

QUESTIONS AND ANSWERS

Health Protection and Promotion Act

R.S.O. 1990, CHAPTER H.7

O. Reg. 493/17: Food Premises

Ministry of Health and Long-Term Care

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Ontario Regulation 493/17 (Food Premises)

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This is a compilation of questions and answers on Ontario Regulation 493/17 (Food Premises) under the Health Protection and Promotion Act (HPPA). It is a living document created by the Ministry of Health and Long- Term Care and will be updated periodically. It is not intended to be comprehensive. It is also not intended to provide any legal advice. If you have any questions about the application of these regulations, you should consult with a lawyer.

O. Reg. 493/17: FOOD PREMISES

INTERPRETATION AND APPLICATION

Q: Why was the definition for food premises revised in the Health Protection and Promotion Act (HPPA)?

A: The previous definition of “food premise” was revised to ensure that businesses preparing food for commercial purposes in a home kitchen (private residence) were subject to inspection as a “food premises” under the *Health Protection and Promotion Act* and the *Food Premises Regulation 493/17*. The new definition maintains the exclusion for the dwelling part of a private residence.

New definition under the HPPA:

- “food premise” means a premises where food or milk is manufactured, processed, prepared, stored, handled, displayed, distributed, transported, sold or offered for sale, but does not include a room actually used as a dwelling in a private residence; (“dépôt d’aliments”)

A change to the definition of “food premise” was included in the recent legislative amendments to the HPPA, which came into effect on May 1st, 2018. That definition previously stated (prior to May 1st, 2018):

“‘food premise’ means a premises where food or milk is manufactured, processed, prepared, stored, handled, displayed, distributed, transported, sold or offered for sale, but *does not include a private residence.*”

It now reads as follows:

“‘food premise’ means a premises where food or milk is manufactured, processed, prepared, stored, handled, displayed, distributed, transported, sold or offered for sale, *but does not include a room actually used as a dwelling in a private residence.*”

This change was made to clarify that food premise businesses being operated in a private residence are subject to inspection by public health inspectors (PHI). Only rooms actually being used as a dwelling cannot be inspected as a food premise.

Q: Under the HPPA, can a private residence be a food premise?

A: Yes, the definition of food premise has been amended and allows for a home-based food premise in a private residence. A PHI has the legal authority to inspect a private

home where there is an enterprise that fits the definition of a food premise.

Q: What is the definition of a dwelling? Is it the same as the definition of a dwelling unit in the HPPA? (“real property used or designed for use as a home or as a place in which one or more persons may sleep.”).

A: The HPPA does not include a definition for “room actually used as a dwelling”.

Q: May a kitchen that is used for dwelling purposes also be used for commercial food preparation purposes at times?

A: A kitchen in a private residence that is used for commercial food preparation, would be considered to be a food premises during those times that it is used for commercial purposes. PHIs are encouraged to work collaboratively with food premise owners to ensure safe food handling practices are conducted in accordance with the *Food Premises Regulation 493/17*.

Q: Does food premises in a private residence require a separate entrance?

A: No, food premises in a private residence do not require a separate entrance. All food premises are subject to inspection by a PHI. Only rooms actually being used as a dwelling cannot be inspected as a food premise.

Q: Are food premises in a private residence required to comply with all of the provisions in the *Food Premises Regulation* including dishwashing, adequate number of hand wash basins, and disclosure of inspection results?

A: Yes, food premises in a private residence are required to comply with the *Food Premises Regulation 493/17*, as it applies to them. PHIs are encouraged to work collaboratively with new food premise owners and operators early on and if possible to ensure new food premise owners understand the requirements of the regulation.

Q: Are public health inspectors to enforce the Ontario Building Code (OBC) requirements when conducting inspections?

A: No, unless those OBC requirements are referenced in a regulation which the PHI has the authority to enforce (under the HPPA). Public health units are encouraged to communicate with municipal building departments if they have questions about any of the streamlined requirements, or if for example, during an inspection the PHI believes an operator may have altered their facility in a manner that does not comply with the *Building Code Act* or the *OBC*.

Q: Why have some OBC requirements been removed from the modernized regulations, and some have remained in the regulations?

A: Generally, the modernized regulations have removed some references to *OBC* requirements if they contradicted the *OBC*, or were redundant and held no public health benefit.

Q: Should vendors of non-exempted farmers markets have the inspection results of inspections disclosed?

A: Yes. Operators of all food premises that are subject to the Food Premises Regulation ensure that the results of any inspections conducted by a public health inspector are posted in accordance with the inspector's request.

MOBILE PREMISES

Q: How does the mobile premises section of the modernized regulation apply to street food vending carts? Are street food vendor carts now permitted to sell hamburgers that have not been precooked?

A: A street food vending cart falls under the definition of a mobile premises. The definition of a mobile food premise means *a trailer, cart, or vehicle-mounted food premise or other itinerant food premise which is capable of being readily moved and in which food is prepared and offered for sale to the public*. Mobile premises may serve hazardous foods that are prepared in a safe manner and follow the requirements set out in *Reg. 493/17 (Food Premises)*.

Q: For mobile food premises that are not self-contained (such as a cart), how it is possible to prepare food “within” a cart by an operator who is working “within” the premise?

A: “mobile food premise” is defined as being a trailer, cart or vehicle-mounted food premise or other itinerant food premise which is capable of being readily moved and in which food is prepared and offered for sale to the public. Thus food prepared and served is prepared within the mobile food premise whether that premise is a truck or a cart.

OPERATION AND MAINTENANCE

Q: The regulation requires the operator of a food premise to maintain records of all pest control measures that are undertaken in the premise and shall retain the records for at least one year after they are made. Is using a pest control company a requirement to be in compliance?

A: The addition of pest control requirements are to ensure a food premise is protected from pest activity and to adequately address pest activity issues. This requirement also ensures that operators are responsible for monitoring and control measures such as integrated pest management. Whether an operator has a contract with a pest control company or monitors pests on their own, records are to be maintained for at least one year after they are made.

Q: What is the definition of an adequate number of hand washing stations?

A: This is an outcome-based requirement and it does not prescribe a definition of an adequate number of hand washing stations. Food premise owners/ operators are encouraged to work with PHIs on a case-by-case basis to ensure food handlers have convenient access to hand washing stations and to wash hands as often as necessary to prevent the contamination of food or food areas.

Q: How can I identify a service animal?

A: The *Food Premises Regulation 493/17* requires that service animals as described in subsection 80.45 (4) of Ontario Regulation 191/11 (Integrated Accessibility Standards) align with regulations under the *Accessibility for Ontarians with Disabilities Act, 2005 (AODA)*. This means that those with a service animal as defined in the AODA, are permitted to bring the service animal into the food premise.

It is important to note that customers and service animals are only permitted to be in areas of the food premise where food is served, sold or offered for sale, and are not permitted to enter areas where food handling is conducted to ensure the food items are protected from potential contamination.

Under the [Customer Service Standards in the Integrated Accessibility Standards Regulation 429/07](#), an animal is considered a service animal as long as it isn't excluded by another law (e.g. municipal bylaws that exclude exotic animals or certain breeds) and satisfies one of two requirements, either

- a) the animal can be readily identified as one that is being used by the person for reasons relating to the person's disability, as a result of visual indicators such as the vest or harness worn by the animal; or

- b) the person provides documentation from one of the following regulated health professionals confirming that the person requires the animal for reasons relating to the disability (the regulation includes a list of nine colleges)

Q: What are the notification requirements for food premise operators prior to opening a food service premise?

A: Subsection 16(2) of the HPPA provides that every person who intends to commence to operate a food premise shall give notice of the person's intention to the medical officer of health of the health unit in which the food premise will be located. Section 5 of the Food Premises Regulation provides further detail as to what has to be included in the notice (his or her name, contact information and the location of the food premise in the notice).

Q: Where are inspection results to be posted at a food service premise?

A: Food premise operators must disclose inspection results by posting where their public health inspector requests the inspection results be posted. Clearly disclosing results to consumers provides transparency, awareness, and ensures consumers can make informed choices.

Many public health units have some variation of a disclosure program in place. While approaches to on-site posting requirements, and level of detail may vary, they provide consumers with information to help make informed choices about where they dine.

The specifics of what will be posted at the food premise will be at the request of the PHI, based on what currently exists in their jurisdiction.

Q: Is sleeping permitted in the storage area of a food premise?

A: Section 7(1)(b) of the *Food Premises Regulation 493/17* requires that:

(b)no room where food is prepared, processed, packaged, served, transported, manufactured, handled, sold, offered for sale or displayed is used for sleeping purposes;

Therefore, if a storage room is where food is prepared, processed, packaged, served, transported, manufactured, handled, sold, offered for sale or displayed it cannot be used for sleeping purposes.

Q: Do floors and floor coverings in storage areas need to be tight, smooth, and non-absorbent?

A: The regulation requires in section 7(1)(c) that:

- (c) *the floor or floor coverings are tight, smooth and non-absorbent in rooms where,*
 - (i) *food is prepared, processed, packaged, served, transported, manufactured, handled, sold, offered for sale or displayed,*
 - (ii) *utensils are cleaned, or*
 - (iii) *washing fixtures and toilet fixtures are located;*

Therefore, if food is prepared, processed, packaged, served, transported, manufactured, handled, sold, offered for sale or displayed, utensils are cleaned, or washing fixtures and toilet fixtures are located it is required that the floor or floor coverings are tight, smooth and non-absorbent.

Q: What are the requirements for equipment, utensils and multi-service articles that are in direct or indirect contact with food or food residuals?

A: The regulation requires that equipment, utensils that are in direct contact with food are corrosion-resistant and non-toxic so that they do not contaminate the food items. These items must also be free from cracks, crevices and open seams so that they can be thoroughly cleaned and sanitized to prevent the spread of bacteria.

Q: What are the requirements for preventing and controlling pests?

A: To prevent and control pests, the *Food Premises Regulation 493/17* requires that every food premise shall be protected against the entry of pests and kept free of conditions that lead to the harbouring or breeding of pests.

Q: When and where are live birds or animals permitted in a food premise?

A: Live birds and animals are not to be permitted in a food premise, unless they meet one of the exemptions. The exemptions to this requirement are for service animals, live aquatic species stored in sanitary tanks, and live birds or animals that are offered for sale on food premises other than food service premises (if the MOH has given written approval in writing for the keeping of the birds or animals on the premises).

Q: What are the requirements for vending machines?

A: “Equipment” is defined in the Food Premises regulation as meaning any appliance, apparatus or device that is or may be used in the operation or maintenance of a food premise, including vending machines, but does not include utensils or multi-service articles. As such any provision in the Food Premises Regulation that is applicable to equipment and relevant to the vending machine must be complied with (e.g., must be of sound and tight construction and kept in good repair). Furthermore section 17 of the Regulation provides for certain requirements that are specific to vending machines.

CLEANING AND SANITIZING

Q: Why was the requirement to double the concentration of sanitizer when sanitizing large equipment removed from the regulation?

A: It was removed based on best evidence to follow the manufacturers’ instructions for use in a food premises.

Q: What was the rationale for allowing the use of alternative sanitizing agents for utensils?

A: *Reg. 493/17 (Food Premises)* has been modernized to allow for the use of alternative sanitizers if they are approved by the MOH, Health Canada or the Canadian Food Inspection Agency. This offers industry a wider range of options for sanitizers, as long as they are used for the intended purpose and in accordance with manufacturer’s instructions. They are also required to have a test reagent for determining the concentration of the sanitizer residual.

Q: How can it be determined that an NSF international certified dishwasher is in compliance with the regulation?

A: The exemption applies to a mechanical dishwasher that bears a certification from NSF International that certifies it for commercial use. If the mechanical dishwasher does not bear a certification from NSF International then the mechanical dishwasher would be required to meet the prescribed mechanical dishwashing requirements of section 20 (1) of *Reg. 493/17*:

Mechanical dishwashers

- 20.** (1) Mechanical dishwashers must be,
(a) *so constructed, designed and maintained that,*

(i) the wash water is sufficiently clean at all times to clean the dishes and is maintained at a temperature not lower than 60 Celsius or higher than 71°Celsius, and

(ii) the sanitizing rinse is,

(A) water that is maintained at a temperature not lower than 82° Celsius and is applied for a minimum of 10 seconds in each sanitizing cycle, or a chemical solution described in clause 19 (b), (c), (d) or (e); and

(B) provided with thermometers that show wash and rinse temperatures and that are so located as to be easily read.

Q: What are the differences between utensils and multi-service articles?

A. “Utensil” includes kitchenware, tableware, glasses, cutlery or other similar items used in the handling, preparing, processing, packaging, displaying, serving, dispensing, storing, containing or consuming of food. “Multi-service article” is both broader in scope, as it includes containers, and narrower, in that it only includes containers and utensils that are intended for repeated use in the service or sale of food

FOOD HANDLING

Q: The regulation only references food handler training. Does this mean that food handling certificates are not required?

A: *Reg. 493/17* requires at least one food handler or supervisor has completed food handler training. Upon completion of a food handler training course, a certificate is awarded. PHIs may require that the certificate be available for inspection.

The provincial food handler training plan in accordance with the *Operational Approaches for Food Safety Guideline, 2018* includes minimum requirements for public health unit program delivery. A component of the food handler training program requirements includes a 70% pass on the examination and issuance of a certificate to the successful candidates.

The PHI may wish to recommend to the food premises operator to have more than one/multiple trained/certified food handlers and/or supervisors on site at the food service premise to ensure adequate coverage.

Q: What is meant by a food service premise?

A: Definition of a food service premise: *any food premise where meals or meal portions are prepared for immediate consumption or sold or served in a form that will permit immediate consumption on the premises or elsewhere.* Examples include: restaurants,

food take-out, or convenience stores that serve food items that include a component of food handling such as serving hot foods that can be eaten immediately.

Q: What is a “potentially hazardous food”?

A: Potentially hazardous foods are defined as *foods in a form or state that are capable of supporting the growth of infectious or toxigenic micro-organisms and which require time and temperature control to limit such growth.*

Q: With the new requirement for food handlers training in the regulation, will food service operators have sufficient access to standardized training?

A: The MOHLTC has developed the Provincial Food Handler Training Plan under the *Operational Approaches for Food Safety Guideline, 2018* which consists of a number of mechanisms to increase consistency in food handler training across the province, including:

- A Provincial Food Handler Training Manual
- Standardized Food Handler Training Program Requirements
- Standardized Food Handler Training Examinations
- A Provincial Food Handler Certification Card

PHUs are to ensure the availability of food handler training in their jurisdiction.

Q: Is a trained food handler required to be onsite at a food service premise that mainly uses volunteers such as a school nutrition program?

A: A food service premise is defined in the Food Premises Regulation as: *any food premise where meals or meal portions are prepared for immediate consumption or sold or served in a form that will permit immediate consumption on the premises or elsewhere.* Therefore, if meals or meal portions are prepared for immediate consumption at a school nutrition program or sold or served in a form that will permit immediate consumption on the premises or elsewhere than a trained food handler is required, as the regulation requires that every operator of a food service premise must ensure there is at least one food handler or supervisor on the premise who has completed food handler training during every hour in which the premise is operating.

Q: Why is it important that certain food products or ingredients are supplied to food premises from facilities that are regulated by other provincial or federal legislation? How will an operator demonstrate compliance with this requirement?

A: It is important to ensure that products or ingredients are purchased from approved and safe sources. Food premise owners and operators must obtain food products (e.g., dairy, eggs, and honey) from sources that are subject to inspection under provincial and federal legislation (Ontario Ministry of Agriculture, Food and Rural Affairs and the Canadian Food Inspection Agency).

Records must also be retained for all food items used in the food premise at least until the first anniversary of the purchase. This requirement will aid in verifying product traceability in the event of a foodborne illness outbreak.

Q: Is a special event considered a food premise and are they required to have a certified food handler? Do special events require the posting of disclosure signs?

A: A special event is required to follow Reg. 493/17 (Food Premises) unless it falls under the exemption under sections 2. (2) and 2. (3) Stating:

2. (2) *the regulation applies to all food premises except,*
- a) *Boarding houses that provide meals to fewer than 10 boarders;*
 - b) *Subject to subsection (3), food premises owned, operated or leased by religious organizations, service clubs or fraternal organizations where the religious organization, service club or fraternal organization,*
 - (i) *Prepares and serves meals for special events, or*
 - (ii) *Conducts bake sales; and*
 - c) *Farmers' market food vendors.*

2. (3) *If a religious organization, service club or fraternal organization prepares and serves a meal for a special event to which the general public is invited that includes potentially hazardous food originating from a food premise that is not inspected under the Act, the exemption in clause (2) (b) applies only if the following conditions are met:*

1. Patrons attending the special event must be notified in writing as to whether or not the food premise has been inspected in accordance with this Regulation. The notice shall be posted in a conspicuous place at the entrance to the food premise at which the special event meal is held.

2. The operator must keep a list of all persons who donate potentially hazardous food for the special event meal and must provide a copy of that list to a public

health inspector on request. The list must contain each donor's name, address and telephone number, in full.

If the special event is exempt and falls under section 2(3), the operator must ensure that a notice is posted notifying patrons that the food premise has or has not been inspected in accordance with *Reg. 493/17 (Food Premises)*. If the special event vendor is not exempt from the above application, they are required to follow the requirements in the *Reg. 493/17 (Food Premises)* including food handler training and posting of disclosure signage. It is also advised to refer to the *Operational Approaches for Food Safety Guideline, 2018* for more information on special events.

Q. Why were the specific internal cooking temperatures of certain types of hazardous food products removed from the regulation?

A. Internal cooking temperatures have been removed and replaced with an outcome-based requirement to ensure food is processed in a manner that is safe to eat.

This allows food premises owners and operators' flexibility to prepare food items such as sous-vide and steak tartar that had been previously prohibited.

Q: How do operators protect “other food storage” from contamination?

A: This requirement in section 31 of *Reg. 493/17 (Food Premises)* is meant to be outcome focused to allow for context/ site specific assessment of potential food contamination to ensure food is kept safe. It is important for operators to work with a PHI to determine the best method to protect food from contamination, or possible contamination, and to ensure that storage equipment utilized is maintained in a clean and sanitary manner.

COMMODITIES

Q: Do eggs need to be graded?

A: Yes, Section 47. (1) of *Reg. 493/17 (Food Premises)* states, no operator of a food premise shall store, handle, serve, process, prepare, display, distribute, transport, sell or offer for sale ungraded or Grade “C” eggs.

Q: Have changes been made to address eggs used in food premises other than those from domestic hens?

A: Yes, eggs from animals other than the domestic hen are permitted provided they are in clean condition, with no visible cracks, at the time they enter the food premise and are transported and stored in a cold-holding temperature of 4°Celsius or less.

Q: Can a food premises operator serve unpasteurized milk provided it is pasteurized on site?

A: Under the *Health Protection and Promotion Act*, it is illegal to sell, deliver or distribute milk or a milk product that has not been pasteurized in a plant licensed under the *Milk Act, 1990*.

Pasteurization requirements in *Reg. 493/17 (Food Premises)* have been updated to reflect time and temperatures appropriate for sheep milk and milk from animals other than cows to reflect industry best practices and scientific evidence.

Q: In the absence of a regulatory requirement for specific internal cooking temperatures, can food premises now serve undercooked hamburger?

A: Operators and PHIs should determine if food is processed in a safe manner. A HACCP based approach is recommended under the *Food Safety Protocol, 2018*. In addition, the minimum internal cooking temperatures, as a best practice, are expected to be followed as undercooking and inadequate temperatures can lead to foodborne illness.

Q: Is game meat obtained from hunting permitted to be donated to a food bank?

A: It should be noted that food premises, including food banks, in Ontario are prohibited from serving uninspected wild game meat under Section 38 of *O. Reg. 493/17 (Food Premises)* as it may pose health risks (i.e., cross contamination) to the public when the meat is not processed in a regulated facility.

The exemptions to permit wild game meat to be served are under certain circumstances and in certain locations. A food premise may have game animal meat obtained through hunting on the premises that is handled, prepared and stored for the purpose of serving it at a wild game dinner or a wild game event if certain conditions are met.