

**ADDED AND CHANGED DEFINITIONS
105 CMR 590.000 and the
2013 Federal Food Code with 2015 Amendments**

*[Definitions with the title underlined or sections of words underlined
are 2018 changes to 590.000]*

Accredited Program.

(1) "Accredited program" means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals and recognized by the Department.

(2) "Accredited program" refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, re-certification, discipline and grievance procedures; and test development and administration.

(3) "Accredited program" *does not refer to training functions or educational programs.*

Adulterated means the definition in M.G.L. c. 94, § 186 as it pertains to food.

"**Asymptomatic**" means: (1) without obvious symptoms; not showing or producing indications of a disease or other medical condition, such as an individual infected with a pathogen but not exhibiting or producing any signs or symptoms of vomiting, diarrhea, or jaundice; (2) "Asymptomatic" includes not showing symptoms because symptoms have resolved or subsided, or because symptoms never manifested.

"**Balut**" means an embryo inside a fertile egg that has been incubated for a period sufficient for the embryo to reach a specific stage of development after which it is removed from incubation before hatching.

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.

"**Casing**" means a tubular container for sausage products made of either natural or artificial (synthetic) material.

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 the one for which he holds a permit, for service at a single meal, party or similar gathering.

CIP.

(1) "CIP" means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and SANITIZING solution onto or over EQUIPMENT surfaces that require cleaning, such as the method used, in part, to clean and SANITIZE a frozen dessert machine.

(2) "CIP" does not include the cleaning of EQUIPMENT such as band saws, slicers, or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

"Commingle" means:

- (1) To combine shellstock harvested on different days or from different growing areas as identified on the tag or label, or
- (2) To combine shucked shellfish from containers with different container codes or different shucking dates.

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

"Conditional employee" means a potential food employee to whom a job offer is made, conditional on responses to subsequent medical questions or examinations designed to identify potential food employees who may be suffering from a disease that can be transmitted through food and done in compliance with Title 1 of the Americans with Disabilities Act of 1990.

"Core item" means: (1) a provision in this Code that is not designated as a priority item or a priority foundation item; (2) "Core item" includes an item that usually relates to general sanitation, operational controls, sanitation standard operating procedures (SSOPs), facilities or structures, equipment design, or general maintenance.

"Cottage Food Operation" means a person who produces cottage food products only in the home kitchen of that person's primary domestic residence and only for sale directly to the consumer.

"Cottage Food Products" means non-time/temperature control for safety baked goods, jams, jellies, and other non-time/temperature control for safety foods produced at a cottage food operation.

"Counter-mounted equipment" means equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

"Cut leafy greens" means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. The term "leafy greens" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula and chard. The term "leafy greens" does not include herbs such as cilantro or parsley.

"Dealer" means a person who is authorized by a shellfish control authority for the activities of shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor of molluscan shellfish according to the provisions of the National Shellfish Sanitation Program.

"Disclosure" means a written statement that clearly identifies the animal-derived foods which are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens.

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.

Drinking Water.

- (1) Drinking water means water that meets the provisions of 310 CMR 22.00: Drinking Water
- (2) "Drinking water" is traditionally known as "potable water."
- (3) "Drinking water" includes the term "water" *except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "non-drinking" water.*

"Egg" means: (1) the shell egg of avian species such as chicken, duck, goose, guinea, quail, ratites or turkey; (2) "Egg" does not include:

- (a) A balut;
- (b) The egg of reptile species such as alligator; or
- (c) An egg product.

"Egg Product" means: (1) all, or a portion of, the contents found inside eggs separated from the shell and pasteurized in a food processing plant, with or without added ingredients, intended for human consumption, such as dried, frozen or liquid eggs; (2) "Egg product" does not include food which contains eggs only in a relatively small proportion such as cake mixes.

"Exclude" means to prevent a person from working as an employee in a food establishment or entering a food establishment as an employee.

"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, or 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.

FC-Regulatory Authority means the definition or "regulatory authority" set forth in FC 1-201.10, which is the board of health.

"FDA" means the U.S. Food and Drug Administration

"Food Employee" means an individual working with UNPACKAGED FOOD, FOOD EQUIPMENT, or UTENSILS, or FOOD-CONTACT SURFACES, with the exception of farm workers handling uncut fruits and vegetables, unprocessed honey, pure maple products, or farm fresh eggs which are stored and maintained at 45 degrees F (7.2 degrees C) or below. This could include the owner, individual having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or any other person working in a food establishment. In health care facilities, this includes those who set up trays for patients to eat, feed or assist patients in eating, give oral medications or give mouth/denture care. In day care operations, schools and long-term care facilities, which are permitted 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 not including farm trucks; 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) An 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 below;

(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 (C)(1): 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 FC-regulatory authority;

(h) A private home that receives catered or home-delivered food;

(i) Cooking classes that are held for educational purposes only.

"Handwashing sink" means: (1) a lavatory, a basin or vessel for washing, a wash basin, or a plumbing fixture especially placed for use in personal hygiene and designed for the washing of the hands.

(2) "Handwashing sink" includes an automatic handwashing facility.

"Health practitioner" means a physician licensed to practice medicine, or if allowed by law, a nurse practitioner, physician assistant, or similar medical professional.

"Highly susceptible population" means persons who are more likely than other people in the general population to experience foodborne disease because they are: (1) Immunocompromised; preschool age children, or older adults; and

(2) Obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

"Juice" means: (1) the aqueous liquid expressed or extracted from one or more fruits or vegetables, purées of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or purée; (2) "Juice" does not include, for purposes of HACCP, liquids, purées, or concentrates that are not used as beverages or ingredients of beverages.

"Major food allergen" means:

(a) Milk, egg, fish (such as bass, flounder, cod, and including crustacean shellfish such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(b) A food ingredient that contains protein derived from a food, as specified in Subparagraph (1)(a) of this definition; (2) "Major food allergen" does not include:

(a) Any highly refined oil derived from a food specified in Subparagraph (1)(a) of this definition and any ingredient derived from such highly refined oil; or

(b) Any ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282).

"Mechanically tenderized" means: (1) manipulating meat with deep penetration by processes which may be referred to as "blade tenderizing," "jaccarding," "pinning," "needling," or using blades, pins, needles or any mechanical device; (2) "Mechanically tenderized" does not include processes by which solutions are injected into meat.

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 covered food establishment.

Misbranded means the definition in M.G.L. c. 94, §187 as it pertains to food.

"Non-continuous cooking" means: (1) the cooking of food in a food establishment using a process in which the initial heating of the food is intentionally halted so that it may be cooled and held for complete cooking at a later time prior to sale or service; (2) "Non-continuous cooking" does not include cooking procedures that only involve temporarily interrupting or slowing an otherwise continuous cooking process.

"Packaged" means: (1) bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant.

(2) "Packaged" does not include wrapped or placed in a carry-out container to protect the food during service or delivery to the consumer, by a food employee, upon consumer request.

"Priority item" means: (1) a provision in this Code whose application contributes directly to the elimination, prevention or reduction to an acceptable level, hazards associated with foodborne illness or injury and there is no other provision that more directly controls the hazard.

(2) "Priority item" includes items with a quantifiable measure to show control of hazards such as cooking, reheating, cooling, handwashing; and

(3) "Priority item" is an item that is denoted in this Code with a superscript P-^P.

"Priority foundation item" means: (1) a provision in this Code whose application supports, facilitates or enables one or more priority items.

(2) "Priority foundation item" includes an item that requires the purposeful incorporation of specific actions, equipment or procedures by industry management to attain control of risk factors that contribute to foodborne

illness or injury such as personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling; and

(3) "Priority foundation item" is an item that is denoted in this Code with a superscript Pf - Pf.

"Ratite" means a flightless bird such as an emu, ostrich, or rhea.

"Reduced Oxygen Packaging" means:

(1)(a) The reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the atmosphere (approximately 21% at sea level); and

(b) A process as specified in Subparagraph (1)(a) of this definition that involves a food for which the hazards *Clostridium botulinum* or *Listeria monocytogenes* require control in the final packaged form.

(2) "Reduced oxygen packaging" includes:

(a) Vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package;

(b) Modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes reduction in the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen;

(c) Controlled atmosphere packaging, in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring food, and impermeable packaging material;

(d) Cook chill packaging, in which cooked food is hot filled into impermeable bags which have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens; or

(e) Sous vide packaging, in which raw or partially cooked food is vacuum packaged in an impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

"Reminder" means a written statement concerning the health risk of consuming animal foods raw, undercooked, or without otherwise being processed to eliminate pathogens.

"Re-service" means the transfer of food that is unused and returned by a consumer after being served or sold and in the possession of the consumer, to another person.

"Residential kitchen" means a kitchen in a private home.

"Restrict" means to limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens, or unwrapped single-service or single-use articles.

"Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss as defined in 9 CFR 590.

"Retail" means sale to the ultimate consumer.

"Risk" means the likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

"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.

"Shiga toxin-producing Escherichia coli" (STEC) means any E. coli capable of producing Shiga toxins (also called verocytotoxins). STEC infections can be asymptomatic or may result in a spectrum of illness ranging from mild, non-bloody diarrhea, to hemorrhagic colitis (i.e., bloody diarrhea), to hemolytic uremic syndrome (HUS - a type of kidney failure). Examples of serotypes of STEC include: E. coli O157:H7; E. coli O157:NM; E. coli O26:H11; E. coli O145:NM; E. coli O103:H2; and E. coli O111:NM. STEC are sometimes referred to as VTEC (verocytotoxigenic E. coli) or as EHEC (Enterohemorrhagic E. coli). EHEC are a subset of STEC which can cause hemorrhagic colitis or HUS.

"Time/Temperature Control for Safety Food" means:

- (1) a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation;
- (2) "Time/temperature control for safety food" includes:
 - (a) 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; and
 - (b) Except as specified in Subparagraph (3)(d) of this definition, a food that because of the interaction of its A_w and pH values is designated as Product Assessment Required (PA) in Table A or B of this definition:

Table A. Interaction of pH and A_w for control of spores in food heat-treated to destroy vegetative cells and subsequently packaged			
A_w values	pH: 4.6 or less	pH: > 4.6 - 5.6	pH: > 5.6
≤ 0.92	non-TCS food*	non-TCS food	non-TCS food
> 0.92 - 0.95	non-TCS food	non-TCS food	PA**
> 0.95	non-TCS food	PA	PA

* TCS food means Time/Temperature Control for Safety Food
 ** PA means Product Assessment required

Table B. Interaction of pH and A_w for control of vegetative cells and spores in food not heat-treated or heat-treated but not packaged				
A_w values	pH: < 4.2	pH: 4.2 - 4.6	pH: > 4.6 - 5.0	pH: > 5.0
< 0.88	non-TCS food*	Non-TCS food	non-TCS food	non-TCS food
0.88 – 0.90	non-TCS food	non-TCS food	non-TCS food	PA**
> 0.90 – 0.92	non-TCS food	non-TCS food	PA	PA
> 0.92	non-TCS food	PA	PA	PA
* TCS food means Time/Temperature Control for Safety Food				
** PA means Product Assessment required				

- (3) "Time/temperature control for safety food" does not include:
- (a) An air-cooled hard-boiled egg with shell intact, or an egg with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable salmonellae;
 - (b) A food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;
 - (c) A food that because of its pH or A_w value, or interaction of A_w and pH values, is designated as a non-PHF/non-TCS food in Table A or B of this definition;
 - (d) A food that is designated as Product Assessment Required (PA) in Table A or B of this definition and has undergone a Product Assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to:
 - (i) Intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants, or nutrients,
 - (ii) Extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf life and use, or temperature range of storage and use, or
 - (iii) A combination of intrinsic and extrinsic factors; or
 - (e) A food that does not support the growth or toxin formation of pathogenic microorganisms in accordance with one of the Subparagraphs (3)(a) - (3)(d) of this definition even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

"Wholesale" means sale to other than the ultimate consumer.

(Document updated November, 2018 after MA adopted the 2013 Federal Food Code and the 2015 Amendments.)