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## **Food Protection Program Policies, Procedures and Guidelines**

**Issue: Food Allergy Awareness Act FAQs**

**No: RF-10**

### **Background**

According to the Food Allergy and Anaphylaxis Network (FAAN), approximately 12 million persons in the United States (4% of the population) have food allergies. Food allergy health impacts can range from mild to life threatening (anaphylaxis). Accidental ingestion of food allergens results in 50-125,000 annual emergency room visits. Some of these allergic reactions are fatal.

Preventing the accidental ingestion of food allergens is a shared responsibility between the consumer with a serious food allergy and the food establishment operator. With the increasing numbers of persons with life threatening food allergies and more and more people depending on restaurants for meals, food establishments play a vital role in preparing food that is not only free from physical, microbiological and chemical hazards but that is honestly presented. Clear and accurate ingredient information and proper handling of food and equipment will help consumers with serious food allergies make better choices about whether or not to eat in an establishment and/or what to order.

### **What is the Food Allergy Awareness Act?**

The Act Relative to Food Allergy Awareness in Restaurants (FAAA) was signed into law by Governor Patrick in January 2009. The purpose of the Act is to minimize risk of illness and death due to accidental ingestion of food allergens by increasing the restaurant industry and consumer awareness of regulations and best practices with respect to major food allergens. The Act requires that certain food establishments comply with regulations developed by the MDPH that will include provisions for the prominent display of a food allergy awareness poster in the staff area of food establishments, a notice on menus for consumers with food allergies, and additional food allergy training for persons in charge, who are certified in food safety.

The FAAA also requires the Department, in cooperation with the Massachusetts Restaurant Association (MRA) and the Food Allergy & Anaphylaxis Network (FAAN), to develop a program for restaurants to be designated as "Food Allergy Friendly" (FAF) and to maintain a listing of restaurants receiving that designation on the Department's

website. Participation in the program will be voluntary. The Department has established a FAF taskforce to help with the development of guidelines and requirements for restaurants to receive the designation. The requirements will include, but not be limited to, maintaining on the premises and making available to the public, a master list of all the ingredients used in the preparation of each food item available for consumption. More information will be made available once the voluntary program requirements are completed.

### **Who must comply with the Act?**

Once the regulations have been finalized, food establishments that are licensed as innholders or common victuallers under MGL c. 140, section 6 will be required to comply with the Act when serving food. The majority of restaurants in Massachusetts are licensed as innholders or common victuallers.

### **Who is exempt from the Act?**

Food establishments that are not licensed as innholders or common victuallers under MGL c. 140, section 6 are exempt. Food establishments should check with their local board of health and/or town offices if they have any questions about local licensure under MGL c. 140, section 6.

### **What regulations must I follow to comply with the FAAA?**

The Act gives the Department authority to adopt regulations to carry out the law. The Department is in the process of amending 105 CMR 590.000, State Sanitary Code Chapter X: Minimum Sanitation Standards for Food Establishments, to include definitions and a section on food allergy awareness requirements under section 590.009: Special Requirements. The regulation will address the food allergy poster, menu notice, and food allergy training requirements. A public comment period on draft allergen provisions is planned for after February, 2010.

### **Who is responsible for enforcing the food allergy awareness regulations in 105 CMR 590.000?**

The Act gives the authority for enforcement of the regulations, once promulgated, to local boards of health as the primary agencies responsible for enforcing the State Sanitary Code.

### **When do the new food allergy awareness regulations go into effect?**

The food allergen poster, menu advisory and video training requirements are tentatively scheduled to go into effect July 1, 2010 after the MDPH has completed promulgation of the regulations and has finished collaborating with MRA and FAAN in the development of a training video and the creation of a statewide learning management system. More specific guidance will be provided as it is developed. Allergen workshops will be conducted for local boards of health and industry prior to the effective date of the regulations.

**Where can an approved food allergen safety poster and other guidance materials be obtained?**

Free food allergy safety guidance for industry including a food allergy awareness poster approved by the Department's Bureau of Environmental Health/Food Protection Program will be made available for downloading from any of the following web sites:

MDPH Food Protection Program

<http://mass.gov/dph/fpp>

Food Allergy & Anaphylaxis Network

<http://www.foodallergy.org/>

MA Restaurant Association

<http://www.marestaurantassoc.org/>

**Can a food establishment create its own poster?**

Once the regulations are in effect, we will encourage food establishments to use the free, down-loadable poster already developed by FAAN in cooperation with the MRA and the MDPH. An acceptable food allergy poster, if developed by a food establishment or other entity for use in Massachusetts, will need to include a list of the major food allergens, health risks of food allergies, procedures to follow when a customer states that they have a food allergy, and emergency procedures to follow if a customer has an allergic reaction to a food. In addition, food allergy posters must be pre-approved by the Department of Public Health in cooperation with the MRA and FAAN.

**What is an acceptable consumer notice on the menu?**

A clear and conspicuous notice on a printed menu will need to state: "Before placing your order, please inform your server if a person in your party has a food allergy". Alternative language is not an option. A consumer notice is not required on menu boards or at points of sale in accordance with the Act.

**What happens if a food establishment does not comply with the regulations as required?**

Failure to have a poster, menu notice, or proof of training when required will be debited by the local board of health as a critical item on the inspection report requiring corrective action within 10days. Local boards of health may use fines, and other enforcement actions available under 105 CMR 590.000 and state law to achieve compliance.

**Are there any reporting requirements to the local board of health if someone has an allergic reaction in a food establishment requiring immediate medical attention?**

The event of an accidental ingestion suggests that there may be conditions that can result in an imminent health hazard. The permit holder will be required to notify the local board of health in accordance with 590.001 (FC 8-404.11 Ceasing Operations and Reporting) to ensure that all preventive measures have been taken. Note that a food establishment does not need to cease operations if it is unaffected by the imminent health hazard in accordance with 8-404.11(B).