

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

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590.001: Purpose and Definitions

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

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

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

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

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

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 daycare 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:

- (a) stores, prepares, packages, serves, vends food directly to the consumer, or otherwise provides food for human consumption such as a restaurant; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; food bank; residential kitchens in bed-and-breakfast operations; residential kitchens for cottage foods operations and,
- (b) relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(2) Food establishment includes:

- (a) An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and
- (b) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(3) Food establishment does not include:

- (a) An establishment that offers only prepackaged foods that are not time/temperature control for safety foods;
- (b) A produce stand that only offers whole, uncut fresh fruits and vegetables;
- (c) A food processing plant; including those that are located on the premises of a food establishment;
- (d) A residential kitchen if only food that is not time/temperature control for safety food, is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law and if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority;
- (e) A residential kitchen that prepares food for distribution to a charitable facility in accordance with M.G.L c. 94, § 328;
- (f) An area where food that is prepared as specified in 105 CMR 590.001: Food Establishment (3)(d) is sold or offered for human consumption;
- (g) A residential kitchen, such as a family daycare provider; or a bed-and-breakfast operation that prepares and offers food to guests if the home is owner occupied, the number of available guest bedrooms does not exceed six, breakfast is the only meal offered, the number of guests served does not exceed 18, and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the regulatory authority;
- (h) A private home that receives catered or home-delivered food.

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

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

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

Business Days means Monday through Friday excluding legal holidays.

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

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

DEP means the Massachusetts Department of Environmental Protection.

Department means the Massachusetts Department of Public Health.

Director means the Director of the Food Protection Program.

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

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 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-time equivalent(FTE) means the hours worked by one employee on a full-time basis, assuming that full-time basis is working eight hours per day for five days per week.

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

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

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

Residential Kitchen means a kitchen in a private home.

Retail means sale to the ultimate consumer.

School Kitchen means the kitchen area used during the course of the regular school day to prepare or serve breakfast, lunch, or dinner to students in an elementary, middle, high, charter, or innovation school operated by a public school district or board of trustees pursuant to M.G.L. c. 71. School Kitchen does not include:

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

Wholesale means sale to other than the ultimate consumer.

(4) In the *2013 Food Code*, paragraph (1) of the definition of “Drinking Water” is replaced with the following definition:

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

590.002: Management and Personnel

Adopt Chapter 2 “Management and Personnel” of the *2013 Food Code* with the following amendments:

(A) In FC 2-101.11 Assignment,

(1) Paragraph (A) is stricken and replaced by the following:

“(A) Except as specified in ¶ (F) of this section, 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.

(B) In addition to the provisions in FC 2-101.11(A), each food establishment shall employ at least one 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 certification examination that is part of an accredited program recognized by the Department.

(C) Documentation that at least one FTE person in charge has demonstrated knowledge of food safety as specified in FC 2-101.11(A) 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.

(D) 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.

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

(2) Paragraph (B) is relabeled as paragraph (F).

(B) In FC 2-102.12 Certified Food Protection Manager, the following is added as paragraph (C):

“(C) FC 2-102.12(A) 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 USDA 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;

(e) Elderly meal site locations where each Nutrition Project serves congregate meals in compliance with the requirements set forth in 651 CMR 4.00 and limits the site supervisors to the preparation of reheating commercially pre-cooked individually quick frozen (IQF) entrees, cooking commercially prepared dry pasta products for immediate service, and preparing salads and/or side dishes from fresh and/or frozen fruits and vegetables for immediate service.

(C) In FC 2-103.11 Person in Charge, in paragraph (M), the following words are stricken: “*Except when APPROVAL is obtained from the REGULATORY AUTHORITY as specified in ¶ 3-301.11(E)*”

(D) In FC 2-201.13 Removal, Adjustment, or Retention of Exclusions and Restrictions, in paragraph (J), the entire text of subparagraph (4)(f) is stricken.

(E) After FC 2-201.13 Removal, Adjustment, or Retention of Exclusions and Restrictions, the following section is added:

**“2-201.20 Prevention of Foodborne Cases of Viral Gastroenteritis**

Food handling facility employees who test positive for Norwalk virus, Norwalk-like virus, norovirus, or any other calicivirus shall be excluded from food handling duties for either 72 hours past the resolution of symptoms or 72 hours past the date the positive specimen was provided, whichever occurs last. In outbreak circumstances consistent with Norwalk virus, Norwalk-like virus or other calicivirus infection, affecting patrons or food handlers, food handling facility employees may be required to provide stool specimens for testing.”

590.003: Food

Adopt Chapter 3 “Food” of the *2013 Food Code* with the following amendments:

(A) In FC 3-201.11 Compliance with Food Law,

(1) Paragraph (B) is 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) In FC 3-201.16 Wild Mushrooms, the following is added as paragraph (C):

“(C) A board of health may approve the sale or service of wild mushrooms at a food establishment that conforms with the Conference for Food Protection *Guidance Document for a Model Wild-Harvested Mushroom Program, 2014.*”<sup>1</sup>

(C) In FC 3-301.11 Preventing Contamination by Hands,

(1) In paragraph (B),

(a) The words “*or as specified in ¶¶ (D) and (E) of this section*” are stricken, and

(b) The words “*Single-use natural rubber latex gloves are not recommended for food contact in food establishments.*” are added after the last sentence.

(2) In paragraph (D), the entire text is stricken.

590.004: Equipment Utensils and Linen

<sup>1</sup> Conference for Food Protection. (2014). *Guidance Document for a Model Wild-harvested Mushroom Program*. Retrieved from <http://www.foodprotect.org/guides-documents/guidance-document-for-a-model-wild-harvested-mushroom-program/>

Adopt Chapter 4 “Equipment, Utensils, and Linens” of the *2013 Food Code* with no amendments.

590.005: Water, Plumbing and Waste

Adopt Chapter 5 “Water, Plumbing, and Waste” of the *2013 Food Code* with the following amendments:

(A) In FC 5-101.13 Bottled Drinking Water, the entire text is stricken and replaced by the following:

“Bottled drinking water used or sold in a food establishment shall be obtained from sources which comply with 105 CMR 500.090 – 105 CMR 500.094.”

(B) In FC 5-102.11 Standards, the following is added as paragraph (C): “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*.”

590.006: Physical Facilities

Adopt Chapter 6 “Physical Facilities” of the *2013 Food Code* with no amendments.

590.007: Poisonous or Toxic Materials

Adopt Chapter 7 “Poisonous or Toxic Materials” of the *2013 Food Code* with no amendments.

590.008: Compliance and Enforcement

Adopt Chapter 8 “Compliance and Enforcement” of the *2013 Food Code* with the following amendments:

(A) After FC 8-103.12 Conformance with Approved Procedures, the following section is added:

**“8-103.15 Variances.**

In addition to requirements set forth in FC 8-103 Variances:

(A) 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.

(B) 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.

(B) After FC 8-201.14 Contents of a HACCP Plan, the following section is added:

**“8-201.20 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.”

(C) In FC 8-303.20 Existing Establishments, Permit Renewal, and Change of Ownership, the entire text is stricken and replaced by the following:

**“8-303.20 Existing Establishments, Permit Renewal, and Change of Ownership.**

(A) 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.

(B) 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.

(C) Conditions for Issuance. 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 8-401.10.

(D) 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 individually or severally 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).

(1) Failure to submit a permit application in accordance with the board of health's procedures;

(2) Failure to submit the required permit fee;

(3) 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;

(4) Providing false or misleading statements to the board of health or the Department;

(5) The applicant or owner operated the facility without a permit;

(6) The applicant or owner, or if the applicant or owner is a corporation, a corporate officer, 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 the individual is guilty of a crime relating to the processing, storage, distribution or sale of food in connection with the business;

(7) The applicant or owner, or if the applicant or owner is a corporation, a corporate officer, of the facility has engaged in conduct that endangers the public health;

(8) Failure to pay any federal, state, or local taxes as required by law, pursuant to M.G.L. c. 62C, § 49A;

(9) Failure to comply with local regulations/ordinances related to the operation of the facility;

(10) Failure to comply with provisions of 105 CMR 590.000;

(11) Such other reasons not stated in FC 8-303.20(D)(1) through (10), which pose a risk to public health and safety.”

(D) In FC 8-304.10 Responsibilities of the Regulatory Authority, the entire text is stricken and replaced by the following:

**“8-304.10 Responsibilities of the Regulatory Authority**

- (A) At the time a permit is first issued, the FC-regulatory authority shall provide to the permit holder instructions on how to obtain the 105 CMR 590.000 so that the permit holder is notified of the compliance requirements and the conditions of retention, as specified under 8-304.11, that are applicable to the permit.
- (B) Failure to provide the information specified in this section 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.”

(E) After FC 8-304.11 Responsibilities of the Permit Holder, the following section is added:

**“8-304.15 Notification of Changes.**

In addition to requirements set forth in FC 8- 304.11 Responsibilities of the Permit Holder, the permit holder shall:

- (A) 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.
- (B) Submit plans in accordance with FC 8-2 *Plan Submission and Approval* 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.”

(F) After FC 8-304.20 Permits not Transferable, the following section is added:

**“8-304.25 Permit Form.**

In addition to the requirements set forth in FC 8-3 Permit to Operate:

- (A) There shall be one permit form issued to each food establishment. The permit shall indicate:
- (1) Whether the permit is annual, semi-annual, seasonal or temporary; and
  - (2) Each of the following operations permitted:
    - (a) 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);
    - (b) 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);
    - (c) Residential kitchen for retail sale; **cottage foods;**
    - (d) Residential kitchen for bed-and-breakfast;
    - (e) Mobile/Pushcart;
    - (f) Temporary food establishment;
    - (g) Caterer; and/or
    - (h) Other as described on application.
- (B) The permit shall state:
- (1) The name and address of the food establishment;
  - (2) The name of the permit holder;
  - (3) The date of expiration;
  - (4) Any restrictions on the type of operations allowed.”

(G) In FC 8-401.10 Establishing Inspection Interval, subparagraph (B)(2) is stricken and replaced by the following:

“(2) 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”

(H) In FC 8-402.10 Competency of Inspectors, the following paragraphs (C) and (D) are added:

“(C) 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.

(D) Any individual conducting food inspections shall demonstrate the knowledge referenced in this section by:

- (1) 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;
- (2) Being a registered sanitarian or certified health officer who has completed food safety inspection training recognized by the Department.”

(I) In FC 8-402.11 Allowed at Reasonable Times after Due Notice, the entire text is stricken and replaced by the following:

**“8-402.11 Allowed at Reasonable Times after Due Notice.**

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 105 CMR 590 by allowing access to the establishment, allowing inspection, and providing information and records specified in the 105 CMR 590 and to which the FC-regulatory authority is entitled according to law, during the food establishments hours of operation and other reasonable times.”

(J) In FC 8-403.10 Documenting Information and Observations, the entire text is stricken and replaced by the following:

**“8-403.10 Documenting Information and Observations.**

(A) 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 and the *2013 Food Code*. A prototype of an inspection form, which meets the requirements of FC 8-403.10 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.

(B) 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:

- (1) Administrative information about the food establishment and the inspection including but not

limited to:

- (a) The food establishment's legal identity, street and mailing addresses, permit holder's name and address, type of establishment and operation as specified under FC 8-302.14(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
  - (b) The name of the inspector;
  - (c) The date and time of the inspection;
  - (d) The time frame for correction of the violations as specified under FC 8-404.11, 8-405.11, and 8-406.11;
  - (e) The signature of a member of the board of health or its agent; and
  - (f) 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.
- (2) Specific factual observations of violative conditions or other deviations from 105 CMR 590, that require correction by the permit holder, including, but not limited, to:
- (a) Nonconformance with specific provisions of 105 CMR 590;
  - (b) Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of the 2013 Food Code as specified in FC 2-102.11;
  - (c) 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 in FC 2-201.11;
  - (d) 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;
  - (e) 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;
  - (f) Nonconformance with critical limits of a HACCP plan; and
  - (g) A determination by the inspector whether any of the violations create an imminent health hazard.
- (3) 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.
- (4) 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.
- (5) 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 10 days of receipt of the notice, and the address of the board of health.
- (C) 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, § 223(g).”

(K) In FC 8-403.50 Public Information, the entire text is stricken and replaced by the following:

**“8-403.50 Public Information**

All reports and information collected or received by the Department pursuant to M.G.L. c. 111, § 223(g), completed inspection report forms, 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 it pursuant to M.G.L. c. 66, § 10. 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.”

(L) After FC 8-405.20 Verification and Documentation of Correction, the following section is inserted:

**“8-405.25 Food Safety Training**

The 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 105 CMR 590 interventions and foodborne illness risk factors are documented during a reinspection.”

(M) After FC 8-501.20 Restriction or Exclusion of Food Employee, or Summary Suspension of Permit, the following section is inserted:

**“8-501.25 Department Notification/Investigation and Control.**

In addition to requirements in FC 8-501.10 and FC 8-501.20, the board of health shall:

- (A) 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
- (B) Take any other action required by 105 CMR 300.000: Reportable Diseases and Isolation and Quarantine Requirements except that FC 8-501.10 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.”

(N) In FC 8-501.40 Removal of Exclusions and Restrictions, the entire text is stricken and replaced by the following:

**“8-501.40 Removal of Exclusions and Restrictions**

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

- (A) A food employee who was infected with typhoid fever if the food employee's stools are negative for typhoid fever based on testing of at least three consecutive stool specimen cultures that are taken:
  - (1) Not earlier than one month after onset,
  - (2) At least 48 hours after discontinuance of antibiotics, and
  - (3) At least 48 hours apart; and
- (B) If one of the cultures taken as specified in 8-501.40(A) is positive, repeat cultures are taken at intervals of one month until at least three consecutive negative stool specimen cultures are obtained.
- (C) 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:
  - (1) Not earlier than 48 hours after discontinuance of antibiotics; and
  - (2) At least 48 hours apart.
- (D) A food employee who was infected with hepatitis A virus if:
  - (1) The food employee is no longer febrile; or
  - (2) It has been at least one week since the onset of symptoms.”

590.009: Special Requirements

(A) Scope. FC 8-1 through 8-5 and 105 CMR 590.009 through 590.018 shall govern 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 590.009, 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 or her 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 or she 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.

(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 food establishment permits issued and routine inspections conducted for establishments which are:

- 1) Inspected once a year;
- 2) Inspected twice a year;
- 3) Inspected three times a year; and
- 4) Inspected more than three times a year;

(b) The number of full-time equivalent food inspectors, including contractors, employed by the board of health to inspect food establishments;

(c) The number of and examples of variances issued by the board of health over the previous 12 months;

(d) Copies of any innovative operations approved by the board of health in accordance with 105 CMR 590.010(J);

(e) Other information as requested by the Department.

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

(3) 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. Ch. 111, §223(g).

### 590.010: Guidance on Retail Operations

#### (A) Caterers.

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

(2) Notification. Each caterer shall:

(a) 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 prior to 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.

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

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

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

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

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

#### (B) Mobile Food Operations.

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

(a) Transports only whole, uncut fresh fruits and vegetables, or

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

(2) Mobile Food Operation Approval.

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

(b) A board of health may approve a permit application for a mobile food operation that conforms with applicable sections of the *2013 Food Code*, as referenced in the Conference for Food Protection *Recommended Guidance Document for Mobile Food Establishments*, 2014,<sup>2</sup> and 105 CMR 590.000.

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

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

#### (C) Temporary Food Establishments.

(1) Exempt Temporary Food Operations. No permit from the board of health is required if a temporary food establishment only sells whole, uncut fresh fruits and vegetables.

(2) Temporary Food Establishment Approval.

<sup>2</sup> Conference for Food Protection. (2014). *Recommended Guidance for Mobile Food Establishment*. Retrieved from <http://www.foodprotect.org/guides-documents/recommended-guidance-for-mobile-food-establishments/>

- (a) Except as specified 105 CMR 590.010(C)(1), a temporary food establishment shall not sell or serve food unless it has been approved to do so and has obtained a valid permit from the board of health.
- (b) A board of health may approve a permit application for a temporary food establishment that conforms with applicable sections of the *2013 Food Code*, as referenced in the Conference for Food Protection *Temporary Food Establishments 2011 Final Document*,<sup>3</sup> and 105 CMR 590.000.
- (c) 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.
- (d) In the case of temporary food establishment, all violations shall be corrected within a maximum of 24 hours. If violations are not corrected within the time specified, the board of health or its agent, as determined by the Board, shall order the establishment to cease food operations immediately.

(D) Public Markets and Farmer Markets

- (1) Exempt Market Operations. No permit from the board of health is required to sell the following products from a public market or farmers market:
  - (a) Whole, uncut fresh fruits and vegetables.
  - (b) Unprocessed honey, or raw honey as defined by the National Honey Board
  - (c) Maple syrup.
  - (d) Farm fresh eggs which are stored and maintained at 45°F (7.2°C).
- (2) Market Operations Approval.
  - (a) Except as specified 105 CMR 590.010(D)(1), a vendor at a public market or farmers market shall not sell or serve food unless it has been approved to do so and has obtained a valid permit from the board of health.
  - (b) A board of health may approve a permit application for a vendor at a public market or farmers market that conforms to the *Guidelines for Public and Farmers Markets* prepared by the Local Public Health Institute of Massachusetts.<sup>4</sup>

(E) Residential Kitchens: Bed-and-Breakfast Operations

- (1) Exempt Bed-and-Breakfast Operations. No permit from the board of health is required if a bed-and-breakfast operation that prepares and offers food to guests meets the following criteria:
  - (a) The home is owner-occupied;
  - (b) The number of available guest bedrooms does not exceed six;
  - (c) Breakfast is the only meal offered;
  - (d) The number of guests served does not exceed 18; and
  - (e) The consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the board of health.
- (2) Bed-and-Breakfast Approval.
  - (a) Except as specified 105 CMR 590.010(E)(1), a bed-and-breakfast operation shall not sell or serve food unless it has been approved to do so and has obtained a valid permit from the board of health.
  - (b) Bed-and-breakfast operations that require a food establishment permit shall comply with the minimum requirements of 105 CMR 590.010(E), except they shall be exempt from FC 8-2 "Plan Submission and Approval" in which case only an intended menu shall be submitted to the board of health with their application for permit.
  - (c) Bed-and-breakfast operations which require a permit shall be inspected by the board of health upon application for an original permit, within the six months prior to renewal of a permit, and at least once a

<sup>3</sup> Conference for Food Protection. (2010-2012). *Temporary Food Establishments 2011 Final Document*. Retrieved from <http://www.foodprotect.org/guides-documents/temporary-food-establishments-2011/>

<sup>4</sup> Local Public Health Institute of MA. (2016). *Farmers Markets: A Special Food Topic*. Retrieved from <http://sites.bu.edu/masslocalinstitute/2016/05/13/farmers-markets/>

year for the enforcement of 105 CMR 590.000.

(d) 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.

(F) Residential Kitchens: Cottage Food Operations

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

- (a) Whole, uncut fresh fruits and vegetables;
- (b) Unprocessed honey, or raw honey as defined by the National Honey Board (i.e. honey as it exists in the bee-hive or as obtained by extraction, settling or straining without added heat);
- (c) Maple syrup; or
- (d) Farm fresh eggs which are stored and maintained at 45°F (7.2°C).

(2) Cottage Food Operation Approval.

- (a) Except as specified 105 CMR 590.010(F)(1), a cottage food operation shall not sell or serve food unless it has been approved to do so and has obtained a valid permit from the board of health.
- (b) A board of health may approve a permit application for a cottage food operation that conforms with applicable sections of the *2013 Food Code*, as referenced in the *Regulatory Guidance for Best Practices for Cottage Foods* prepared by the Association of Food and Drug Officials<sup>5</sup>, and 105 CMR 590.000.

(G) Schools and USDA Nutrition Programs

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

- (a) Not less than two routine inspections per year shall be conducted:
  1. At least once every six months as required by FC 8-401.10(A), and
  2. At least twice during each school year as required by 7 CFR 210.13(b).
- (b) An additional school kitchen inspection or investigation shall be conducted whenever the FC-regulatory authority:
  1. Receives a public complaint about the school kitchen, but this shall not include any complaint regarding any violation of 105 CMR 225.000: *Nutrition Standards for Competitive Foods and Beverages in Public Schools*,<sup>6</sup> or
  2. Is notified by the permit holder or the Department that food products used at the school kitchen are the subject of a recall notice.

(2) Non-Traditional School Meal Program Approval.

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

<sup>5</sup> Association of Food & Drug Officials. (2012). *Regulatory Guidance for Best Practices – Cottage Foods – April 2012*. Retrieved from [http://www.afdo.org/Resources/Documents/pubs/Cottage\\_Foods\\_013.pdf](http://www.afdo.org/Resources/Documents/pubs/Cottage_Foods_013.pdf)

<sup>6</sup> Massachusetts Department of Public Health. (2014). *105 CMR 225.000: Nutrition Standards for Competitive Foods and Beverages in Public Schools*. Retrieved from <http://www.mass.gov/courts/docs/lib/104-105cmr/105cmr225.pdf>

board of health.<sup>7</sup>

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

1. Inspecting a residential kitchen in a Residential Child Care Institution for compliance with section 410.100 (“Kitchen Facilities”) of the Housing Code.
2. Inspecting a satellite meal drop-off site in an office building for nuisances under M.G.L. Ch. 111, §122.

#### (H) Shared Kitchen or Incubators

(1) Shared kitchens or incubator operations are food preparation facilities that are designed to provide fledgling food retailers or preparers with kitchen space and access to professional equipment.

(2) Shared kitchen entrepreneurs use these facilities:

(a) To develop their skills and create products before committing to the expense of operating a commercial kitchen on their own, or

(b) To rent space for the purpose of preparing food that may be served or sold to the public before they are ready to open a restaurant or operate a commercial kitchen on their own.

(3) An alternative to renting space in a shared kitchen incubator is renting space in the kitchen of a permitted restaurant, in which an entrepreneur would operate under the permit and supervision of the restaurant's operator with a separation of food production and food products.

(4) Required Approvals.

(a) The owner-operator of a shared kitchen shall rent or share the kitchen unless it has been approved to do so and has obtained a valid permit from the board of health. Each shared kitchen is subject to inspection and enforcement as a retail food establishment.

(b) Each user of a shared kitchen must obtain a retail food license from the board of health of the town where the food is sold or served in order to sell ready-to-eat food at street fairs or any type of catered event in Massachusetts.

#### (I) Raw Bars

(1) Raw Bar Approval.

(a) Raw molluscan shellfish shall not be offered for sale or service by a food establishment unless the food establishment has been approved to do so by the board of health.

(b) A board of health may approve the sale or service of raw molluscan shellfish at a food establishment that conforms with applicable sections of 105 CMR 590.000 and 105 CMR 590.010(I).

(2) Record Keeping. In order to meet the minimum requirements of 105 CMR 590.010(I) a raw bar should:

(a) Operate in accordance with all applicable sections of the 105 CMR 590.

(b) Maintain and keep on file for a minimum of 90 days all records of food temperature testing and corrective actions for receiving, cooling, cold holding, and cold storage of raw molluscan shellfish.

(c) Maintain and keep on file for a minimum of 90 days all records of chemical, hot water, and mechanically dispensed sanitizer methods and systems test results and corrective actions for food contact surfaces and equipment used for preparation, holding, and storage of raw molluscan shellfish.

#### (J) Innovative Operations

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

(2) Innovative Operation Approvals.

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

(b) Each innovative operation permit shall be subject to general or specific provisions set forth by the

<sup>7</sup> U.S. Department of Agriculture. (2011). *Food Safety Inspections in Service-Only Sites Participating in the School Meals Programs*. Retrieved from <http://www.fns.usda.gov/food-safety-inspections-service-only-sites-participating-school-meals-programs>

board of health, which may impose conditions, safeguards and limitations on time or use.

590.011: Additional Requirements

(A) Anti-Choking Procedures in Food Service Establishments.

(1) Pursuant to M.G.L. c. 94, § 305D, restaurants with a certain seating capacity are required to have one or more employees trained in a manual choke-saving procedure in accordance with 105 CMR 605.000 *Approved Choke-Saving Procedures*.<sup>8</sup>

- (2) Each food service establishment with a seating capacity that conforms with M.G.L. c. 94, § 305D shall:
- (a) 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
  - (b) Make adequate provision for insurance to cover employees trained in rendering such assistance.

(B) 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, 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 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.

<sup>8</sup> Massachusetts Department of Public Health. (1994). *105 CMR 605.000: Approved Manual Choke-Saving Procedures*. Retrieved from <http://www.mass.gov/courts/docs/lib/104-105cmr/105cmr605.pdf>

(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."

(C) Food Allergy Awareness Requirements. Pursuant to M.G.L. c. 140, § 6B, 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. 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) Location. The notice must be included on printed menus and on indoor and outdoor menu boards, including drive-through menu boards.

(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) 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 5 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.

(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 Department.

(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).

(D) Food Donations

(1) Nonprofit Distribution. M.G.L. c. 94, § 328 limits or restricts what a board of health may license and inspect when a nonprofit corporation, like a food pantry or soup kitchen, distributes or serves food without charge or at a charge sufficient to cover the cost of handling the food. For example,

(a) If a nonprofit corporation distributes food from a church kitchen, then the board of health may not charge a fee to license and inspect church kitchen.

(b) If a residential kitchen is used to prepare food for donation to a nonprofit corporation for distribution, then the board of health may not license or inspect the private home.

(c) If members of a parent-teacher organization (PTO) or other school organization prepare baked goods at home and sell them at a school fundraiser, then the board of health may not license or inspect the home kitchens, and may not charge a fee to inspect or license the fund-raising table.

(2) Pot Luck Events.

(a) Pursuant to M.G.L. c. 94, § 328A, no permit from the board of health is required when a potluck event meets all the following conditions:

1. People must be gathered to share food at the event;
2. No compensation may be provided for bringing food to the event;
3. The event is sponsored by a group of individuals or by a religious, charitable or nonprofit organization;
4. The event may not be conducted for commercial purposes, but money may be collected to support the religious, charitable or nonprofit organization;
5. A business establishment dealing in the sale of food is not sponsoring the potluck event; and
6. Food from a potluck event is not brought into the kitchen of a business establishment dealing in the sale of food.

(b) Participants at the event must be informed that neither the food nor the facilities have been inspected by the state or by a local public health agency for the event to qualify as a “potluck event” and be exempt under 105 CMR 590.011(D)(1).

590.012: 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.

(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.

### 590.013: 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.

(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 Department 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 or her 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 or her and of all preparation areas servicing such vending machines. Such information shall be available to the Commissioner or his or her 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 or her 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.

#### 590.014: 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(A). 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.
- (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.
  - (f) That a written request for a hearing shall be filed with the board of health by the permit holder within 10 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, individually or severally, 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 owner, or if the permit holder or owner is a corporation, a corporate officer, 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 he or she is guilty of a crime relating to the operation of a food establishment;
- (e) The permit holder or owner, or if the permit holder or owner is a corporation, a corporate officer, 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 10 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 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;
- (g) If no request for a hearing is filed within the 10-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 10 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 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 10-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 or 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 applicant or 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 or her 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 or her last and usual place of abode.
    - 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 10 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 10 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 10-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: 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.

(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.

#### 590.017: 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.

#### 590.018: 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.