



# Massachusetts Department of Public Health

## Food Protection Program

Presentation to the MA Environmental Health Association

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**State Sanitary Code Chapter X**  
**Minimum Sanitation Standards for Food Establishments**

**105 CMR 590.000**

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# Timeline of 105 CMR 590 Updates

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- 10/20/16 – first vote of DPH Public Health Council
- 11/3/16 & 12/1/16 – public hearings
- 12/30/16 – comment period closed
- 140 total comments received; 96 unique comments by 27 commenters; over 100 changes made
- 9/12/18 – second vote of DPH Public Health Council
- 10/5/18 – 105 CMR 590 published in MA Registrar



## Overview

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### **105 CMR 590.000: Minimum Sanitation Standards for Food Establishments**

- State and Local Role
- Changes to the Code
  - Permitting
  - Preventing Foodborne Illness
  - Miscellaneous
- Case Studies

# State and Local Role

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- **State:**

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- Sets the state-wide standards for food and food products by adopting regulations and developing policy
- Coordinates investigations of foodborne illness outbreaks with federal and state agencies and boards of health
- May issue Food Code interpretations and guidance; may investigate and/or advise on particular questions.

- **Local**

- Enforces sanitary code in the same manner in which local health rules and regulations are enforced
  - Includes inspections, plan review, complaint and foodborne illness investigation and documentation.
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# State and Local Role: Discretionary Issues

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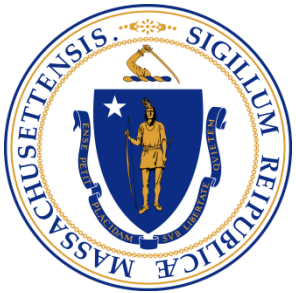
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- **Review:**
    - Existing Guidance by State or [FDA](#)
    - The Food Code Annex
    - [Conference for Food Protection](#)
    - Request Guidance from BOH, Town Counsel and State
  - **MAHB Decision-making Considerations**
    - What is the risk?
    - Is the intervention going to be effective?
    - What is the burden to the individual?
    - Is it fair and reasonable?

# State and Local Role: Discretionary Issues

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- **Question:** Can I Issue a Permit for this Entity?
- **Answers:**
  - **Clear Authority under 590:** Permit a vendor selling meat at a farmers market
  - **No Authority under 590:** Permit a vendor selling prepackaged chips and soda at a farmers market
  - **Discretionary Authority:** Permit a vendor selling prepackaged, non-TCS food products at a farmers market that they open and provide samples to customers
- **What now?**
  - MAHB Decision-making Considerations: Risk, effect, burden, fairness.
  - Consult with local decision makers (BOH and Town Counsel)



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# CHANGES TO THE CODE

# Changes to the Code

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- **Changes related to permitting**
  - **No longer have authority to permit:** prepackaged, non TCS foods and certain B&Bs, etc.
  - **Express authority to permit:** Farmers markets, leased commercial kitchens
- **Changes related to actions that prevent foodborne illness**
  - TCS(PHF) Foods: New definition; includes tomatoes and cut leafy greens
  - Priority, Priority Foundation and Core Items: Enforcement based on risk
  - Date Marking for refrigerated, ready to eat foods
  - Illness Reporting and Vomiting/Diarrhea Cleanup Policies



# Permitting

## 590.001 FC 1-201.10(B) Definitions

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### No Authority to Permit:

- Operation that **only offers** whole, uncut fresh fruits and vegetables, unprocessed honey, pure maple products, or farm fresh eggs which are stored and maintained at 45°F (7.2°C) or less
  - **Only** prepackaged foods that are not time/temperature control for safety foods
  - Cooking classes that are held for educational purposes only.
  - A bed-and-breakfast operation that: is owner occupied; guest bedrooms does not exceed six; breakfast is the only meal offered; number of guests served does not exceed 18; and consumer is informed food is prepared in a kitchen that is not regulated and inspected by the LBOH.
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# Permitting

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## 590.001 FC 1-201.10(B) Definitions



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### Express Authority to Permit:

- **Cottage Food Operations** (formerly Residential Kitchens: Retail Sale)
  - **Farmers Markets**
    - Food Code Guidance, Non-Permanent Food Operations: [Food Code Guidance](#)
  - **Leased Commercial Kitchens:**
    - Food preparation facilities that provide space and access to professional equipment on a lease or rental basis.
    - The owner/lessor approved and permitted by LBOH, specifically allowing for shared space rental, and all lessees/vendors as Retail Food Establishment (or Wholesale from DPH if that's how they're operating)
  - **Innovative Operations**
    - LBOH may approve a permit for establishment not under 590, as long as not prohibited and in harmony with general purpose and intent of 105 CMR 590.000
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# Preventing Foodborne Illness: Enforcement

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## 590.001 Definitions

### 590.008; FC 8-405.11 Timely Correction

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- **Priority Critical**

- Former code: Red Critical violation
- Provision that contributes directly to the elimination, prevention or reduction to an acceptable level, hazards associated with foodborne illness or injury ... (handwashing, improper cooling/holding, improper cook temp)
- Timely Correction: Discretionary but not to exceed 72 hours.

- **Priority Foundation**

- Former code: Blue Critical violation
- Provision whose application supports, facilitates or enables one or more PRIORITY ITEMS. (necessary equipment, HACCP plans, etc)
- Timely Correction: Discretionary but not to exceed 10 calendar days

- **Core**

- Former code: Blue non-critical violation
  - Everything else. SSOPs, equipment design, general maintenance
  - ~~Timely Correction: Discretionary but not to exceed 90 calendar days~~
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# Preventing Foodborne Illness:

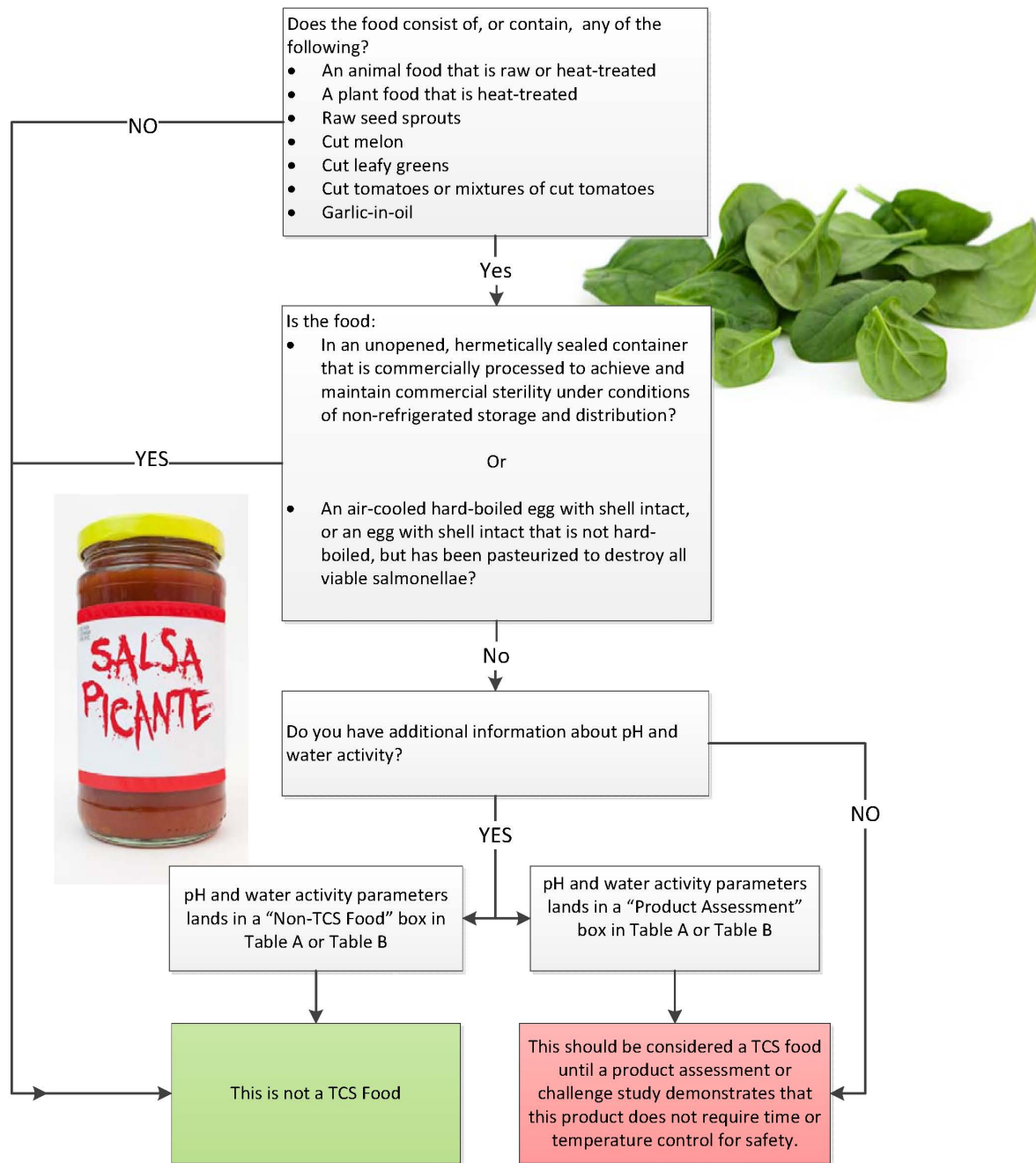
## Time/Temperature Control for Safety Food (TCS)

105 CMR 590.001; FC 1-201.10(B)

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### Changes from PHF to TCS Foods (in red)

- Requires time/temperature to limit microorganism growth or toxin formation
  - Includes an animal FOOD that is raw or heat-treated;
  - a plant FOOD that is heat-treated or consists of raw seed sprouts, cut melons, **cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation**, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation;
  - **Requires adjustment for acidity and moisture content when determining which foods require temperature controls to limit microorganism growth (see pH table in definition)**
  - **Work Aid:** [Cut Leafy Greens FDA Guidance](#)
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# Preventing Foodborne Illness:

## Date Marking TCS Foods

105 CMR 590.003; FC 3-501.17

- Refrigerated, READY-TO-EAT, TIME/TEMPERATURE CONTROL FOR SAFETY FOOD
- prepared and held in a FOOD ESTABLISHMENT for more than 24 hours
- shall be clearly marked to indicate the date or day by which the FOOD shall be consumed on the PREMISES, sold, or discarded
- when held at a temperature of 5°C (41°F) or less
- for a maximum of 7 days.
- The day of preparation shall be counted as Day 1. <sup>Pf</sup>

### Work Aid:

"Date and Disposition" module in Food Code Ch 3, Part III of FDA Compliance Wire (ORAU)



# Preventing Foodborne Illness:

## **Date Marking Exceptions**

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**105 CMR 590.003; FC 3-501.17**

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- **Reduced Oxygen Packaging**
    - Filled hot, sealed and rapidly chilled
  - **Individual meal portions served or repackaged for sale from a bulk container upon a consumer's request**
    - Secondary packaging does not need to be date marked.
  - **Shellstock**
  - **Foods prepared and packaged by an inspected food processing plant**
    - Deli Salads
    - Hard and Soft cheeses with certain moisture content
    - Cultured dairy products (yogurt, milk, sour cream)
    - Preserved Fish Products
    - Shelf stable meats (prosciutto, pepperoni)
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<b>List of Hard Cheeses Exempt from Date Marking</b>	<b>List of Semi-Soft Cheeses Exempt from Date Marking</b>
Asadero Abertam Appenzeller Asiago medium or old Bra Cheddar Christalinna Colby Cotija Anejo Cotija Coon Derby Emmentaler English Dairy Gex (blue veined) Gloucester Gjetost Gruyere Herve Lapland Lorraine Oaxaca Parmesan Pecorino Queso Anejo Queso Chihuahua Queso de Prensa Romanello Romano Reggiano Sapsago Sassenage (blue veined) Stilton (blue veined) Swiss Tignard (blue veined) Vize Wensleydale (blue veined)	Asiago soft Battelmatt Bellelay (blue veined) Blue Brick Camosum Chantelle Edam Fontina Gorgonzola (blue veined) Gouda Havarti Konigskase Limburger Milano Manchego Monterey Muenster Oka Port du Salut Provolone Queso de Bola Queso de la Tierra Robbiole Roquefort (blue veined) Samsoe Tilsiter Trappist





# Preventing Foodborne Illness: Time as a Public Health Control

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105 CMR 590.003(D); FC 3-501.19(A)

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- No longer requires a variance
- Written procedures prepared in advance, available to BOH upon request
- Food marked with the time period when removed from temperature control
- **4 hours:** Initial temperature of 41°F or less when removed from cold holding temperature control, or 135°F or greater when removed from hot holding
- **6 hours:** initial temperature of 41°F less when removed from temperature control and the temperature may not exceed 70°F during 6 hour time frame
  - **Work Aid -**

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"TPHC" module in Food Code Ch 3, Part III of FDA Compliance Wire  
(ORAU)

# Preventing Foodborne Illness: Spread of Illness

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## Employee Illness Reporting 105 CMR 590.002; FC 2-103.11

- Report to PIC health information related to diseases transmissible through food now required to be in a verifiable manner
- **Work Aid:**  
"Food Employee Reporting Agreement" in Ch 7 of DPH Foodborne Illness Investigation and Control Manual

## Vomiting and Diarrheal Events 105 CMR 590.002; 2-501.11

- FOOD ESTABLISHMENT shall have procedures for EMPLOYEES to follow when responding to vomiting or diarrheal events
- the specific actions EMPLOYEES must take to minimize the spread of contamination
- **Work Aid:**  
"Vomit or Diarrhea Clean-up" guide in Ch 8 of DPH Foodborne Illness Investigation and Control Manual

# Miscellaneous

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## **Non Continuous Cooking: 105 CMR 590.003; FC 3-401.14**

- Now allowed with prior LBOH approval of written procedures for preparation and storage and compliance with standards in 105 CMR 590.003; FC 3-401.14

## **Treating Juice: 105 CMR 590.003; FC 3-404.11**

- Juice packaged in a food establishment either treated under HACCP plan or contain a warning label

## **Inspection Signage 590.008; 8-304.11**

- Requires establishments to post a conspicuous sign which tells customers that a copy of last inspection report is available upon request

## **Temperature Measuring Devices for Mechanical Warewashing. 590.004; FC 4-302.13 (B)**

- Requires an irreversible registering temperature indicator

## **Hot and Cold Holding Temperatures. 590.003; FC 3-501.16 (A)(1)**

- Revised hot holding temperature requirement for TCS foods from 60°C (140°F) to 57°C (135°F).
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# Case Study 1

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**You arrive at a food establishment scheduled for a routine inspection and you ask to speak to the person-in-charge (PIC). You find out that the PIC, who is also the Certified Food Protection Manager, has left for the day and an alternate PIC is covering but this person is not a Certified Food Protection Manager. What questions should you ask the alternate PIC?**

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# Case Study 1 cont.

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**Food Code:** Definition of Person-in-charge; 2-101.11, 2-102.11, and 2-103.11; 590.002 (A) through (D)

- "Person in charge" means the individual present at a FOOD ESTABLISHMENT who is responsible for the operation at the time of inspection.
  - 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
  - the PERSON IN CHARGE shall demonstrate to the REGULATORY AUTHORITY knowledge of foodborne disease prevention, application of the HAZARD Analysis and CRITICAL CONTROL POINT principles, and the requirements of this Code.
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# Case Study 1 cont.

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## Annex:

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- Annex 3, Chapter 2: Management and Personnel:
    - Many ways to demonstrate competency.
    - Aspects of the food operation itself will reflect the competency of that person.
    - Dialogue with the person in charge . . . [PIC shows] a clear understanding of the Code and its public health principles to follow sound food safety practices.
  - Annex 5, Conducting Risk-Based Inspections, Part 4
    - Questions about practices and procedures related to foodborne illness risk factors and Food Code interventions
    - Including the establishment's employee health policy and consumer advisory notice and important activities such as receiving, cooling, and preparation
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# Case Study 2

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**An individual contacts you and wants to conduct cooking classes in her home and those of others. She provides the food, teaches the techniques, and each person tastes the food they and the instructor made. What do you tell them?**

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# Case Study 2 cont...

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- **Food Code:** Definition of Food Establishment
    - Exempts Cooking Classes for Educational purposes only
  - **Annex:** No information, MA exemption
  - **MA Guidance:** None
  - **Decision Making Considerations:**
    - Risk, Benefit, Fairness
    - Town Counsel and BOH input
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Questions ?

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