

Commonwealth of Massachusetts

Executive Office of Health and Human Services
Department of Public Health

Presentation to the Public Health Council

State Sanitary Code Chapter X Minimum Sanitation Standards for Food Establishments

105 CMR 590.000

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Michael Moore – *Director, Food Protection Program,
Bureau of Environmental Health*

Overview

- **Background**
 - MA Minimum Sanitation Standards for Food Establishments
 - Regulatory Review
- **Proposed Revisions**
- **Next Steps**
- **Questions**

FDA Retail Food Code and 105 CMR 590.000

- 105 CMR 590.000 adopts the FDA Retail Food Code and adds Massachusetts-specific supplements.
- The FDA Food Code provides a national standard and scientifically sound technical and legal bases for regulating the retail and institutional food service industry.
- FDA reviews and updates its Food Code every four years. The most recent full version was published by FDA in 2013.
- 105 CMR 590.000 currently references the 1999 FDA Code.

MA Minimum Sanitation Standards for Food Establishments

- DPH regulates retail food establishments (restaurants, grocery stores, etc.) and institutional food services (schools, prisons, nursing homes, etc.) under 105 CMR 590.000, pursuant to MA General Law and as part of the State Sanitary Code
 - M.G.L. C.94 § § 305A, 305B, 146, 189 and 189A; c.111 § § 5 and 127A
- Local Boards of Health are the primary designated authority for 105 CMR 590.000 and conduct two annual inspections, code enforcement activities, and issue annual operating permits for retail and for non-state owned institutional food establishments.
- DPH maintains concurrent authority to enforce the provisions of the retail food code, if needed.

Massachusetts Supplements to FDA Retail Food Code

- 105 CMR 590.000 provides state-specific supplements, for example:
 - Local Board of Health inspection, enforcement, permitting authority, and reporting requirements
 - Reference to other state codes, e.g., DEP regulations for Drinking Water (310 CMR 22.00)
 - MA statutory requirements, e.g., allergen-awareness training, anti-choking procedures, restrictions on tobacco sales, definitions
 - Embargo and condemnation authority
 - Vending machines
 - DPH concurrent authority to enforce

Factors Informing Proposed Revisions to 105 CMR 590.000

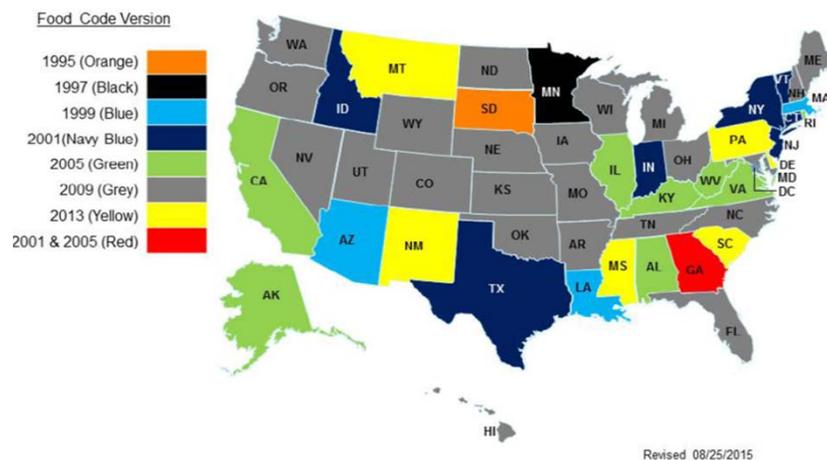
- Executive Order 562 – Regulatory review required for all state agencies
- DPH conducted stakeholder outreach to the Massachusetts Health Officer's Association and the Food Establishment Advisory Committee
- Recommendations of the Food Action Plan adopted by the MA Food Policy Council
- Federal Standards
 - U.S. Food and Drug Administration (FDA)
 - CDC recommendations to prevent foodborne illness
 - Conference for Food Protection

CDC Prevention Status Report Deficiency

- In March 2016, CDC released its 2015 Prevention Status Reports for states.
- CDC evaluates three food safety-related practices, as recommended by the Council to Improve Foodborne Outbreak Response and by FDA, because scientific evidence supports their effectiveness in improving foodborne disease surveillance, detection, and prevention
 - DPH received the highest rating (green) for the speed of PFGE testing for reported cases *E. coli* O157 and for rapid PFGE testing and reporting for cases of *Salmonella*;
 - DPH received a lower rating (yellow) for failing to adopt provisions of the 2013 Food Code related to excluding ill food service workers.

FDA Food Code Adoption in Other Jurisdictions

Food Code Adoption by State



FDA Retail Food Code Adopted by States:

- 46 states use more recent versions of the FDA Code than MA

FDA Retail Food Code Adopted by MA Local Boards of Health:

- As a condition of FDA grants to cities and towns, recipients must use a recent version of the FDA code;
- Two LBOH have adopted more recent versions, 19 are scheduled to adopt the 2013 version this year, and 36 additional are expected to do so in the near future.

Proposed Revisions to the Regulations

Revising 105 CMR 590.000 with the most recent version of the FDA Food Code and updating appropriate Massachusetts supplements will:

- Provide uniform standards for inspections, training and implementation for public health and for retail food establishments across the Commonwealth
- Meet CDC's foodborne illness reduction goals as cited in 2015 Prevention Status Report for Food Safety for Massachusetts
- Strengthen requirements for reporting foodborne illnesses and restricting ill food employees to protect the public and industry from potentially devastating health consequences and financial losses
- Update safety measures, streamline administrative processes, and keep current with trends in the food industry

Proposed Revisions - Definitions

- **Existing (1999 FDA Food Code):**
 - “Critical” violations contribute to food contamination, illness, or environmental health hazards
 - “Non-critical” violations are all other citations
- **Proposed (2013 FDA Food Code):**
 - “Priority” violations (e.g., undercooked food or no handwashing) increase foodborne illness hazards
 - “Priority Foundation” violations (e.g., broken thermometer or hand sink) are infrastructure failures which increase “Priority” risks
 - “Core” violations are general sanitation and all other violations
- **Rationale:**
 - Aligns with CDC recognition of the risks identified as contributing factors in foodborne illness outbreaks and the FDA Food Code.

Proposed Revisions - Definitions

- **Existing (1999 FDA Food Code):**
 - “Potentially Hazardous” Foods (PHFs) require temperature controls to limit microorganism growth. PHFs include meat, chicken, fish, raw seed sprouts, and cut melons.
- **Proposed (2013 FDA Food Code):**
 - “Time/Temperature Control for Safety (TCS)” foods are PHFs with adjustments for acidity and moisture content.
- **Rationale:**
 - Adjustments to acidity or moisture content may affect whether a food must be considered a TCS food.
 - Revisions conform with national standards under the FDA Food Code.

Proposed Revisions - Definitions

- **Existing (1999 FDA Food Code):**
 - Fresh leafy greens which are cut, sliced, or chopped are not defined or discussed in the current regulation
- **Proposed (2013 FDA Food Code):**
 - “Cut Leafy Greens”, including lettuce, spinach, kale, and chard with shredded or chopped green leaves will be defined as TCS foods, which require specific cooling and holding temperatures
- **Rationale:**
 - Twenty-four multi-state foodborne illness outbreaks between 1998 and 2008 were traced back to cut leafy greens
 - Revisions conform with the national standards under the FDA Food Code

Proposed Revisions - Definitions

- **Existing (Massachusetts Supplements):**
 - Food Permits required for Bed and Breakfast Establishments with 4 or more rooms and Bed and Breakfast Homes with 1-3 rooms and serving a full breakfast
- **Proposed (2013 FDA Food Code):**
 - Food permit required for “Bed and Breakfast” with 6 or more rooms
- **Rationale:**
 - Revisions conform with the FDA Food Code
 - Municipalities may still zone and inspect owner-occupied B&Bs and other rentals with fewer than 6 guest rooms, but food permits are not required for breakfast (up to 18 guests)

Proposed Revisions

- **Existing (Massachusetts Supplements):**
 - Mobile Food Establishments (MFEs) limited to hot dogs, non-PHFs, and pre-packaged foods unless equipment required by DPH since 2001 is provided
- **Proposed (Massachusetts Supplements):**
 - High-risk MFEs (e.g., kitchens on wheels) are held to a higher standard than low-risk MFEs (e.g., serving packaged ice cream)
 - Adopts MFE equipment requirements and review procedures as updated by Conference for Food Protection in 2014
- **Rationale:**
 - Revisions conform with national standards under the FDA Food Code and provide guidance to local health departments that enable them to evaluate MFE operations and risks in the field.

Proposed Revisions

- **Existing (Massachusetts Supplements):**
 - School cafeterias are the only food establishments required to post or share inspection reports issued by Boards of Health.
- **Proposed (2013 FDA Food Code):**
 - Establishments must post a conspicuous sign which tells customers that a copy of last inspection report is available upon request
- **Rationale:**
 - Revisions align with national standards under the FDA Food Code
 - Access to inspection reports provides consumers with public information and supplement records provided by LBOH.

Proposed Revisions to Retail Food Code

- **Existing (Massachusetts Supplements):**
 - Public and farmers markets may be licensed as “temporary food establishments,” which can operate for no more than 14 consecutive days
- **Proposed (Massachusetts Supplements):**
 - Use DPH policies developed and tested since 2006 to standardize how Boards of Health license and inspect the different types of outdoor markets opening across the state
- **Rationale:**
 - Standardize and update licensing processes and inspection methods
 - Update regulations to recognize and regulate emerging trends in evolving food industry

Proposed Revisions to Retail Food Code

- **Existing (Massachusetts Supplements):**
 - Church kitchens and some under-used restaurants rent space to start-up food operators and fledgling food retailers
- **Proposed (Massachusetts Supplements):**
 - Multiple permit holders can use a “shared kitchen” or “incubator” kitchens that are licensed and inspected by a Board of Health
- **Rationale:**
 - Update regulations to recognize and regulate emerging trends in evolving food industry

Conclusion

Adoption of the 2013 FDA Food Code with Massachusetts supplements will:

- Meet CDC's foodborne illness reduction goals as reported in 2015 Prevention Status Report for Food Safety for Massachusetts;
- Reduce the risk of foodborne illnesses within food establishments, thus protecting consumers and industry from potentially devastating health consequences and financial losses;
- Provide uniform standards for retail food safety that reduce complexity and improve compliance; and
- Establish standardized methods to inspect and audit food establishments;
- Provide transparency regarding inspections to the public

Next Steps

- DPH will hold 2 public hearings (eastern and western parts of the state) and a comment period
- After the public comment period and hearings, DPH will review comments and draft additional appropriate revisions
- Approval of the proposed revisions, along with a review of public comments, will be requested at a subsequent meeting of the Public Health Council
- Following final approval, this regulation will be revised
- Training and guidance materials will be developed to assist with implementation