

# Food Protection Program:

## *Residential Kitchen Questions and Answers*

*The MA Department of Public Health's Food Protection Program works in conjunction with Local Boards of Health to ensure a safe and wholesome food supply in Massachusetts by promulgating and enforcing regulations related to food safety, conducting foodborne illness complaint investigations, and responding to other food emergency incidents.*

*Individuals who produce food in their home kitchen for sale to others may have to get a state or local permit and comply with certain rules and limitations. The following is provided to assist individuals in complying with state regulations related to the production and sale of food made in a kitchen in a residence. Depending on what foods are produced in the Residential Kitchen, and how those foods will be sold or distributed, a Residential Kitchen may require a Wholesale License or Permit, a Retail Permit, or both.*

### **What is a Residential Kitchen?**

A Residential Kitchen is a kitchen in a private home. Most Residential Kitchens, including those in a private home where individuals are cooking for their family or for charitable purposes, like a bake sale, do not require a permit. Certain food-based activities in Residential Kitchens require a license or permit either as a Retail Residential Kitchen or as a Wholesale Residential Kitchen. If a Retail permit is required, the Residential Kitchen must comply with certain requirements in the Retail Food Code (105 CMR 590). If a wholesale license is required, the Residential Kitchen must comply with certain requirements in the regulations for Good Manufacturing Practices (105 CMR 500).

### **What Activities in a Residential Kitchen Require a Permit?**

- Anyone producing food for sale “direct to the consumer” is considered a **Retail Residential Kitchen** and is required to have a permit under 105 CMR 590.
  - “Direct to the consumer” includes events like farmers markets, craft fairs, and sales by internet or mail.
  - Anyone that makes food in a Residential Kitchen in Massachusetts that wants to sell in another state should confirm that they are in compliance with both Federal law and the state laws where they are doing business.
- Anyone producing food for sale at wholesale, for example, to a supermarket or restaurant that will re-sell to the ultimate consumer, is considered a **Wholesale Residential Kitchen** and is required to have a License or Permit under 105 CMR 500.

### **Who Issues the Required Permits?**

- **Retail Residential Kitchen** operations are inspected and permitted by the local board of health in the city or town where the Residential Kitchen is located. 105 CMR 590.010 (F) (2) (a). They are permitted as “Cottage Food Operations.”
- **Wholesale Residential Kitchen** operations may sell their products to retail stores, grocery stores, restaurants, etc., and are inspected and licensed by the Massachusetts Department of Public Health, Food Protection Program. 105 CMR 500.015 (B)

### **What Foods May Be Produced in A Residential Kitchen?**

- **Retail Residential Kitchen** may only make “Cottage Food Products.” These are foods that can be safely held at room temperature, including baked goods, jams, and jellies. 105 CMR 590.001(C); FC 1-201.10 (B)
- **Wholesale Residential Kitchen** operations selling wholesale may only produce foods that can be safely held at room temperature and foods that do not require refrigeration. 105 CMR 500.015 (D) (1)
- **Retail or Wholesale Residential Kitchens** may not prepare finished products that require hot or cold holding for safety, including meat or fish that is raw or heat-treated, certain cut produce including melons, leafy greens, and tomatoes.

*Examples of food products that may not be prepared or sold by a Residential Kitchen:* cream-filled pastries, cheesecake, custard, cut fruit and vegetables, tomato and barbeque sauce, pickled products, relishes and salad dressings [105 CMR 590.001(C); FC 1-201.10(B)], 105 CMR 500.015(D)(1) and (3).

### **What types of processing operations are prohibited in a Residential Kitchen?**

For both **Retail and Wholesale Residential Kitchen** operations, processing operations that are prohibited include: acidification, hot fill, thermal processing in hermetically-sealed containers, vacuum packaging, and curing/smoking. The only exception is jams and jellies that are thermal-processed in hermetically-sealed containers. [105 CMR 590.001(C); FC 1-201.10(B)], 105 CMR 500.015(D)(1) and (3)

### **Could there be a circumstance where laboratory testing of a food product may be required?**

Yes. For both **Retail and Wholesale Residential Kitchen** operations, the Licensee or Permit Holder or applicant may be required to provide laboratory evidence to the regulator in order to determine whether the food poses a food safety risk if not held or stored at a certain temperature.

The laboratory testing may include analysis of pH, water activity ( $A_w$ ), toxin formation or other tests as appropriate. [105 CMR 590.001(C); FC 1-201.10(B)], (105 CMR 500.003). If required to provide laboratory testing, the Residential Kitchen operator should reach out to a private food laboratory and determine which testing may be appropriate to establish that a product does not require hot or cold holding to maintain food safety.

### **Must a Residential Kitchen operator use a standard recipe for each batch of product?**

Since each recipe has a different set of risks, preparing multiple products in a Residential Kitchen may require multiple laboratory evaluations to show that the products do not pose a food safety risk. Using a single standardized recipe that has been evaluated by a food laboratory helps the person in charge of the Residential Kitchen to meet food safety requirements while maintaining consistent food quality.

### **If I need a License or Permit, what standards must my Residential Kitchen comply with?**

- **Retail Residential Kitchens:** For a list of provisions that all Residential Kitchens permitted under the Food Code must adhere to, please see guidance issued by the Department titled *Retail Food Code Standards for Permitted Residential Kitchen* available at [www.mass.gov/lists/retail-food](http://www.mass.gov/lists/retail-food).
- **Wholesale Residential Kitchens:** Please see section 105 CMR 500.015: *Supplemental Regulations for Residential Kitchens: Wholesale Sale*, for specific requirements related to Wholesale Residential Kitchen operations, available here: <https://www.mass.gov/files/documents/2017/09/11/105cmr500.pdf>

### **Do I need a License or Permit for making food in my Residential Kitchen to sell at a bake sale?**

If the Residential Kitchen is preparing food for sale or service at a function such as a religious or charitable organization's bake sale, no permit is required as long as:

- The food that is not time/temperature control for safety; and
- 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.

Additionally, the school, church or other location that distributes or sells the food that is made in the Residential Kitchen for a charitable purpose, such as the site of the school bake sale, does not require a permit. M.G.L. c. 94 §328; [105 CMR 590.001(C); FC 1-201.10(B)], 105 CMR 500.015(A)(2).

### **Do I Need a Permit to Donate Food that I make in my Residential Kitchen to a Charity?**

A Residential Kitchen preparing food for distribution to a charitable facility does not require a permit, as long as that facility is a non-profit corporation that distributes the food for free or only charges an amount sufficient to cover the cost of handling the food. M.G.L. c. 94, §328. (Note: No permit is required even if the Residential Kitchen is preparing foods that pose a food safety risk.) [105 CMR 590.001 (C); FC 1-201.10 (B)], 105 CMR 500.015 (A)(2).



For Any Questions, please contact your Local Board of Health or the Massachusetts Department of Public Health, Bureau for Environmental Health's Food Protection Program at 617-983-6712 | Fax: 617-983-6770 | TTY: 617-624-5286 | Email: [FPPDPH@state.ma.us](mailto:FPPDPH@state.ma.us)

If you would like a copy of the state regulations or additional information concerning the retail food code, please visit: [mass.gov/lists/retail-food](http://mass.gov/lists/retail-food)

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