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TO: Local Boards of Health

FROM: Kim Foley, Acting Director
MDPH/BEH Food Protection Program

DATE: January 3, 2011

RE: **Enforcement Guidelines for Allergen Awareness Regulation**

The following guidelines for interpreting and enforcing the allergen awareness section of 105 CMR 590.000 are provided by the MDPH Food Protection Program (FPP) in accordance with 105 CMR 590.010(E). To obtain copies of any of the documents discussed in these guidelines,

- (a) Go to the FPP website at <http://www.mass.gov/dph/fpp>
- (b) Under "What's New", select the link for "Food Allergen Awareness Training and Regulation"
- (c) Under "Special Operations", look under the title "Food Allergen Awareness Training and Regulation", and select a link for information.

- (1) **Background** – In order to implement requirements of the Allergen Awareness Act, M.G.L. c. 140, § 6B, the MDPH Public Health Council voted on June 9, 2010 to amend Chapter 10 of State Sanitary Code, 105 CMR 590.000, *Minimum Sanitation Standards for Food Establishments*. The allergen awareness amendments to the Food Code are available at the FPP website discussed above.
- (2) **Poster** – Section 105 CMR 590.009(G)(1) requires food establishment to display an MDPH-approved poster in the employee work area. MDPH has approved two (2) versions of the Food Allergy & Anaphylaxis Network: the 2005 version, and the 2009 version. These posters are available on the FPP website discussed above and at <http://www.foodallergy.org/page/restaurant-poster>. If one of these two posters is on display as required, then additional posters may be displayed also. In other words, an

alternative poster may be on display, provided that an MDPH-approved poster is displayed in the employee work area as required by 105 CMR 590.009(G)(1).

- (3) **Menu Notice** – Section 105 CMR 590.009(G)(2) requires all menus and menu boards in the food establishment to display the words “Before placing your order, please inform your server if a person in your party has a food allergy”. For more detailed information on what to look for during an inspection, please refer to the Q&As sheet on the FPP website.
- (4) **Point of Service Notice** – Section 105 CMR 590.009(G)(2)(b)2 allows food establishment to utilize this option in lieu of placing a notice on a menu board. The wording which describes the size and location of the notice was taken from section 105 CMR 590.009(F), which prohibits the sale of tobacco to minors. Board of Health inspectors who are familiar with the “no sale of tobacco to minors” signs already on cash registers can compare those signs to any allergen notices which appear in order to determine if they can be “read from a distance of five feet”.
- (5) **Training Certificate** – Sections 105 CMR 590.009(G)(3) requires at least one certified food protection manager in each effected establishment to obtain a food allergen awareness training certificate by February 1, 2011. The names and contact information about vendors who provide these certificate video are available at the FPP website discussed above.
- (6) **Inspection Report** – A prototype inspection report that meets the requirements of the new amendments is available on the FPP website discussed above. Alternative forms which are consistent with this prototype may be used if approved by FPP in accordance with 105 CMR 590.013(E)(1). Please note that the only difference between this and earlier reports is the addition of the line “Allergy Awareness 590.009(G) ” in the upper right-hand corner under the title “Non-compliance with:”.
- (7) **Documenting Non-compliance** – If an establishment is not in compliance with the allergen awareness regulation, then the Board of Health inspector should check the box next to “Allergy Awareness 590.009(G) ” (see above), and record the findings in the narrative section of the inspection report in accordance with 105 CMR 590.013(E)(1). FPP believes it is reasonable for an inspector to give a food establishment 10 days or less to correct conditions of non-compliance which relate to the allergen awareness sections of the Food Code.
- (8) **Q&As** – The FPP website discussed above contains a list of questions and answers that will be updated on a regular basis. If you have a question about this regulation that you would like to add to the list, please contact FPP.