporation, a corporate officer or the owner of the facility has engaged in conduct that endangers the public health;
 - (f) Failure to pay any federal, state, or local taxes as required by law, pursuant to M.G.L. c. 62C, § 49A;
 - (g) Failure to comply with local regulations/ordinances related to the operation of the facility; or
 - (h) Such other reasons not stated in 105 CMR 590.014(B)(1)(a) through (g), which pose a risk to public health and safety.
- (2) The order to suspend the permit shall be given by the board of health or its authorized agent, as determined by the local board of health, to the permit holder in writing and shall specify:
- (a) The name and location of the permit holder;
 - (b) The specific violation(s) for which the permit or operation is to be suspended;
 - (c) The date the suspension will become effective;
 - (d) That the suspension shall remain in effect until the conditions cited in the order to suspend are corrected and their correction is confirmed by the board of health or its authorized agent, as determined by the local board of health, through reinspection and any other means as appropriate;
 - (e) Notice of a right to a hearing before the board of health if a written request for hearing is filed with the board of health by the permit holder within ten days of receipt of the order to suspend, the right to inspect and obtain copies of all relevant inspection reports, orders, notices and other documentary information in the possession of the board of health, and the right to be represented at the hearing. A local board of health that sets a hearing on a specified date rather than requiring the permit holder to request a hearing, satisfies this notice requirement provided that there is adequate notice of the hearing date, and the notice fully informs the permit holder of the rights listed above;
 - (f) The name and address of the board of health where the written request for a hearing shall be sent;

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- (g) If no request for a hearing is filed within the ten-day period, the board of health may impose the suspension order; and
- (h) The signature of a member of the board of health or its agent, as determined by the board of health.

(C) Revocation of a Permit with Notice.

- (1) The board of health or its authorized agent, as determined by the board of health, may issue an order to revoke a permit or refuse to renew a permit to operate a food establishment or terminate one or more particular operations of the establishment for:
 - (a) Serious or repeated violations of any of the requirements of 105 CMR 590.000;
 - (b) Any grounds cited in 105 CMR 590.014(B)(1)(b) through (h), which in the discretion of the board of health or the Department are sufficiently serious to require revocation.
- (2) The order to revoke the permit shall be given by the board of health or its authorized agent, as determined by the board of health, to the permit holder in writing and shall specify:
 - (a) The name and location of the food establishment and the name and address of the permit holder;
 - (b) The specific violation(s) for which the permit or operation is to be suspended;
 - (c) The date the revocation will become effective. The revocation of a permit shall be effective for a period of one year from the date of the final order, unless the board of health orders otherwise;
 - (d) Notice of a right to a hearing before the board of health if a written request for hearing is filed with the board of health by the permit holder within ten days of receipt of the order to revoke, the right to inspect and obtain copies of all relevant inspection reports, orders, notices and other documentary information in the possession of the board of health, and the right to be represented at the hearing. A local board of health that sets a hearing on a specified date rather than requiring the permit holder to request a hearing, satisfies this notice requirement provided that there is adequate notice of the hearing date, and the notice fully informs the permit holder of rights listed above;
 - (e) The name and address of the board of health to where the written request for a hearing shall be sent;
 - (f) If no request for a hearing is filed within the ten-day period, the board of health may impose the revocation order; and
 - (g) The signature of a member of the board of health or its agent, as determined by the board of health.

590.015: Service of Orders/Hearings

(A) Service of Orders.

- (1) Each applicant/permit holder shall provide the board of health with his complete and correct mailing address on its application for a permit. Each permit holder shall notify the board of health within seven calendar days of any change in the mailing address. The address provided to the board of health shall be deemed the appropriate address for the service of all orders and notices from the board of health.
- (2) Orders for summary suspension shall be served on the permit holder or his authorized agent by:
 - (a) Posting the order on a public entrance to the food establishment; and,
 - (b) In hand service to the permit holder or by sending a copy of the order or notice by registered or certified mail, return receipt requested to the address indicated in 105 CMR 590.015(A)(1).
- (3) All orders, other than orders for summary suspension, shall be served on the applicant or permit holder or his authorized agent as follows:
 - (a) By sending a copy of the order by registered or certified mail, return receipt requested, at the address indicated in 105 CMR 590.015(A)(1), or
 - (b) Personally, by any person authorized to serve civil process.
 - (c) Only if the aforementioned methods are unsuccessful, service may be made as follows:
 - 1. By any person authorized to serve civil process by leaving a copy of the order at his last and usual place of abode.

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2. If the last and usual place of abode is unknown, service may be made by posting a copy of the order in a conspicuous place on or about the premises.

(4) Proof of Proper Service. Proof of proper service may be made by affidavit of the person making service or by admission of the receipt signed by the permit holder, the person operating a food establishment without a permit to operate, or an authorized agent of the permit holder.

(B) Hearings.

(1) The person or persons to whom any order or denial of approval pursuant to 105 CMR 590.000 has been directed, may request a hearing before the board of health. Such request shall be in writing and shall be filed in the office of the board of health within ten days after receipt of the order or notice. Upon receipt of such request the board of health shall set a time and a place for such hearing and shall inform the petitioner thereof in writing. Except in the case of a summary suspension under 105 CMR 590.014(A), the hearing shall be commenced not later than ten days after the day on which the request was filed. A local board of health that sets a hearing on a specified date rather than requiring the permit holder to request a hearing, satisfies the hearing requirement provided that it gives adequate notice of the hearing date. However, upon application of the petitioner the board of health may postpone the date of the hearing beyond the ten-day period or the set date, for a reasonable time if in the judgment of the board of health the petitioner has submitted a good and sufficient reason for such postponement.

(2) At the hearing the petitioner shall be given an opportunity to be heard and to show why the order should be modified or withdrawn. Any oral testimony given at a hearing shall be recorded *verbatim* (tape recording shall suffice).

(3) After the hearing, the board of health shall make a final decision based upon the complete hearing record, and shall inform the petitioner in writing of the decision. If the board of health sustains or modifies an order, it shall be carried out within the time period allotted in the original order or in the modification.

(4) Every notice, order, decision and other record prepared by the board of health in connection with the hearing shall be entered as a matter of public record in the office of the board of health.

(5) A copy of the transcript or tape recording shall be provided upon request and a reasonable fee may be charged for the cost of providing such copy.

(6) Any person aggrieved by the final decision of the board of health may seek relief in a court of competent jurisdiction in the Commonwealth.

590.016: Examination and Embargo of Food

(A) Examination and Sampling. Food may be examined or sampled by the board of health pursuant to M.G.L. c. 94, §§ 146 and 189 for the purpose of determining compliance with 105 CMR 590.000.

(B) Embargo Notice. The board of health may place an embargo on any food, which it knows, or has probable cause to believe is adulterated or misbranded provided that:

- (1) A written notice is issued to the holder of the permit to operate the food establishment or to the person in charge; and
- (2) The notice specifies in detail the reason(s) for the embargo order.

(C) Embargo Tag. The board of health shall tag, label, or otherwise identify any food subject to the embargo order. The tag or label shall state that the food:

- (1) Is believed to be adulterated or misbranded;
- (2) Has been embargoed for ten days; and
- (3) Cannot be removed, used, sold or disposed of without permission of the board of health.

(D) Storage or Destruction of Embargoed Food. The board of health shall permit storage of food under conditions specified in the embargo order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished.

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(E) Condemnation, Disposal or Reconditioning. If the food subject to embargo is found to be adulterated or misbranded, the board of health shall take such steps as are necessary, pursuant to M.G.L. c. 94, §§ 146 or 189A, to effect the condemnation and disposal or reconditioning of the food.

(F) Embargo Release. If the food subject to embargo is not found to be adulterated or misbranded it shall be released.

590.017: Prevention of Foodborne Disease Transmission by Employees – federal 1999 Food Code Chapter 8-5

(A) FC 8-501.10 Department Notification/Investigation and Control. In addition to requirements in FC 8-501.10 and FC 8-501.20, the local board of health shall:

- (1) Immediately notify the Department of all confirmed and suspected foodborne illness outbreaks within 24 hours on a form provided by the Department and shall keep the Department informed until the investigation has been completed; and
- (2) Take any other action required by 105 CMR 300.000: *Reportable Diseases and Isolation and Quarantine Requirements* except that 105 CMR 590.017(B) shall supercede the Minimum Period of Isolation of Patient established for *E.coli* O157:H7 and *Shigella* in 105 CMR 300.200: *Isolation and Quarantine Requirements*.

(B) FC 8-501.40 Release of Food Employee from Restriction or Exclusion. FC8-501.40 shall be stricken and replaced by the following:

The FC-regulatory authority shall release a food employee from restriction or exclusion according to law and the following conditions:

- (1) A food employee who was infected with *Salmonella* Typhi if the food employee's stools are negative for *S. Typhi* based on testing of at least three consecutive stool specimen cultures that are taken:
 - (a) Not earlier than one month after onset, ^(FC)
 - (b) At least 48 hours after discontinuance of antibiotics, and ^(FC)
 - (c) At least 48 hours apart; and
- (2) If one of the cultures taken as specified in 105 CMR 590.017(B)(1) is positive, repeat cultures are taken at intervals of one month until at least three consecutive negative stool specimen cultures are obtained. ^(FC)
- (3) A food employee who was infected with *Shigella* spp. or *Escherichia coli* O157:H7 if the employee's stools are negative for *Shigella* spp. or *E. coli* O157:H7 based on testing of 2 consecutive stool specimen cultures that are taken:
 - (a) Not earlier than 48 hours after discontinuance of antibiotics; and
 - (b) At least 48 hours apart.
- (4) A food employee who was infected with hepatitis A virus if:
 - (a) The food employee is no longer febrile; or
 - (b) It has been at least one week since the onset of symptoms.

590.018: Vending Machines

(A) License.

- (1) No person shall conduct a vending machine operation without a license issued by the commissioner.
- (2) A license shall expire no later than one year from the date issued.
- (3) A license may be renewed by applying at least 30 days prior to the expiration of the license.

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(B) License: Application.

(1) Any person desiring to conduct a vending machine operation shall make written application for a license to the Commissioner on a form provided by him. The application shall state whether the applicant is an individual, partnership, corporation or other entity; the name and address of the applicant, and if the applicant is a partnership, the name and address of each partner. The application shall also state the address of the applicant's principal place of business; of each preparation area servicing more than one building in which vending machines are located; and of each food storage area where food is stored for use in more than one building in which vending machines are located. The application shall also state the total number of vending machines owned by the applicant and in use at all machine locations. The application shall be signed by the applicant under the pains and penalties of perjury.

(2) The applicant shall forward to the Division a list of the names and addresses of suppliers from whom he purchases potentially hazardous food for direct use in vending machines.

(C) License: Issuance, Inspection, Fees. Upon receipt of an application for a new license, the commissioner or his agent shall make an inspection of the preparation area; of supply storage, servicing, cleaning and sanitizing facilities; of transport facilities; and of representative equipment and machine locations to determine compliance with the provisions of 105 CMR 590.000 and with the applicable provisions of M.G.L. c. 94. The Commissioner, after determining compliance by the operator and upon receipt of the appropriate fee, shall issue a license to conduct a vending machine operation. Such license shall not be transferable.

(D) License: Display of Operator's License Number. An easily readable label or sign bearing the operator's license number, company name, and service telephone number shall be conspicuously displayed at each machine location.

(E) Operator's List of Vending Machine Locations and Preparation Areas. Each licensee shall keep a list of all locations within the Commonwealth wherein vending machines are operated by him and of all preparation areas servicing such vending machines. Such information shall be available to the commissioner or his agent upon his request.

(F) Inspection of Vending Machines, Premises and Preparation Areas. The Commissioner or his agent may, after presenting proper identification, enter, at any reasonable time, any premises wherein vending machines are operated, or any preparation area servicing such machines for the purpose of inspecting the same. The licensee shall make provision for the Commissioner or his agent to have access, either in company with an employee of the operator or otherwise, to the interior of any vending machine operated by him.

(G) Food Establishments outside the Commonwealth Servicing Vending Machines within the Commonwealth. Food, beverages and ingredients processed and prepared in food establishments or food processing plants outside the Commonwealth may be sold in vending machines within the Commonwealth if such establishments conform to the provisions of the law governing such establishments within the Commonwealth, and if the operator of said vending machines is licensed under 105 CMR 590.000. To determine the extent of compliance with such provisions, the Commissioner or his agent may accept reports from the responsible authority in such jurisdictions outside the Commonwealth where such food service, retail food or food processing plants are located.

(H) Enforcement. 105 CMR 590.013 through 590.021 are applicable to vending machines except to the extent that the FC-regulatory authority shall be the Department.

590.019: Criminal Penalties

(A) Violation of 105 CMR 590.000 Provisions. Any person who violates any provision of 105 CMR 590.000 shall, upon conviction, be fined not more than \$100 for the first offense and not more than \$500 for a subsequent offense unless a different penalty is set by statute.

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(B) Failure to Comply with Orders. Any person who fails to comply with any order issued pursuant to 105 CMR 590.000 shall, upon conviction, be fined not more than \$100 for the first offense and not more than \$500 for a subsequent offense. Each day's failure to comply with an order shall constitute a separate offense.

590.020: Advisory Committee

The Director may appoint an advisory committee for food establishments, which may consist of 12 members. At least two members should be health officers and two members should be board of health members who have been nominated by existing professional organizations comprised of health officers and/or board of health members and at least three members should be persons active in the food service and retail food industry who have been nominated by existing trade organizations. The committee may advise the Director on matters of policy; may be consulted by the Director prior to the issuance of rules and regulations; and may perform such other duties as the Director may request.

590.021: Severability

If any provision of 105 CMR 590.000 shall be declared invalid for any reason whatsoever, that decision shall not affect any other portion of 105 CMR 590.000, which shall remain in full force and effect; and to this end the provisions of 105 CMR 590.000 are hereby declared severable.

REGULATORY AUTHORITY

105 CMR 590.000: M.G.L. c. 94 §§ 305A, 305B, 146, 189 and 189A; c. 111. §§ 5 and 127A.

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