

FOOD SAFETY
State and Federal Standards and Regulations

Massachusetts

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MASSACHUSETTS

Definitions¹²²⁰

- ! “Ready-to-eat food” means a restaurant style food offered or exposed for sale in restaurants, supermarkets or similar food service establishments, that is ready for consumption, though not necessarily on the premises where sold. It does not include luncheon products such as meat, poultry or cheese, when sold separately.
- ! “Article of food” includes fresh meat, fresh meat products except in process of manufacture, fresh food fish, poultry, eggs and butter.
- ! “Cold storage” means the storage of articles of food at or below a temperature of forty-five degrees Fahrenheit for a period of thirty days or more.
- ! “Commissioner” refers to the commissioner of food and agriculture.
- ! “Food” includes all articles, whether simple, mixed or compound, used for food or drink, confectionery or condiment, by man or animal.
- ! “Label” means a display of written, printed or graphic matter upon the container of any article.
- ! “Oleomargarine” includes butterine, margarine, and imitation butter not made exclusively and wholly of milk or cream, or containing fats, oils or grease not produced from milk or cream.
- ! “Sausage” refers to meat from meat cattle, swine, veal, sheep, poultry, or a mixture of such meats, either fresh, salted, pickled or smoked, with or without added salt, spices, cereal and with or without the addition of edible fats, blood and sugar, or subsequent

¹²²⁰ MASS. GEN LAWS ANN. ch. 94 § 1 (West 1985 & Supp. 1997).

smoking.

Adulteration and Misbranding

Food is deemed to be adulterated:

- (1) if it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated if the quantity of such substance in or on such article does not ordinarily render it injurious to health;
- (2) if it bears or contains, by reason of administration of any substance to the livestock or poultry or otherwise, any added poisonous or added deleterious substance;
- (3) if it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug and Cosmetic Act;
- (4) if it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug and Cosmetic Act; provided that an article not otherwise deemed adulterated shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the department;
- (5) if it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthy, unwholesome or otherwise unfit for food;
- (6) if it has been prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered

injurious to health;

- (7) if it is, in whole or in part, the product of an animal, including poultry, which has died otherwise than by slaughtering;
- (8) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;
- (9) if it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug and Cosmetic Act;
- (10) if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is;
- (11) if it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance; or
- (12) if it falls below the standard of purity, quality or strength which it purports or is represented to possess.¹²²¹

Misbranded

Food is misbranded:

- (1) if its labeling is false or misleading in any particular;

¹²²¹ § 186.

- (2) if it is offered for sale under the name of another food;
- (3) if it is in imitation or semblance of any other food; provided that this does not apply to an imitation of a food for which a standard of quality or identity has been adopted under the provisions of MASS. GEN LAWS ANN. c 94 § 192 nor to an imitation of any other food for which no standard has been established by law or regulation, if its label bears the word “imitation” and immediately thereafter the name of the food imitated;
- (4) if its container is so made, formed, or filled as to be misleading;
- (5) if the package containing it or its label bears any statement, design or device regarding the ingredients or the substances contained therein which is false or misleading in any particular;
- (6) if it is in package form and fails to bear a label showing (1) the name and place of business of the manufacturer, packer, or distributor; (2) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count; provided that reasonable variations may be permitted, and exemptions as to small packages may be established for food products by regulations prescribed by the department;
- (7) if any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and

use;

- (8) if it purports to be or is represented as a food for which a standard of quality has been prescribed by the department, and its quality falls below such standard, unless its label bears a statement as to its true nature;
- (9) if it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by the regulations of the department unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring and coloring, present in such food;
- (10) if it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the department and if falls below the standard of fill of container, applicable thereto, unless its label bears a statement that it falls below such standard;
- (11) if it is not subject to the provision of paragraph Nine unless its label bears (1) the common or usual name of the food in order of predominance, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the department, be designated as spices, flavorings, and colorings without naming each; provided that, to the extent that compliance with the requirements of this clause is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the

department;

- (12) if it purports to be or is represented for special dietary uses, its label bears such information concerning its vitamin, mineral and other dietary properties as the department determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses;
- (13) if it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; or
- (14) in the case of meat or meat food product or poultry or poultry products, if it fails to bear, directly thereon and on its containers, the official inspection legend and establishment number of the establishment where the product was prepared and such other information as the department may require in regulations to assure that it will not have false or misleading labeling.¹²²²

Inspection and Sale of Food

Collection of samples may be acquired through purchase on the open market.¹²²³ Samples are examined to determine whether they are adulterated or misbranded. If it appears that they are misbranded or adulterated, the Commissioner may give reasonable notice to the party from whom the sample was received.¹²²⁴ When the Commissioner finds or has probable cause to believe that food is adulterated or misbranded, he shall affix a tag or other appropriate marking to such food to warn all persons not to remove or dispose of the article by sale or otherwise until

¹²²² § 187.

¹²²³ § 188.

¹²²⁴ § 189.

permission is granted by the Commissioner.¹²²⁵ Violations are subject to monetary fine, imprisonment, or both.¹²²⁶

Milk

Any person selling milk which does not conform to standards adopted will be punished by a fine of not more than \$50.00 for a first offense.¹²²⁷ Milk cannot be sold by a dairy farm unless that farm has been issued a certificate of registration by the Commissioner.¹²²⁸ If the available fresh milk from registered dairy farms does not meet consumers needs, the Commissioner has authority to approve temporary receipt of milk from unregistered dairy farms.¹²²⁹ All dealers of milk must be registered as dealers with the Commissioner.¹²³⁰ Cities and towns are permitted to establish boards of health to amend or repeal rules and regulations for the handling and sale of milk within their respective jurisdictions.¹²³¹

Milk plants, receiving stations, and pasteurization plants are subject to inspection by the Commissioner.¹²³² Any person found selling, delivering, or exchanging milk from a milk plant, receiving station or pasteurization plant which has not been inspected and approved will be

¹²²⁵ § 189A.

¹²²⁶ § 190.

¹²²⁷ § 13D.

¹²²⁸ § 16A.

¹²²⁹ § 16H.

¹²³⁰ § 16F.

¹²³¹ § 16J.

¹²³² § 16K.

punished by a fine of not less than \$500 nor more than \$1000 for a first offense.¹²³³

It is a punishable offense to, for the purpose of sale or exchange, add any fat or oil other than milk fat to milk, cream or skimmed milk so that the resulting product is in imitation or semblance of milk, cream or skimmed milk.¹²³⁴ Anyone selling milk not conforming to the Massachusetts standard will be punished through monetary fines.¹²³⁵

The board of health of cities and towns with populations in excess of ten thousand may appoint milk inspectors.¹²³⁶ Inspectors have authority to enter each place where milk is produced, stored or kept for sale and take samples therefrom.¹²³⁷ Producers of milk are not liable to prosecution for the production of below standard milk unless the milk is taken upon his premises or while in his possession or under his control by an inspector of milk, and a sealed sample was given to the producer upon demand. Producers of milk are also not liable to prosecution for the production of below standard milk if they bring the milk to the legal standard for milk solids and milk fat within twenty days after written notice that it is below standard. After twenty days an inspector may take a second sample. If that sample is found to be below the legal standard for milk solids and milk fat, prosecution may follow.¹²³⁸ Inspectors who willfully connive with inspections are subject to monetary fines.¹²³⁹ Anyone making or using imitation or counterfeit

¹²³³ § 16L.

¹²³⁴ § 17A.

¹²³⁵ § 20.

¹²³⁶ § 32, 33.

¹²³⁷ § 35.

¹²³⁸ § 37.

¹²³⁹ § 38.

inspection seals on milk is subject to monetary fines.¹²⁴⁰

Milk dealers must use clean vessels for the containment of milk. Each vessel must bear a label containing his own name or the business name.¹²⁴¹ Anyone allowing a vessel used as a container for milk intended for sale to contain offal, swill, kerosene, vegetable matter, skimmed milk, buttermilk, cream, or food products is subject to a monetary fine.¹²⁴²

Pasteurization establishments must be licensed by the board of health of the town where the establishment is to be located.¹²⁴³ Pasteurization plants are the only authorized entity for blending milk and cream for sale. Anyone blending milk and cream for sale who is not a licensed pasteurization plant is subject to monetary fine.¹²⁴⁴

Butter, Cheese, and Lard

Anyone intending to sell oleomargarine must stamp, label or mark the word “oleomargarine,” “margarine,” or “butterine” on the top, side and bottom of the container.¹²⁴⁵ Anyone intending to sell imitation cheese must provide that the words “imitation cheese” are stamped, labeled or marked on the top and side of each package containing the imitation cheese.¹²⁴⁶ Anyone selling oleomargarine or imitation cheese without the required labels or with misleading labels which include the word “dairy” or “butter” or “creamery” is subject to a

¹²⁴⁰ § 39.

¹²⁴¹ § 45.

¹²⁴² § 48.

¹²⁴³ § 48A.

¹²⁴⁴ § 48D.

¹²⁴⁵ § 49.

¹²⁴⁶ § 50.

monetary fine.¹²⁴⁷

Hotels, restaurants or boarding houses which furnish oleomargarine to guests without notifying those guests that the product is not butter are subject to monetary fines.¹²⁴⁸

Fish

! “Canned lobster meat or crab meat” refers to lobster meat or crab meat preserved by heat processing, freezing, or refrigeration, and packed in a container impervious to contamination and so sealed that once opened it cannot be re-sealed and re-used for its original purpose.

! “Clam” refers to a marine mollusk of the species *Mya arenaria* commonly called the soft-shelled clam.

! “Fish” refers to any animal life inhabiting the ocean or its connecting waters including any crustacean or marine fish, whether free swimming or free moving, and any shellfish or sea worms, whether or not imbedded in the soil.

! “Lobster” refers to the common American lobster, of the species *Homarus americanus*.

! “Shellfish” refers to clams, conchs, mussels, oysters, periwinkles, quahaugs, razor clams or razor fish, scallops, sea clams, sea quahaugs, sea scallops and winkles.¹²⁴⁹

Food fish must be plainly marked with the date of receipt at a cold storage facility.¹²⁵⁰

Fish which have been frozen cannot be sold or represented for sale as anything other than frozen

¹²⁴⁷ § 51.

¹²⁴⁸ § 58.

¹²⁴⁹ § 77I.

¹²⁵⁰ § 77B.

fish.¹²⁵¹ Swordfish may not be imported into the state unless it is packed in ice to prevent it from becoming infected, contaminated or unwholesome.¹²⁵² Fish which was previously frozen in cold storage may not be deposited in cold storage facilities in Massachusetts for periods exceeding six months.¹²⁵³

Anyone who cooks, buys, sells, offers or exposes for sale, gives away or knowingly delivers, transports, ships, or receives for food purposes any lobster, or similar species of crustacea which is uncooked and dead, or which was cooked after it was dead is subject to monetary fine and imprisonment.¹²⁵⁴

No one may buy, sell, expose for sale, give away, deliver or have in his possession any lobster meat or crab meat after it has been taken from the shell except when canned and labeled according to statutory guidelines.¹²⁵⁵

The Commissioner, his agents or inspectors may inspect all fish offered or exposed for sale, and may enter any place where fish is stored, kept, offered or exposed for sale, and may require that such place and any equipment be kept in a sanitary condition.¹²⁵⁶

Eggs

Anyone carrying on an establishment for the breaking or canning of eggs without a

¹²⁵¹ § 77C.

¹²⁵² § 77D.

¹²⁵³ § 77E.

¹²⁵⁴ § 77G.

¹²⁵⁵ § 77H.

¹²⁵⁶ § 88D.

license is subject to a monetary fine or imprisonment or both.¹²⁵⁷ No one shall sell eggs described as “fresh” unless the shell is sound and clean; the air cell is not more than one quarter inch in depth, localized and regular in outline; the white is firm and clear; the yolk is not plainly visible; and there is no visible germ development. No more than ten percent of eggs sold at wholesale and not more than two eggs in each dozen offered at retail may vary from the specifications listed except that: the air cell may not be more than three eighths of an inch in depth and may be slightly tremulous; the yolk may be plainly visible and mobile; the white may be reasonably firm, and germ development may be slightly visible. No one shall sell eggs which have been preserved or protected by treating the shells unless the container is plainly marked as “shell-treated” or shell-protected”. Violations are subject to monetary fine.¹²⁵⁸

Broken eggs packed in cans, if not intended for food, must be denatured when deposited in cold storage and must be plainly marked to indicate that they are not to be sold for food.¹²⁵⁹ No one shall sell eggs which are wholly or partly decayed or decomposed, eggs in the fluid state, or frozen masses of broken eggs, if the mass contains eggs wholly or partly decayed or decomposed. Violations are subject to monetary fine or imprisonment or both.¹²⁶⁰

Meats, Poultry and Fish

Slaughter Houses

! “Broker” refers to any person engaged in the business of buying or selling livestock

¹²⁵⁷ § 90A.

¹²⁵⁸ *Id.*

¹²⁵⁹ § 92.

¹²⁶⁰ § 92A.

products or poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person.

! “Capable of use as human food” refers to any livestock or poultry carcass unless it is denatured to deter its use as human food.

! “Livestock” refers to any cattle, sheep, swine, goats, horses, mules, or other equines, whether live or dead.

! “Livestock product” refers to any carcass, part thereof, meat or meat food product of any livestock.

! “Meat food product” refers to any product capable of use as food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats.

! “Poultry” refers to any domesticated bird, whether live or dead.

! “Poultry product” refers to any poultry carcass or part thereof.

! “Prepared” or “processed” refers to slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed in any way.

! “Renderer” refers to any person engaged in the business of rendering livestock or poultry carcasses.¹²⁶¹

The Department of Health supervises establishments engaged in the business of slaughtering livestock or poultry.¹²⁶² Slaughter houses must be licensed by the department.¹²⁶³

¹²⁶¹ § 118.

¹²⁶² § 119

¹²⁶³ § 120.

Inspectors may inspect livestock and poultry, carcasses of slaughtered animals, and all meat and poultry offered for sale. Inspectors may enter every part of every establishment supervised by the department any time. If carcasses or products are tainted, diseased, corrupted, decomposed, unwholesome, unfit for food from any cause or otherwise adulterated or misbranded, the inspector shall seize and may destroy the meat product. Inspectors notify the Commissioner immediately of any carcasses or products seized or condemned.¹²⁶⁴

The department requires ante mortem and post mortem inspections with respect to the slaughter of livestock and poultry at all official establishments in Massachusetts. The department also requires the identification of livestock and poultry for inspection purposes, and the marking and labeling of livestock products or poultry products to identify whether those products were found to be adulterated. The department requires investigations of the sanitary conditions of all official establishments and prescribes regulations relating to sanitation for all official establishments.¹²⁶⁵

No livestock or poultry may be slaughtered or prepared, if capable of use as human food, except in compliance with Massachusetts statutes and regulations. No adulterated or misbranded articles capable of use as human food may be sold, transported, or received for transportation unless they have been inspected and passed. No one may buy, sell, or transport any slaughtered poultry from which the blood, feathers, feet, head, or viscera have not been removed. No one may buy, sell or transport any livestock products or poultry products which are not intended for

¹²⁶⁴ § 124.

¹²⁶⁵ § 125.

use as human food unless they are denatured.¹²⁶⁶

All dressed poultry, including chickens, fowl, ducks, geese, pheasants and turkeys, slaughtered outside Massachusetts shall, unless it has been inspected for wholesomeness by the United States Department of Agriculture, be deemed unfit for food, and shall not be sold or offered for sale.¹²⁶⁷

Slaughtering by any method which shall cause injury or pain, or bleeding or slaughtering except by a humane method is prohibited.¹²⁶⁸ Violators are subject to monetary fine, imprisonment or both.¹²⁶⁹ Ritual slaughter in order to protect freedom of religion is not prohibited.¹²⁷⁰

Sausage

Sausage is deemed adulterated if it contains any cereal or vegetable flour in excess of two percent. Adulterated sausage includes that which contains any coloring matter, or any substance injurious or deleterious to health; water in excess of an amount sufficient to make the product palatable; organs of the thoracic and abdominal cavities except hearts, tripe and liver; and any diseased, contaminated, filthy or decomposed substance.¹²⁷¹ No one may manufacture, sell, or offer for sale any adulterated sausage. Violations are subject to monetary fine.¹²⁷²

¹²⁶⁶ § 126.

¹²⁶⁷ § 139B.

¹²⁶⁸ § 139D.

¹²⁶⁹ § 139F.

¹²⁷⁰ § 139G.

¹²⁷¹ § 142.

¹²⁷² § 143.

Inspection and Sale of Meat

Local boards of health may inspect carcasses of all slaughtered animals and all meat, fish, vegetables, produce, fruit or provisions of any kind found in their town, and all veal found or offered for sale. Local boards also make and enforce reasonable rules as to the conditions under which articles of food may be kept or exposed for sale. If carcasses are found tainted, diseased, corrupted, decayed, unwholesome or unfit for food from any cause, the board shall seize and destroy or dispose of otherwise than for food.¹²⁷³ Any one violating any rule or regulation of a local board of health is subject to a monetary fine.¹²⁷⁴

Anyone who sells or offers for sale for food any diseased animal or product thereof or any tainted, diseased, corrupt, decayed or unwholesome carcass, meat, vegetable, produce, fruit or provisions of any kind, except when packed in such a container that upon reasonable inspection the condition of the contents thereof cannot be ascertained, without making the condition of the thing sold or offered for sale fully known to the buyer is subject to a monetary fine, imprisonment or both.¹²⁷⁵

Anyone who kills a calf when less than two weeks old with the intent to sell for food is subject to monetary fine, imprisonment or both.¹²⁷⁶

Anyone selling or transporting poultry must be licensed by the Commissioner of food and

¹²⁷³ § 146.

¹²⁷⁴ § 148.

¹²⁷⁵ § 150.

¹²⁷⁶ § 151.

agriculture.¹²⁷⁷ Violators are subject to monetary fines, imprisonment or both.¹²⁷⁸ Anyone who knowingly sells or exposes for sale dead poultry, before it has been properly dressed by the removal of the crop and entrails if they contain food, is subject to a monetary fine.¹²⁷⁹

Anyone who sells or offers for sale any meat or meat product to which has been added any sulphur dioxide or compound thereof, except beef sausage made of fresh beef and enclosed in casings, which contain sulphur dioxide or compound thereof not in excess of 1-10 of 1%, when calculated as anhydrous sodium sulphite, if contained in a package which has conspicuously labeled on the outside as follows: contains not more than 1-10 of 1% sodium sulphite” is subject to monetary fines.¹²⁸⁰

Donation of Food

No person who donates food, including open-dated food whose date has passed, to a nonprofit corporation for distribution or serving by the nonprofit corporation without charge or at a charge sufficient to only cover the cost of handling food, shall be liable for civil damages for any injury arising out of the condition of the food; provided, that at the time of donation such food is not misbranded and is not adulterated and has not been manufactured, processed, prepared, handled or stored in violation of applicable regulations, and that such injury is not the result of gross negligence, recklessness or intentional misconduct of the donor.

No nonprofit corporation shall distribute or serve food from any establishment unless that

¹²⁷⁷ § 152A.

¹²⁷⁸ § 152C.

¹²⁷⁹ § 153.

¹²⁸⁰ § 153A.

corporation has been inspected and is in compliance with all inspection or permit requirements of the department and board of health in the city or town in which food is to be distributed or served.

No nonprofit corporation which distributes or serves food without charge or at a charge sufficient only to cover the cost of handling such food, including open-dated food whose date has passed, shall be liable for civil damages for any injury arising out of the condition of the food; provided, that at the time of distribution such food is not misbranded and is not adulterated and has not been manufactured, processed, prepared, handled or stored in violation of applicable regulations and that such injury is not the result of gross negligence, recklessness or intentional misconduct of the donor.¹²⁸¹

¹²⁸¹ § 328.