

Residential Kitchens Questions and Answers

**Massachusetts Department of Public Health
Bureau of Environmental Health
Food Protection Program**

617-983-6712
305 South Street
Jamaica Plain, MA 02130

There are an increasing number of private citizens preparing food products in their home kitchens for sale. Massachusetts allows its residents to operate home-based businesses to produce low-risk foods, such as cakes, cookies, breads, and confectioneries. Currently, the Massachusetts Department of Public Health Food Protection Program receives more than 200 inquiries per year from citizens interested in starting home-based food businesses.

Home-based food businesses are allowed within specific regulatory limitations. Retail Residential kitchen operations are restricted to sale directly to the consumer and are inspected and licensed by the local board of health. Wholesale operations may sell their products to retail stores, restaurants, etc., and are inspected and licensed by the Massachusetts Food Protection Program.

At the end of this brochure there is a listing of regulations pertaining to retail and wholesale residential kitchens, as well as information as to where to obtain copies.

The following are answers to some of the most commonly asked questions about residential kitchen operations.

What kinds of foods may be prepared in a residential kitchen?

Residential kitchens are strictly limited to the preparation of non-potentially hazardous foods (non-PHF), such as baked goods, confectioneries, jams and jellies. Non-PHF, such as cakes and cookies, which have PHF ingredients are acceptable.

What kinds of foods *may not be prepared* in a residential kitchen?

The preparation and sale of potentially hazardous foods (PHF) such as cream-filled pastries, cheesecake, custard and other foods which can support the growth of disease-causing bacteria are strictly prohibited.

In addition, perishable foods that require refrigeration, such as cut fruit and vegetables, tomato and barbecue sauce, pickled products, relishes and salad dressings are not permitted in residential kitchens.

In addition, all foods that are manufactured or packaged using processes that require state or federal control (e.g., acidification, hot fill, vacuum-packaging, etc) are prohibited. Garlic-in-oil products are not permitted.

What types of processing operations are prohibited in a residential kitchen?

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.

To evaluate the non-potentially hazardous status of a food, what type of laboratory analysis may a board of health or the Massachusetts Department of Public Health request?

For any food product, the board of health or the Massachusetts Department of Public Health may require laboratory documentation that the food has a final pH of 4.6 or below or a water activity of 0.85 or below.

When reporting results, the laboratory must reference the standardized testing procedure.

Residential kitchen operators must keep records of analysis of products on file for review.

Must a residential kitchen operator use a standard recipe for each batch of product?

Yes. Persons preparing food products must maintain a standardized recipe of the products used in the preparation of the food: listing all ingredients in order of weight. Any change in the recipe constitutes a recipe deviation, and new analysis may be required.

Are there any personnel, marketing or volume restrictions for residential kitchens?

Yes. First, only household members may be employed in the operation.

Second, the use of brokers, wholesalers, and warehouses by residential kitchen operators to store, sell, and distribute foods prepared in residential kitchens is prohibited.

Food products manufactured in Massachusetts residential kitchens may not be sold out-of-state (in interstate commerce), because the U.S. Food and Drug Administration does not recognize these foods as originating from an approved source.

Massachusetts Residential Kitchens

Regulations

Retail Sale:

- **105 CMR 590.000** *Minimum Sanitation Standards for Food Establishments, Chapter X*
- **105 CMR 520.000** *Massachusetts Labeling Regulations*

Wholesale:

- 105 CMR 500.000** *Good Manufacturing Practices*
- 105 CMR 520.000** *Massachusetts Labeling Regulations*

Unofficial copies of all regulations are available at: <http://mass.gov/dph/fpp/regs.htm>

License Applications

A residential kitchen that wholesales its product is required to obtain a *License for Food Processing and/or Distribution at Wholesale* from the Massachusetts Department of Public Health

An application for a License to Manufacture and/or Distribute Food at Wholesale is available at <http://mass.gov/dph/fpp/pdf/foodapplication.pdf>

A Guidance document, "Notice for Applicants for a License to Manufacture/Distribute Food at Wholesale from a Residential Kitchen is available at <http://www.state.ma.us/dph/fpp/wfoapp.pdf>.

To obtain copies, contact a State Bookstore:

**Massachusetts State House
Beacon Street, Room 116
Boston, MA 02213**

or telephone:

**Boston: 617-727-2834
Springfield: 413-784-1376
Fall River: 508-646-1374**

If you have questions about retail residential kitchen operations and licensing, please contact your local board of health.

If you have questions about wholesale residential kitchen operations and licensing, contact the:

**Massachusetts Department of Public Health
Center for Environmental Health
Food Protection Program
305 South Street
Jamaica Plain, MA 02130
617-983-6712.**

Persons preparing food products must maintain a standardized recipe of the products used in the preparation of the food: listing all ingredients in order of weight. Any change in the recipe constitutes a recipe deviation, and a new analysis may be required. **Are there labeling requirements for foods manufactured in a residential kitchen?**

Yes. All foods prepared in a residential kitchen must be labeled with all ingredients (in order of amount by volume), name of residential kitchen, address and/or phone number, and sell-by date, if required.

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If you have questions about **retail** residential kitchen operations, inspections, or licensing, contact your local board of health.

If you have questions about **wholesale** residential kitchen operations, or licensing, contact the:
Massachusetts Department of Public Health
Bureau of Environmental Health
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A guidance document, "Notice for Applicants

Residential Kitchens

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Department of Public Health
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Residential kitchen operators must keep records of analysis of products on file for review.

Minimum Requirements for Packaged-food Labeling

The Massachusetts Food Protection Program has prepared this guide to help you develop a food label that complies with Massachusetts and federal labeling requirements. For additional information, please refer to the resources listed on the back panel.

Foods that Require Labeling

All packaged foods must be labeled in accordance with Massachusetts and federal labeling regulations, including all foods intended for retail sale that are manufactured in licensed residential kitchens.



For interpretations and assistance with labeling regulations, please contact:

**Food Protection Program
Bureau of Environmental Health
Massachusetts Department of Public Health
305 South Street
Jamaica Plain, MA 02130**

**Phone: 617-983-6712
Fax: 617-983-6770
TTY: 617-624-5286
Web: www.mass.gov/dph/fpp**

**Or the U.S. Food and Drug Administration
<http://www.cfsan.fda.gov/label.html>
Office of Nutritional Products, Labeling, and
Dietary Supplements: 301-436-2371**

Minimum Information Required on a Food Label

The Massachusetts and federal labeling regulations require the following information on every food label:

- Common or usual name of the product.
 - **All** ingredients listed in descending order of predominance by weight, and a complete listing of sub-ingredients.
Example of a sub-ingredient: Flour (bleached wheat flour, malt barley, flour, niacin, iron, potassium thiamine, thiamine mononitrate, riboflavin).
 - Net weight of product.
Dual declaration of net weight, if product weighs one pound or more.
Example: 1 pound [16 oz.]
 - “Keep refrigerated” or “Keep frozen” (if product is perishable).
 - All perishable or semi-perishable foods require open-dating and recommended storage conditions printed, stamped, or embossed on the retail package.
 - Once an open-date has been placed on a product, the date may not be altered.
 - Name and address of the manufacturer, packer, or distributor. If the company is not listed in the current edition of the local telephone book under the name printed on the label, the street address must also be included on the label.
 - Nutrition labeling.
 - If a food product has a standard of identity, the food must meet the standard in order to be offered for sale under that product name.
 - All FDA certified colors.
Example: FD&C Yellow #5, FD&C Red #3
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Massachusetts Open-dating Regulation

To comply with the Massachusetts open-dating labeling regulation, a “sell-by” or “best-if-used-by” date is required if the product has a recommended shelf life of fewer than 90 days.

Foods exempt from this requirement include: fresh meat, poultry, fish, fruits, and vegetables offered for sale unpackaged or in containers permitting sensory examination, and food products pre-packaged for retail sale with a net weight of less than 1½ ounces.

Foods may be sold after the open-date if the following conditions are met:

- It is wholesome and good quality.
- The product is segregated from food products that are not “past date,” and the product is clearly marked as being “past date.”

Health Claims

Health claims allowed by the FDA on a label are limited to the following relationships between diet and disease:

1. Calcium and reduced risk of osteoporosis.
 2. Sodium and increased risk of hypertension.
 3. Dietary saturated fat and cholesterol and increased risk of heart disease.
 4. Dietary fat and increased risk of cancer.
 5. Fiber-containing grain products, fruits, and vegetables and reduced risk of cancer.
 6. Fruits/vegetables and reduced risk of cancer.
 7. Fruits, vegetables, and grain products that contain fiber, particularly soluble fiber and reduced risk of heart disease.
 8. Soluble fiber from certain foods and reduced risk of heart disease.
 9. Folic acid and reduced risk of neural tube defects.
 10. Soy protein & reduced risk of heart disease.
 11. Stanols/sterols and reduced risk of heart disease.
 12. Dietary non-cariogenic carbohydrate sweeteners and reduced risk of tooth decay.
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Food Allergen Labeling

The Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) addresses the labeling of foods that contain any of the eight major food allergens.

FALCPA defines "major food allergens" as

Milk	Fish
Egg	Crustacean Shellfish
Peanuts	Tree Nuts
Soybeans	Wheat

All ingredients that contain a major food allergen must be labeled, even if they are exempted from labeling by being a spice, flavoring, coloring or incidental additive.

FALCPA requires the labeling of food allergens in one of two ways.

1. In the ingredient statement, include the common or usual name of the food source, followed by the name of the allergen in parentheses. For example: Ingredients: Flour (**wheat**), whey (**milk**)
2. After the ingredient statement, place the word, "Contains:" followed by the name of the food allergen. For example: *Contains: Wheat, Milk*

FALCPA requires that:

- For Tree Nuts, the specific type of nut must be declared.
Example: almonds, pecans, walnuts
- For Fish and Crustacean Shellfish, the species must be declared.
Example: cod, salmon, lobster, shrimp

FALCPA's requirements apply to all packaged foods sold in the United States, including both domestically manufactured and imported foods.

Resource Information on Labeling

Principal display panel
105 CMR 520.101
21 CFR 101.0

Information panel
105 CMR 520.102
21 CFR 101.2

Identity labeling of food
105 CMR 520.103
21 CFR 101.3

Nutrition labeling
105 CMR 520.109
21 CFR 101.9

Misbranding of food
105 CMR 520.118
MGL C. 94 sec. 187
21 CFR 101.18

Mandatory labeling information
105 CMR 520.020

Natural and organic labeling
105 CMR 520.116

Trans Fat
<http://www.cfsan.fda.gov/~dms/transgui.html>

Allergens
Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) (Public Law 108-282) Guidance for Industry
<http://www.cfsan.fda.gov/~dms/alrguid4.html>

NOTE: This brochure is only a guide.

Since regulations are amended from time to time, it is the responsibility of licensees to know and abide by all current labeling regulations. Always consult official Massachusetts and federal regulations to ensure labels are in full compliance.

Massachusetts Minimum Requirements for Packaged-Food Labeling



WHEAT BREAD

Ingredients: Flour (bleached wheat flour, malt barley, flour, niacin, iron, potassium thiamine, thiamine mononitrate, riboflavin, folic acid), Sugar, Eggs, Water, Milk, Margarine (liquid soybean oil, partially hydrogenated soybean oil, water, salt, whey, soybean lecithin, vegetable mono & diglycerides, sodium benzoate as a preservative, potassium caseinate [a milk protein], artificially colored, FD&C Red #3, artificially flavored, vitamin A, dalmite added), Yeast, Salt

Contains: Wheat, Eggs, Milk, Soy

Sell by: 9/22/08
Net Weight: 1 pound (16 oz.)

The Bakery
412 Main Street
Anytown, MA 01234



**Food Protection Program
Bureau of Environmental Health
Massachusetts Department of Public Health
July 2008, 4th edition**

Massachusetts Department of Public Health
Bureau of Environmental Health/Food Protection Program

Q&As for MDPH Allergen Awareness Regulation

The following are actual questions we have received from food establishments.

1	The Food Allergy Awareness Act
1.1	<p>What is the Food Allergy Awareness Act?</p> <p>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 restaurant industry and consumer awareness of regulations and best practices with respect to major food allergens.</p>
1.2	<p>What does the Act require?</p> <p>The Act requires that certain food establishments comply with regulations developed by the Massachusetts Department of Public Health (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 certified food protection managers. 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 FAF program will be voluntary. In response to the statutory requirements of coordinating with MRA and FAAN, the Department established a FAF workgroup to develop the initial regulatory amendments. The Department has asked that a representative from local health be added to the workgroup for designing the FAF 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 and strict adherence to procedures that prevent cross contamination. More information will be made available once the voluntary program requirements are completed.</p>
	Effective Dates
1.3	<p>When do the new food allergy awareness regulations go into effect?</p> <p>On October 1, 2010, the food allergen poster and menu advisory requirements will go into effect. By February 1, 2011, food establishments subject to the regulations must have on staff a certified food protection manager who has viewed the training video and obtained a training certificate. Workshops designed for local boards of health to enforce the new regulations have been scheduled and will be completed prior to the effective date of the regulations.</p>
1.4	<p>Would MDPH delay implementation to allow restaurants to properly prepare and allocate appropriate time and funding?</p> <p>No. Per 105 CMR 590.009(H), poster and menu requirements must be implemented no later than October 1, 2010 and Food Allergen Awareness Training must be implemented by February 1, 2011.</p>
2	Definitions - 105 CMR 590.002(B)
2.1	<p>What is the definition of food allergen in the new regulations?</p> <p>Major Food Allergens are clearly defined as:</p> <ul style="list-style-type: none"> (1) Milk, eggs, fish (such as bass, flounder, or cod), crustaceans (such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; and (2) A food ingredient that contains protein derived from a food named in subsection (1). <p>"Major food allergen" does not include:</p> <ul style="list-style-type: none"> (a) Any highly refined oil derived from a food specified in subsection (1) or any ingredient derived from such highly refined oil; or (b) Any ingredient that is exempt under the petition or notification process specified in the federal Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282).
2.2	<p>Are allergens in distilled spirits and alcoholic beverages required to be disclosed?</p> <p>No. Distilled spirits or wine, in themselves, are not known to present a risk. Allergens are not in distilled beverages as there are no proteins left for them to be attached to. If a bar area has a menu, it would be</p>

Massachusetts Department of Public Health
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Q&As for MDPH Allergen Awareness Regulation

	required to post the allergen statement on its bar menu. There are foods with major allergens used in many bar settings such as milk, nuts, and flavorings that may be an ingredient in certain alcoholic mixed drinks. The Department believes that bar areas should be considered in the same manner as other food service areas when establishments are putting in place actions related to compliance with 105 CMR 590.009(H).
3	Establishments - 105 CMR 590.009(H)
3.1	Who must comply with the Act? MDPH regulations apply specifically to “all food establishments that cook, prepare, or serve food intended for immediate consumption either on or off the premises.”
3.2	Some food stores may have just a few seats or a small seating area for customers,). Is this considered a seating area and how is it impacted? It does not matter whether or not the grocery store has a seating area. The key issue is whether or not the store cooks, prepares, or serves food intended for immediate consumption.
3.3	Is “take-out” defined in the regulations or is it in any way relevant? “Take-out” is not defined, but the concept is encompassed in the portion of the regulations stating “food establishments that cook, prepare, or serve food intended for immediate consumption . . . off the premises.”
3.4	How would a supermarket setting deal with an independent sushi counter? These are folks who lease space. Since sushi is intended for immediate consumption either on or off premises, a sushi retailer who leases space would be required to comply with the food allergen awareness regulations.
3.5	When a store boils lobsters and gives them to a customer, is that considered a food intended for immediate consumption either on or off the premises? Since boiled lobster is intended for immediate consumption either on or off premises, a store that boils lobster for its customers would be required to comply with the food allergen awareness regulations.
3.6	Will establishments with the highest risk of reactions, such as bakeries and candy stores, need to comply with the new regulations? Any bakery or candy store that cooks, prepares, or serves food intended for immediate consumption either on or off the premises will be required to comply with the food allergen awareness regulations.
3.7	Are the new regulations focused ONLY on the major allergens listed? If so, some may view this as only affecting Seafood and Bakery departments of certain establishments/grocery stores. The allergen awareness requirements are not restricted to seafood and bakery departments. Any food establishment (or department in a food establishment) that cooks, prepares, or serves food intended for immediate consumption either on or off the premises will be affected.
3.8	Do food service establishments have to maintain a list of all the allergens that they have on site? No, food service establishments are not required to maintain a list of allergens they have on site.
4	Poster - 105 CMR 590.009(H)(1)
4.1	Where can an approved food allergen safety poster and other guidance materials be obtained? Free food allergy safety guidance for local boards of health and industry, including a food allergy awareness poster approved by the Department, are available for downloading from the MDPH Food Protection Program website - http://mass.gov/dph/fpp . General food allergy information can be found at Food Allergy & Anaphylaxis Network - http://www.foodallergy.org/ and MA Restaurant Association - http://www.marestaurantassoc.org/
4.2	Allergen Poster: It says ".....shall prominently display in the employee work area...." What is the definition of employee work area? The work area is a conspicuous and accessible place where notices to employees are customarily placed AND that permits employees to readily read the poster.

Massachusetts Department of Public Health
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4.3	<p>Can a food establishment create its own poster?</p> <p>Food establishments must use the approved allergen poster developed by FAAN, in cooperation with the MRA and the MDPH, that is available for downloading at http://mass.gov/dph/fpp. It may be printed and used in color or black and white.</p>
4.4	<p>Is there a procedure for getting an alternate allergy awareness poster reviewed and approved by the Department?</p> <p>Due to extremely limited staff resources, the Department cannot commit to review / approve alternate posters prior to the effective implementation date (10/01/10). Food establishments must have the Department-approved poster displayed by October 1, 2010. If an establishment wishes to display a pre-existing poster in the same area, this is fine, as long as the approved poster is also displayed.</p>
5	<p>Menu notice - 105 CMR 590.009(H)(2)</p>
5.1	<p>What is an acceptable consumer notice on the menu?</p> <p>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.</p>
5.2	<p>Our current menu statement is "Not all ingredients are listed in the menu. Please let your server know if you have any food allergies." Is this consistent with the requirements of the regulation?</p> <p>No. The regulations require specific language: "Before placing your order, please inform your server if a person in your party has a food allergy".</p>
5.3	<p>I was previously advised that "The requirements apply to all food stores that cook, prepare, or serve food intended for immediate consumption either on or off the premises ("take-out"), whether or not they have a seating area. However, also it was also stated that; "The menu notice requirement only applies to food stores that have menus or menu boards." Almost all of our members do have "take-out" (prepared sandwiches, hot meals, sushi, etc.) but do not have a "menu or menu board". Are they NOT required to place the menu notice requirement anywhere?</p> <p>If food establishments do not have either a menu or menu board, they are NOT required to place the customer notice anywhere. Keep in mind that informal chalk or highlighter boards used by some establishments to list daily specials with their prices are considered menu boards. In addition, automated menus or menus posted on a website are considered "menus provided outside the establishment" or "printed menus" and must contain the notice. The poster and training requirements do apply to all food establishments that cook, prepare, or serve food intended for immediate consumption.</p>
5.4	<p>Would the menu notice have to be placed in an advertisement circular, if it is considered a "menu" since it does have a food list and/or pictorial display of food items and is distributed outside of the establishment? How about on-line announcements?</p> <p>Menus are printed lists of food items and prices from which a customer can order food, either in person, by telephone, or online. The purpose of the allergen notice is for the consumer to be alerted that he or she should notify the server about the consumer's food allergy. Advertising circulars and on-line announcements, if they are not intended to generate specific consumer orders, are not considered menus. If they are intended to be used by consumers in ordering food, they are considered menus and must include the notice.</p>
5.5	<p>Where must the notice be placed in a food store to inform customers to advise their server if they have a food allergy?</p> <p>The menu notice requirement only applies to food stores that have menus or menu boards. If a menu board is used, the notice must be either (1) on the menu board itself, (2) adjacent to the menu board, OR (3) at each point of service where the food is ordered. For example, if the point of service is a deli counter, the notice could be securely placed on the counter in such a way as to be easily seen and read from a distance of five feet by a person standing at or approaching the counter.</p>
5.6	<p>Should the point of purchase or the point of sale, which would be at the cash register display the notice?</p> <p>The regulations specify the point of service where food is ordered, not the point of sale.</p>

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5.7	<p>What if a customer purchases for example a sandwich and beverage and takes it over to the seating area? Is the aisle where they picked up the candy bar required to have such a notice? Does it have to be done at every counter where they can pick up their food, e.g., deli, bakery, sandwich area, etc.?</p> <p>The notice must be at every counter where a person may order food intended for immediate consumption, IF there is a menu at the counter or a menu board behind the counter.</p>
5.8	<p>Where must the consumer notice be posted?</p> <p>The consumer notice is required on printed menus and on indoor and outdoor menu boards, including drive-through menu boards. In lieu of placing the notice directly on the indoor or outdoor menu board itself, the food establishment may post the notice adjacent to the menu board or at each point of service where food is ordered.</p>
6	Training – 105 CMR 590.009(H)(3)
6.1	<p>Many of our members already provide allergen training with programs designed for a food store setting. Should they be discontinued and replaced with the Department’s allergen awareness requirements?</p> <p>Food establishments should NOT eliminate their present training procedures. The statutory requirement to view the video is additional, and is intended to raise allergen awareness but is NOT intended to substitute for existing training programs. Certified food protection managers will be required to obtain food allergy awareness certification from an MDPH approved vendor. Vendors will charge up to \$10.00 to participants to issue the certificate after participants have viewed the video. Separate from the training requirement, the video will be made available for free online for anyone who would like to view it.</p>
6.2	<p>Will the training video illustrate the only way to meet compliance?</p> <p>No, the training video includes allergy awareness topics to protect your consumers. It does not contain regulatory or inspection information.</p>
6.3	<p>The way the information that you sent reads, a certificate goes with the video. Does this mean that all future trainees must watch the same video that is recognized only by MDPH? If so will there be a monetary charge? Who will be responsible for administering the viewing and training for the trainees? Can a private entity do their own customized training and have it meet the required regulations?</p> <p>The regulation states “Food establishments shall have on staff a certified food protection manager who has been issued a Massachusetts certificate of allergen awareness training by an allergen awareness training verification program recognized by the Department.” A certificate is issued to the trainee after they have participated in the allergen awareness training. There is one training video approved by the Department. The certified training is being conducted by 3 MDPH approved vendors for a charge of up to \$10.00. If you would like other staff to watch the video, they may do so free of charge on the MDPH website, but they will not receive the training certificate. If a private entity chooses to do its own customized training, it can do so, but it will not substitute for the required MDPH approved allergy awareness training and will not result in receipt of a required certificate for food protection managers.</p>
6.4	<p>Will the state supply the video to local Boards of Health, and also to trainers that do Food Safety certification training?</p> <p>The video will be available for free online for anyone to view. However, only the three MDPH-approved vendors can issue the food allergy awareness certificate to certified food protection managers.</p>
6.5	<p>Can local colleges administer certificates, or CEUs, through their institutions that training in this area has been completed?</p> <p>Local colleges will not satisfy the certification requirement. The Department followed Commonwealth of Massachusetts procurement procedures in issuing a request for response (RFR) to select vendors for the training component. The procurement period has closed. In accordance with 105 CMR 590.009(H), the certified food protection manager is required to participate in the allergy awareness training that has been approved by the Department and is administered through MDPH approved vendors. MDPH approved vendors may choose to offer the opportunity to view the video and provide certification services, in conjunction with existing restaurant training programs, through colleges or other institutions, and/or</p>

Massachusetts Department of Public Health
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	accredited food safety training programs.
6.6	<p>Supermarkets typically have a more than one certified Person-In-Charge (PIC), usually one for each department, bakery, seafood, etc. Do the servers need to be certified or the PIC? Staff sometimes switch as far as who the server may be, they may have to fill in at another store, another shift, etc. and it may be the PIC or not.</p> <p>The person in charge should not be confused with the certified food protection manager. The certified food protection manager is the only person required to be certified by one of the MDPH-approved food allergy awareness training vendors. When the certified person is not present at the establishment, another employee must be designated to be the person in charge. The designated person in charge does not need to be certified, but must be knowledgeable about food allergy awareness and have the authority to initiate necessary actions and/ or emergency responses.</p> <p>In addition, all staff must be trained and knowledgeable in food allergy awareness as it relates to their assigned duties, as required by 105 CMR 590.009(H) (3)(b)2.</p>
7	Video approved by MDPH – MGL Ch. 140, s. 6B, subsection (c)
7.1	<p>Is there any procedure for input on the video for allergen awareness training by the Association to make sure it is also compatible with a food store setting?</p> <p>No. As stated previously, the video will raise awareness but is not intended to substitute for a comprehensive allergen training program.</p>
7.2	<p>How do you get approved to be on the vendor list to issue a certificate proving the training video was fully viewed?</p> <p>The Department followed Commonwealth of Massachusetts procurement procedures in issuing a request for response (RFR) to select vendors for the training component. The procurement period has closed.</p>
7.3	<p>Would MDPH allow for the approval of national training programs already in use by multi-state operators, provided that those programs include allergen awareness components?</p> <p>No, the video was produced specifically to implement Massachusetts' Allergen Awareness statute to address food allergy awareness through regulatory requirements.</p>
7.4	<p>How will the Department proceed with approving future video proctors, assuming those approved now are not approved for life? Many in our industry have in-house food safety specialists who would like to incorporate the required video training for their employees;</p> <p>As stated in question 6.5, DPH issued an RFR for vendors , and the procurement period has closed. The vendors for the first 5 years have been selected. In-house food safety specialists can contact approved vendors who are posted on the DPH website to form a business relationship.</p>
7.5	<p>At some point will there be a chance to update or revise the video with a retail focus as opposed to a restaurant focus? The Food Marketing Institute may have funding available to do just that.</p> <p>There are currently no plans to pursue other avenues to address the food allergy awareness training. As previously stated, the intent of the regulation is to increase awareness with food establishments and increase consumer awareness.</p>
8	Exemptions - 105 CMR 590.009(H)(4)
8.1	<p>Who is exempt from the Act?</p> <p>Food establishments that DO NOT cook, prepare, or serve food intended for immediate consumption are exempt from the allergy awareness regulatory requirements.</p> <p>Public and private schools, educational institutions, summer camps, childcare facilities, and other child care programs approved to participate in USDA Child Nutrition Programs are exempt, provided that they have written policies and procedures for identifying, documenting, and accommodating students with food allergies, and documentation verifying participation in food allergen training recognized by the Massachusetts Department of Elementary and Secondary Education and the Massachusetts Department of Public Health. However, these institutions must ensure that their employees are properly trained in food allergy awareness as it relates to their assigned duties.</p> <p>Food service operations in institutional settings in which food is prepared and/or served to a specific</p>

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	<p>population (i.e. hospitals, non-profits, charitable food facilities, etc) are exempt ONLY from the menu notice requirement. They must still comply with the poster and training requirements.</p> <p>Temporary food establishments operated by non-profit organizations are exempt from all of the allergen awareness requirements, in accordance with 105 CMR 590.009(H)(4)(c).</p>
8.2	<p>What are the requirements for schools that are not approved to participate in USDA Child Nutrition Programs?</p> <p>Schools that are not required by USDA to follow ADA and make school meal accommodations must comply with the Allergen Awareness Regulation. Private schools, for example, that do not belong to the USDA School Lunch Program would not be exempt, and would have to meet the requirements listed in the Allergen Awareness Regulation.</p>
8.3	<p>Are cafeteria-style dining areas in retail food stores exempt or excluded from the regulation?</p> <p>The type or size of a dining area does not determine whether the regulations apply or not. Food establishments that cook, prepare, or serve food intended for immediate consumption either on or off the premises must comply with the requirements.</p>
9	Enforcement - 105 CMR 590.013
9.1	<p>Who is responsible for enforcing the food allergy awareness regulations in 105 CMR 590.000?</p> <p>The Act gives the authority for enforcement of the regulations to local boards of health as the primary agencies responsible for enforcing the State Sanitary Code.</p>
9.2	<p>What happens if a food establishment does not comply with the regulations as required?</p> <p>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 10 days. Local boards of health may use fines and other enforcement actions available under 105 CMR 590.000 and state law to achieve compliance.</p>
9.3	<p>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?</p> <p>The occurrence 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 need not discontinue operations in an area of the establishment that is unaffected by the imminent health hazard in accordance with FC 8-404.11(B).</p>
9.4	<p>Would MDPH allow for an annual certification on the food service renewal forms, as an alternative to the mandatory training and posting requirements?</p> <p>No, MDPH is not considering alternative avenues to comply with the regulation. The video viewing requirement was set by statute.</p>
10	Food Allergy Friendly Designation - MGL Ch. 140, s. 6B, subsection (g)
10.1	<p>Do the requirements (employer poster in work area, advisory for consumers to disclose any allergy, training and development of a food allergy friendly program) apply to all food stores that have take-out and a courtyard for seating, or just to those with a seating area?</p> <p>The poster, menu advisory, and training requirements apply to all food stores that cook, prepare, or serve food intended for immediate consumption either on or off the premises ("take-out"), whether or not they have a seating area. The Department will amend regulations to address FAF programs at a later date, and such programs will be entirely voluntary.</p>

Food Allergies

what you need to know



Millions of people have food allergies that can range from mild to life-threatening.

Most Common Food Allergens



Peanuts



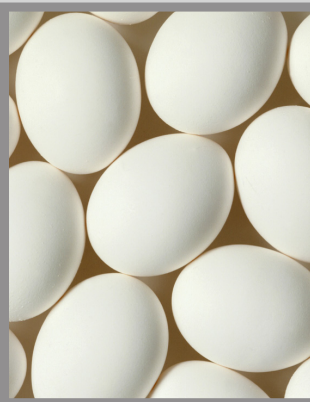
Tree nuts



Fish



Shellfish



Eggs



Milk



Wheat



Soy

*** Always let the guest make their own informed decision.**

When a guest informs you that someone in their party has a food allergy, follow the four R's below:

- **Refer** the food allergy concern to the department manager, or person in charge.
- **Review** the food allergy with the customer and check ingredient labels.
- **Remember** to check the preparation procedure for potential cross-contact.
- **Respond** to the customer and inform them of your findings.

*** Sources of Cross-Contact:**

- Cooking oils, splatter, and steam from cooking foods.
- Allergen-containing foods touching or coming into contact with allergy-free foods (i.e. a nut-containing muffin touching a nut-free muffin).

Any food equipment used for the processing of allergy-free foods must be thoroughly cleaned and sanitized prior to use.

- All utensils (i.e., spoons, knives, spatulas, tongs), cutting boards, bowls, pots, food pans, sheet pans, preparation surfaces.
- Fryers and grills.
- Wash hands and change gloves after handling potential food allergens.

*** If a guest has an allergic reaction, call 911 and notify management.**



Reminder Notice from the Board of Health

The Massachusetts Food Code Contains a Section on Food Allergy Awareness That is Now in Effect

In June 2010, the state Food Code was amended to comply with the Act Relative to Food Allergy Awareness in Restaurants which the Governor signed into law in January 2009. Copies of the new regulation and related documents are available on the MDPH/BEH Food Protection Program website. To find this information:

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

Requirements that took effect on October 1, 2010:

- **Poster in Employee Work Area** - The 8.5" by 11" poster that must be displayed in the employee work area is available on line at <http://www.foodallergy.org/page/restaurant-poster>. The "employee work area" is a conspicuous and accessible place where notices to employees are usually placed and easily read. See 105 CMR 590.009(G)(1) for more details about this requirement..
- **Notice to Consumers on Menus and Menu Boards** - Menus and menu boards must include a notice which reads, "Before placing your order, please inform your server if a person in your party has a food allergy." The notice must be displayed in a clear and conspicuous manner, and the notice on menu boards must meet the font size requirements discussed in 105 CMR 590.009(G)(2)(b).

Requirements that took effect on February 1, 2011:

- **Allergen Awareness Certificate** - At least one certified food protection manager in each effected establishment must obtain a certificate which shows that they have viewed the MDPH-approved allergen awareness training video. Three private vendors are approved by MDPH to issue these certificates in accordance with 105 CMR 590.009(G)(3)(a). The name and contact information for these vendors in posted on the FPP website listed above.

105 CMR 590.000: STATE SANITARY CODE CHAPTER X--MINIMUM SANITATION STANDARDS FOR FOOD ESTABLISHMENTS

590.009: Special Requirements

(D) Residential Kitchens.

(1) Residential Kitchens in Bed and Breakfast Homes and Bed and Breakfast Establishments.

(a) All bed and breakfast homes serving full breakfast and bed and breakfast establishments serving full or continental breakfast shall require a food establishment permit and shall comply with the minimum requirements of 105 CMR 590.009(D) as well as the Administration and Enforcement sections (105 CMR 590.010 through 590.021), except they shall be exempt from 105 CMR 590.043, "Plan Submission and Approval" in which case only an intended menu shall be submitted to the board of health with their application for permit. However, bed and breakfast establishments with ten guestrooms or more shall comply with all provisions of 105 CMR 590.000.

(b) Bed and breakfast homes and bed and breakfast establishments, which require a permit, shall be inspected by the board of health upon application for an original permit and within the six months prior to renewal of a permit, and as often as necessary for the enforcement of 105 CMR 590.000.

(c) Food preparation and protection: Residential kitchens in bed and breakfast homes and bed and breakfast establishments.

1. Food shall be prepared and protected in accordance with 105 CMR 590.000.

2. Food, utensils and equipment shall be stored in a manner to avoid contamination.

3. The following food handling practices for potentially hazardous foods are prohibited: cooling and reheating prior to service, hot holding for more than two hours, and service of leftovers.

4. All food temperature requirements shall be met as contained in 105 CMR 590.000. Hot and cold holding equipment shall be provided to maintain potentially hazardous foods at temperatures required by 105 CMR 590.000.

(2) Residential Kitchens: Retail Sale.

(a) A food establishment permit shall be required if food is prepared in or distributed from a residential kitchen for retail sale except as exempted under the definition of food establishment in 105 CMR 590.002 and shall comply with the minimum requirements of 105 CMR 590.009(D) as well as the Administration and Enforcement (105 CMR 590.010 through 590.021), except they shall be exempt from 105 CMR 590.043, "Plan Submission and Approval" in which case only an intended list of food to be prepared or distributed shall be submitted to the board of health with their application for permit. In addition, the following requirements shall be met:

(b) Food Preparation and Protection: Residential Kitchen for Retail Sale.

1. Only non-potentially hazardous foods and foods which do not require refrigeration and a variance in accordance with 105 CMR 590.010(H) shall be prepared in or distributed from a residential kitchen for retail sale to the public except as exempted under the definition of food establishment in 105 CMR 590.002. Ingredients that are potentially hazardous foods, such as milk, cream, and eggs, may be used in food preparation for the public provided that the final product is not a potentially hazardous food.

2. Wholesale operations requiring a food processor registration by the Department shall not be conducted in an establishment holding a residential kitchen permit.

3. Only immediate family members residing in the household may prepare food for retail sale in a residential kitchen.

(3) General Requirements for All Residential Kitchens.

(a) Food Supplies. Food shall be obtained from approved sources, shall be in sound condition, and be safe for human consumption. Foods, which do not comply with 105 CMR 590.000, shall not be served to the public and shall either be stored separately or labeled for private use. A separate shelf or portion thereof within a refrigerator shall be an acceptable form of separate storage. In addition to requirements set forth in FC 3-201.11(C), packaged food shall also meet requirements set forth in 105 CMR 520.000: Labeling.

(b) Personal Health and Hygiene. Food employees shall conform to employee health and hygiene requirements in 105 CMR 590.000.

(c) Handwashing. A soap dispenser and disposable towels for use in handwashing shall be provided at the kitchen sink. This sink shall not be used for handwashing after toilet use but may be used for food preparation and warewashing provided it is cleaned and sanitized prior to and between use.

(d) Toilet Room. A toilet room shall be available for use by food employees. Toilet rooms opening to the kitchen or dining area shall have adequate ventilation. Ventilation may be provided by window(s) or by mechanical means. A soap dispenser and disposable towels shall be provided for handwashing in toilet rooms used by food employees.

(e) Equipment and Utensil Design And Construction. All equipment and utensils shall be constructed of safe materials and maintained in good repair.

(f) Food-Contact Surfaces. All food contact surfaces, counters, sinks and work surfaces in the establishment shall be smooth, non-absorbent and easily cleanable.

(g) Cleaning and Sanitizing.

1. Food contact surfaces of equipment, tableware and utensils shall be cleaned and sanitized prior to food preparation for the public and after each use in accordance with 105 CMR 590.000.

2. For manual cleaning and sanitizing of cooking equipment, utensils and tableware, three compartments shall be provided and used; or a two compartment sink may be used if single service tableware is provided, or when an approved detergent sanitizer is used in accordance with FC 4-501.114 and FC 4-301.12. The board of health may allow the use of compartments other than sinks, such as tubs and basins.

3. A domestic or home style dishwasher may be used provided the following performance criteria are met:

a. The dishwasher must effectively remove physical soil from all surfaces of dishes, equipment and utensils.

b. The operator shall provide and use daily a maximum registering thermometer or a heat thermal label to determine that the dishwasher's internal temperature is a minimum of 150° F after the final rinse and drying cycle. Records of this testing shall be kept on file for 30 days.

c. The dishwasher must be installed and operated according to manufacturer's instructions for the highest level of sanitization possible when sanitizing residential kitchen facilities' utensils and tableware; a copy of the instructions must be available on the premises at all times.

4. There shall be sufficient area or facilities such as portable dish tubs and drain boards for the proper handling of soiled utensils prior to washing and of cleaned utensils after sanitization so as not to interfere with safe food handling, handwashing and the proper use of dishwashing facilities. Equipment, utensils and tableware shall be air-dried.

(h) Insect Proof/Rodent Proof.

1. Food service preparation and storage areas shall be constructed and maintained to prevent the entry of pests and other vermin.

2. Pesticides and rodenticides shall be applied according to law.

(i) Premises.

1. Pets may be present on the premises, but shall be kept out of food preparation and dining areas during food preparation and service to the public.

2. Laundry facilities may be present in the kitchen, but shall not be used during food preparation and service to the public.

3. Cooking facilities in the kitchen shall not be available to guests.

- (j) Garbage Receptacles. Impervious receptacles shall be provided for storage of garbage and refuse.
- (k) Water Supply. Hot and cold water under pressure shall be provided and shall be from an approved source.
- (l) Sewage. Sewage shall be disposed of through an approved system that is:
 - 1. A public sewage treatment plant; or
 - 2. An individual sewage disposal system that is sized, constructed, maintained, and operated according to law.

(E) Anti-Choking Procedures in Food Service Establishments. Pursuant to M.G.L. c. 94, § 305D, each food service establishment having a seating capacity of 25 persons or more shall:

- (1) Have on its premises, while food is being served, an employee trained in manual procedures approved by the department to remove food lodged in a person's throat; and
- (2) Make adequate provision for insurance to cover employees trained in rendering such assistance.

(61) Potentially Hazardous Food.

(a) "**Potentially hazardous food**" means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting:

- (i) The rapid and progressive growth of infectious or toxigenic microorganisms;
- (ii) The growth and toxin production of *Clostridium botulinum*; or
- (iii) In raw shell eggs, the growth of *Salmonella Enteritidis*.

(b) "**Potentially hazardous food**" includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth as specified under Subparagraph (a) of this definition.

(c) "**Potentially hazardous food**" does not include:

- (i) *An air-cooled hard-boiled egg with shell intact;*
- (ii) *A food with an a_w value of 0.85 or less;*
- (iii) *A food with a pH level of 4.6 or below when measured at 24°C (75°F);*
- (iv) *A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and*
- (v) *A food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of **S. Enteritidis** in eggs or **C. botulinum** can not occur, such as a food that has an a_w and a pH that are above the levels specified under Subparagraphs (c)(ii) and (iii) of this definition and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms.*
- (vi) *A food that does not support the growth of microorganisms as specified under Subparagraph (a) of this definition even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.*