APPENDIX A:
AMENDMENTS AS REVISED (adopted June 9, 2010)

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

(1) ADD new definition in 105 CMR 590.002(B):

Major Food Allergen means:

(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).

"Major food allergen" does not include:

(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) Amend the definitions of "menu" and "menu board" in 590.002(B) as follows:

Menu means a printed list or pictorial display of a food item or items and their price(s) that are available for sale from a food establishment, and includes menus distributed or provided outside of the establishment.

Menu Board means any list or pictorial display of a food item or items and their price(s) posted within or outside a food establishment.

(3) Amend as follows 105 CMR 590.003(B) (Management and Personnel – federal 1999 Food Code Chapter 2)

(B) FC 2-102.11 Demonstration

...

The areas of knowledge include:

...

(17) No later than February 1, 2011:

(a) Describing FOODS identified as MAJOR FOOD ALLERGENS and describing the symptoms that MAJOR FOOD ALLERGENS could cause in a sensitive individual who has an allergic reaction; and

(b) Ensuring that employees are properly trained in food allergy awareness as it relates to their assigned duties.

(4) Amend 590.009: Special Requirements to add new subsection (H):

(H) <u>Food Allergy Awareness Requirements.</u> Food establishments that cook, prepare, or serve food intended for immediate consumption either on or off the premises shall comply with the following requirements.

(1) <u>Poster.</u> No later than October 1, 2010, such food establishments shall prominently display in the employee work area a poster approved by the Department, no smaller than 8.5 by 11 inches, relating to major food allergens. The poster shall include the following information:

(a) Major food allergens;

(b) Health risks of food allergies;

(c) Procedure to follow when a customer states that he or she has a food allergy; and

(d) Emergency procedure to follow if a customer has an allergic reaction to a food.

(2) <u>Notice on printed menus and menu boards.</u> Such food establishments shall include on all printed menus and menu boards a clear and conspicuous notice requesting a customer to inform the server before placing an order, about the customer's allergy to a major food allergen. The notice shall state: *Before placing your order, please inform your server if a person in your party has a food allergy.*

clear + cons.
← EXACT wording

(a) <u>Effective Date.</u> The notice must be included on printed menus and on indoor and outdoor menu boards, including drive-through menu boards, no later than October 1, 2010.

(b) <u>Menu Boards</u>.

1. All notices on menu boards must be easily readable from the point of service at which food is ordered. On the menu board itself, the font size of the notice must be equal to or greater than the font size of the smallest menu item listed on the menu board.

2. 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. Such notice must be securely posted in a manner so that it may be easily seen and read from a distance of five feet by a person standing at or approaching the point of service, shall directly face the purchaser, and shall not be obstructed from view.

(3) <u>Food Allergen Awareness Training</u>

(a) By February 1, 2011, such 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. The certificate will be valid for 5 years.

(b) The certified food protection manager shall:

1. Demonstrate knowledge of MAJOR FOOD ALLERGENS by posting the Massachusetts food allergen awareness training certificate; and

2. Ensure that employees are properly trained in food allergy awareness as it relates to their assigned duties.

(4) <u>Exemptions</u>

(a) 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 from 105 CMR 590.009(~~H~~)G with the exception of 105 CMR 590.009(~~H~~G)(3)(b)2., provided that they have:

1. Written policies and procedures for identifying, documenting, and accommodating students with food allergies, and

2. Documentation verifying participation in food allergen training recognized by the Massachusetts Department of Elementary and Secondary Education and the Massachusetts Department of Public Health.

(b) Food service operations in institutional settings in which food is prepared and/or served to a specific population (for example, hospitals, non-profit organizations, Older American Act Elderly Nutrition programs, and charitable food facilities) that have written procedures for identifying, documenting, and accommodating their clients with food allergies are exempt from 105 CMR 590.009(H)(2).

(c) Temporary food establishments operated by non-profit organizations are exempt from 105 CMR 590.009(~~H~~)G.

Regulatory authority: MGL c. 140, § 6B.

Massachusetts Department of Public Health

Bureau of Environmental Health/Food Protection Program

Q & A for MDPH Allergen Awareness Regulation

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

1	**The Food Allergy Awareness Act**
1.1	**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 restaurant industry and consumer awareness of regulations and best practices with respect to major food allergens.
1.2	**What does the Act require?** 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.
	Effective Dates
1.3	**When do the new food allergy awareness regulations go into effect?** 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.
1.4	**Would MDPH delay implementation to allow restaurants to properly prepare and allocate appropriate time and funding?** 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.
2	**Definitions - 105 CMR 590.002(B)**
2.1	**What is the definition of food allergen in the new regulations?** Major Food Allergens are clearly defined as: (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). "Major food allergen" does not include: (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	**Are allergens in distilled spirits and alcoholic beverages required to be disclosed?** 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

	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 and 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.

4.3	**Can a food establishment create its own poster?** 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.
4.4	**Is there a procedure for getting an alternate allergy awareness poster reviewed and approved by the Department?** 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.
5	**Menu notice - 105 CMR 590.009(H)(2)**
5.1	**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.
5.2	**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?** No. The regulations require specific language: "Before placing your order, please inform your server if a person in your party has a food allergy".
5.3	**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?** 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.
5.4	**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?** 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.
5.5	**Where must the notice be placed in a food store to inform customers to advise their server if they have a food allergy?** 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.
5.6	**Should the point of purchase or the point of sale, which would be at the cash register display the notice?** The regulations specify the point of service where food is ordered, not the point of sale.

5.7	**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.?** 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.
5.8	**Where must the consumer notice be posted?** 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.
6	**Training – 105 CMR 590.009(H)(3)**
6.1	**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?** 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 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.
6.2	**Will the training video illustrate the only way to meet compliance?** No, the training video includes allergy awareness topics to protect your consumers. It does not contain regulatory or inspection information.
6.3	**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?** 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.
6.4	**Will the state supply the video to local Boards of Health, and also to trainers that do Food Safety certification training?** The video will be available for free online for anyone to view. However, only the 3 MDPH approved vendors can issue the food allergy awareness certificate to certified food protection managers.
6.5	**Can local colleges administer certificates, or CEU's, through their institutions that training in this area has been completed?** 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

	accredited food safety training programs.
6.6	**Supermarkets typically have a number of certified Person's 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.** 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. 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.
7	**Video approved by MDPH – MGL Ch. 140, s. 6B, subsection (c)**
7.1	**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?** No. As stated previously, the video will raise awareness but is not intended to substitute for a comprehensive allergen training program.
7.2	**How do you get approved to be on the vendor list to issue a certificate proving the training video was fully viewed?** 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.
7.3	**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?** No, the video was produced specifically to implement Massachusetts' Allergen Awareness statute to address food allergy awareness through regulatory requirements.
7.4	**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;** 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.
7.5	**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.** 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.
8	**Exemptions - 105 CMR 590.009(H)(4)**
8.1	**Who is exempt from the Act?** Food establishments that DO NOT cook, prepare, or serve food intended for immediate consumption are exempt from the allergy awareness regulatory requirements. 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. Food service operations in institutional settings in which food is prepared and/or served to a specific

	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. 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).
8.2	**What are the requirements for schools that are not approved to participate in USDA Child Nutrition Programs?** 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.
8.3	**Are cafeteria-style dining areas in retail food stores exempt or excluded from the regulation?** 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.
9	**Enforcement - 105 CMR 590.013**
9.1	**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 to local boards of health as the primary agencies responsible for enforcing the State Sanitary Code.
9.2	**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 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.
9.3	**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 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).
9.4	**Would MDPH allow for an annual certification on the food service renewal forms, as an alternative to the mandatory training and posting requirements?** No, MDPH is not considering alternative avenues to comply with the regulation. The video viewing requirement was set by statute.
10	**Food Allergy Friendly Designation - MGL Ch. 140, s. 6B, subsection (g)**
10.1	**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?** 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.