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Guidance for Stakeholders Regarding the Retail Food Code

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The following information is provided to assist municipalities, food establishments and other interested parties in interpretation of the Retail Food Code. Additional information is available on our website at mass.gov/food-safety or by contacting the Food Protection Program at (617) 983-6712 or fpp.dph@state.ma.us.

Introduction to the Retail Food Code (105 CMR 590)

What is the Retail Food Code?

The Retail Food Code (105 CMR 590) is the state regulation that provides sanitation standards for all Food Establishments and adopts portions of the 2013 FDA Food Code (“Food Code”). The local board of health enforces these standards.

What operations must comply with the Retail Food Code?

All operations that meet the definition of “Food Establishment” in the Retail Food Code must comply with the regulation. Generally, a Food Establishment is any operation that serves food directly to the consumer. Examples of Food Establishments include: restaurants; satellite or catered feeding locations; catering operations; and residential kitchens in bed-and-breakfast or cottage foods operations.

All parts of the operation, including a transportation vehicle or a central preparation facility that supplies another location, are subject to regulation and inspection under the Retail Food Code.

Are permits required?

A Food Establishment may not operate without a permit from the local board of health. The local board of health will ensure that the Food Establishment complies with the state minimum standards in the Retail Food Code, along with any additional locally-adopted standards. (105 CMR 590.008/Food Code 8-301.11)

Do all operations that provide food require a permit?

If an establishment meets one of the following, it does not need a permit under the Retail Food Code:

- The only foods for sale are whole, uncut fresh fruits and vegetables, unprocessed honey, pure maple products or farm fresh eggs which are stored and maintained at 45 degrees F or less.
- The only foods for sale are prepackaged foods that are not defined as time/temperature controlled for safety foods.¹
- Kitchens in residences that meet certain requirements. (Note: please see the definition of Food Establishment in 105 CMR 590.001 for the list of these exemptions.)

¹ Foods that require time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation. These include meat or fish that is raw or heat-treated and certain cut produce including melons, leafy greens, and tomatoes.

Non-Permanent Food Operations

Do Non-Permanent Food Operations², e.g., vendors that sell food at carnivals or at farmers markets, require a permit under the Retail Food Code?

Yes. Operations that offer food at farmers markets, fairs, carnivals, celebrations, fundraisers, or restaurant food shows must have a permit.

- While some events will be organized by one manager (coordinating permitting and other issues for the event), LBOHs must issue a Temporary Food Establishment (TFE) license to each individual vendor. (105 CMR 590.008; 8-301.11)
- The license should indicate the time frame for the issued permit; in the case of Farmers Markets, this could be for the entire season.

What if there is no water supply at the Non-Permanent Operation?

If no permanent water supply is available, the vendor may access water through:

- A supply of containers of commercially bottled drinking water
- Closed portable water containers
- An enclosed vehicular water tank
- An on-premises water storage tank
- Piping, tubing, or hoses connected to an adjacent approved source. (5-104.12)

What are the restroom and handwashing requirements for Non-Permanent Operations?

If permanent restrooms and handwashing facilities are not available, portable restrooms and handwashing facilities must be provided for use by the vendors. (5-203.11; 6-402.11).

Handwashing sinks must be easily accessible (within 25 feet) to vendors handling exposed, processed foods. If handwashing sinks are not easily accessible, and food exposure is limited, the local authority may approve the use of chemically treated towelettes for handwashing.

Do Non-Permanent Operations need to store food in refrigerators?

Mechanical refrigeration is not required if food temperatures can be maintained and verified (with the exception of shellfish transportation). Foods requiring time/temperature control for safety (TCS) must be held at proper temperatures during transportation and display for sale. This can be achieved by refrigeration or by storing the food on self-draining ice in an insulated container.

Do Non-Permanent Operations need to have a Certified Food Protection Manager on staff?

A Certified Food Protection Manager is required unless:

- 1) the vendor is a non-profit organization; or
- 2) the food being served has been deemed by the LBOH to pose minimal risk of causing, or contributing to, foodborne illness based on the nature of the operation and extent of food preparation; or
- 3) the vendor is serving only:
 - pre-packaged food;
 - a limited preparation of non-TCS food; and/or
 - 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% (Ex.: Beef Jerky) (2-102.12; 105 CMR 590.002(C))

² Non-Permanent Food Operations include Temporary Food Establishments and Farmers Markets. Temporary Food Establishments operate for a period of no more than 14 consecutive days in conjunction with a single event or celebration. (Ex. Festivals, Restaurant Trade Shows). A Farmers Market is a public market or market place occurring more than once per year, and the primary purpose of the market is for multiple Massachusetts farmers to sell food, crops and other farm-related items.

How should food be protected at a Non-Permanent Operation?

Fresh uncut fruits and vegetables can be displayed in the open air but must be stored off the ground. Vendors often use a table, empty crates, or boxes underneath the crates holding the produce.

Processed Foods require protection while on display. Vendors may individually package items such as baked goods or, if displayed in bulk, should cover the items while on display until given to the consumer. (3-306.11; 3-301.11). Items offered in bulk should be served with a utensil, single-use glove, or single-use paper sheet.

Can raw milk or raw milk products be sold at a Non-Permanent Operation?

Raw (unpasteurized) milk is not allowed for sale at TFEs or any other Food Establishments. Raw milk is only allowed for sale in Massachusetts at farms which are certified and inspected by the Massachusetts Department of Agricultural Resources (MDAR).

Aged cheeses made with raw milk may be sold, provided 1) that they are made in a licensed food manufacturing facility and 2) that vendors maintain strict temperature control of 41°F or below.

What is the difference between a Temporary Food Establishment and a Farmers Market?

A Temporary Food Establishment is a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration. (Ex. Festivals, Restaurant Trade Shows).

A Farmers Market is a public market or market place occurring more than once per year, and the primary purpose of the market is for multiple Massachusetts farmers to sell food, crops and other farm-related items.

Applicable state laws allow vendors at Farmers Markets to sell three products that may not be sold by Temporary Food Establishments: raw finfish, raw shellfish, and wine.

- Raw finfish and shellfish may be sold by a vendor at a Farmers Markets if they have proper permits from the Massachusetts Division of Marine Fisheries (DMF), comply with DMF regulations, and are approved by the LBOH.
- Licensed farm-wineries may sell wine at events that are approved by the Massachusetts Department of Agriculture (MDAR) as “Agricultural Events.” The event must be certified by MDAR and the vendor must have a license from the local liquor/license control board.

Mobile Food Establishments

Do Food Trucks need a permit to operate?

Yes. Food Trucks, or Food Establishments that operate from a facility that is mobile, rather than a permanent building, are called “Mobile Food Establishments” (MFEs) in the Retail Food Code. Each MFE must have a separate permit for each mobile facility and from each municipality where the MFE intends to operate. The permit may be issued for any period of time approved by the LBOH, and should include the dates, location(s), and any restrictions in the operation.

What if the truck is only transporting food?

A truck that transports food for a permitted Food Establishment does not need a separate MFE permit. A MFE permit is not required if the mobile operation:

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

What is a “Servicing Area”?

A Servicing Area is an operating base location to which the MFE returns regularly for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food (105 CMR 590.001(C)). The LBOH may require that a MFE operate in conjunction with a “Servicing Area”.

If required, the Servicing Area should be inspected, along with the mobile operation, prior to issuing a permit (105 CMR 590.010). If the Servicing Area is not located in the town where the MFE permit is requested, the LBOH may request a copy of the servicing area’s permit and/or a letter from the LBOH in the Servicing Area’s municipality certifying that it is still in operation.

What if there is no water supply to the Food Truck?

If no permanent water supply is available, the vendor may access water through:

- A supply of containers of commercially bottled drinking water
- Closed portable water containers
- An enclosed vehicular water tank
- An on-premises water storage tank
- Piping, tubing, or hoses connected to an adjacent approved source. (5-104.12)

What are the restroom and handwashing requirements for Food Trucks?

Permanent or portable restrooms and handwashing facilities must be available for use during food preparation and along the route.

Handwashing sinks must be easily accessible (within 25 feet) to vendors handling exposed, processed foods. If handwashing sinks are not easily accessible, and food exposure is limited, the local authority may approve the use of chemically treated towelettes for handwashing.

Special Activities in Food Establishments

Does a Caterer need a permit under the Retail Food Code?

Yes. A caterer must have a base of operations in a permitted Food Establishment that complies with all provisions of the Retail Food Code. The establishment must inform the LBOH prior to, or within 72 hours after, serving a meal outside the permitted Food Establishment. The LBOH may require a copy of the Food Establishment Permit if the meal is served in a different city or town other than where the Food Establishment is located. (105 CMR 590.010(A))

Does a Food Establishment that delivers meals to schools or senior centers need a Wholesale Permit?

A retail Food Establishment may deliver ready-to-eat meals to schools, senior centers and other institutional feeding sites without an additional license as a wholesale food processor under if:

1. Food is pre-ordered for a single meal;
2. 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;
3. Meals are fully cooked or prepared by the food establishment; and
4. Meals are stored and delivered under required temperatures. (105 CMR 590.010(A))

May a Food Establishment lease all or a portion of their kitchen?

Yes. Food Establishments may lease all or a portion of their kitchen space on a lease or rental basis if:

1. The owner, operator or lessor of the space obtains a permit from the LBOH as a Retail Food Establishment, subject to inspection and enforcement, that specifically allows for shared space rental; and
2. Each entity leasing space obtains a permit from the LBOH as either a Retail Food Establishment or a wholesale license from DPH, or both, depending on the activities conducted. These entities must comply with all applicable regulations, including all sections of the Retail Food Code. (105 CMR 590.010(H))