MARYLAND

Task Force to Study Food Allergy Awareness, Food Safety, and Food Service Facility Letter Grading

Delegate Shawn Z. Tarrant
Co-Chair
Senator Jamie Raskin
Co-Chair

January 14, 2014

The Honorable Martin O'Malley
Governor
State of Maryland
Annapolis, MD 21401-1991

The Honorable Thomas M. Middleton
Senate Finance Committee
3 East
Miller Senate Building
Annapolis, MD 21401

The Honorable Peter A. Hammen
House Health and Government Operations
Committee
Room 241
House Office Building
Annapolis, MD 21401

RE: Final Report of the Food Allergy Awareness, Food Safety, and Food Service Facility Letter Grading Task Force

Dear Governor O'Malley, Chair Middleton, and Chair Hammen:

Pursuant to House Bill 9, Chapter 252 of the Acts of 2013, the Food Allergy Awareness, Food Safety, and Food Service Facility Letter Grading Task Force submits this report on the findings and recommendations of the Task Force related to food allergies, food safety, and food service facility letter grading in Maryland.

I hope this information is useful. If you have questions about this report, please contact Dr. Clifford Mitchell at 410-767-7438 or cliff.mitchell@maryland.gov.

Sincerely,

Senator Jamie Raskin
Co-Chair

Delegate Shawn Z. Tarrant
Co-Chair

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REPORT OF THE
TASK FORCE ON FOOD ALLERGY AWARENESS, FOOD SAFETY, AND FOOD SERVICE FACILITY LETTER GRADING
TO THE
MARYLAND GENERAL ASSEMBLY
IN FULFILLMENT OF CHAPTER 252

January 2014

EXECUTIVE SUMMARY

The Task Force on Food Allergy Awareness, Food Safety, and Food Service Facility Letter Grading (the Task Force) was established by the Department of Health and Mental Hygiene (the Department) in 2013 to examine issues related to food service facilities in Maryland. The Task Force developed a series of findings and recommendations that are detailed in this report.

- **Food Safety:** In the area of food safety related to safety training and manager certification, the Task Force recommends that Maryland should move progressively towards a requirement that a certified food protection manager must be present at all facilities when food preparation and service to the general public is taking place.

- **Food Allergy Awareness:** With respect to food allergies, the Task Force recommends that by 6 months after implementation, food service facilities display on their menus, menu boards or at the point of service the request that Patrons with known food allergies notify their server of the allergies, prior to ordering food. The Task Force also recommends that food service facilities have available at all times, on their premises, a member of the staff, who has taken a food allergen awareness training course, approved by the Department, and passed an accredited test, for consultation with patrons to discuss meal options so as to minimize potential allergen risks. The timing for this requirement is to be established by the Department in regulation. The Department will post a list of acceptable third-party online and in-person food allergen awareness training courses, and list resources for restaurants to learn more about food safety and food handling as they relate to food allergies. The Department will also initiate tracking of food allergy complaints as new resources are made available to the Department to do so.

- **Food Service Facility Letter Grading:** Finally, regarding letter grading of food service facilities, the Task Force did not recommend adoption of any form of letter grading or scoring of inspection reports of food service facilities. Rather, the Task Force considered alternatives to letter grading, and encourages the routine publication of those parts of facility inspection reports, which relate to those items, generally known as the critical items, most closely related to public health. While the Task Force did not specify a preference for a publication method, it did recognize that resources would be required to support this activity.

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THE TASK FORCE CHARGE

House Bill 9 (Chapter 252) was passed by the Maryland General Assembly in 2013. This legislation created a Task Force (membership listed in Appendix 1) to study food allergy awareness, food safety, and food service facility (FSF) letter grading (see full legislation in Appendix 2). The Task Force was established to:

1. Study and make recommendations regarding:
    - Food allergy awareness and food allergy training for food service facilities in the State;
    - Food safety training for food service facilities in the State; and
    - The use of systems for grading and classifying health inspection results for food service facilities in the State.

2. Review food safety efforts at the State and local level, including:
    - The frequency of food service facility inspections, the most common violations, and the reasons for closures;
    - The number of foodborne illness cases that have been linked to food service facilities; and
    - The impact of local food service manager certification programs.

3. Study:
    - The most common food allergies and issues related to food preparation and cross–contamination in food service facilities;
    - Existing and planned food allergy training materials, programs, and certifications;
    - Food allergy awareness and training mandates for food service facilities in other states;
    - Legal issues related to food allergens, including potential civil liability, compliance with the Americans with Disabilities Act, and negligence issues;
    - The use of grading and classifying health inspection results for food service facilities by other jurisdictions;
    - The frequency of foodborne illness cases linked to food service facilities in jurisdictions that grade and classify health inspection results compared to similar jurisdictions that do not use grading and classification systems;
    - The costs of implementing and administering grading and classifying systems, how the costs of these systems are paid for, and any cost–benefit analyses of these systems that have been completed;
    - The alternatives to grading and classifying health inspection results, including the State's existing pass–fail inspection system, online posting of health inspection results, a system that informs consumers regarding the frequency of health inspections at food service facilities, and any other options the Task Force considers appropriate.

4. Study and evaluate:
    - Mandated food service manager certification and mandated food handler training options; and

- Online food safety training programs for certification and recertification.

The Task Force was directed to report its findings and recommendations on or before January 1, 2014. Because of the scope of the Task Force's activities, this report presents its recommendations with a significant portion of the supporting materials in the appendices.

MARYLAND FOOD SERVICE FACILITY OVERVIEW

The Department delegates to the 24 local health departments in the State the authority to inspect and enforce approximately 27,000 food service facilities in accordance with the Code of Maryland Regulations (COMAR) 10.15.03 – Food Service Facilities. These regulations mandate food service facilities be inspected at a prescribed frequency associated with the risk of food handling involved using a Hazard Analysis Critical Control Point (HACCP) approach to food safety. The inspections ensure that the food service facilities are conducting business by ensuring certain critical items are met. These items include:

Critical Items

- Obtaining food from an approved source;
- Protecting raw and ready-to-eat food from all adulteration, spoilage and contamination;
- Restricting food workers with infection or other indicators of illness;
- Ensuring that all food workers wash hands thoroughly before contact with utensils, raw food and before using gloves;
- Properly cooling and refrigerating potentially hazardous foods and providing sufficient refrigeration equipment;
- Holding potentially hazardous foods at proper hot temperatures and providing sufficient hot-holding equipment;
- Adequately cooking and reheating potentially hazardous foods;
- Providing potable hot and cold running water; and
- Discharging sewage properly from the facility.

A priority assessment is conducted for each food establishment based on the information provided at the time of plan reviews, construction, remodeling, or any planned changes. Priority is established by the complexity of food processes conducted at the establishment using the HACCP approach.

Types of Priority and Frequency of Inspections

- High priority food service facility: At a minimum frequency of three times per year, one at every 4-month interval;
- Moderate priority food service facility: At a minimum of two times per year, one every 6 months;
- Low priority food service facility: Using a comprehensive inspection at a minimum of once every 2 years.

The mandated inspections rate for each local health department is based on the number of food service facilities in each priority area. Typically, with an adequately staffed program, completing 80% of the mandated inspections rate is a realistic achievement. In practice, the number of Environmental Health Specialists (EHS) available in a jurisdiction to conduct routine food service facility inspections is limited and reduced by unscheduled events such as complaints, foodborne illness outbreaks, re-inspections to confirm corrective actions have been completed and requirements to conduct mandated inspections/investigations in other Environmental Health programs.

Most Common Violations

A review of the most recent local health department inspection reports showed that the most common critical violations were:

- Failure to hold hot foods above 135 degrees F to minimize microbial growth; and
- Failure to hold cold foods below 41 degrees F to minimize microbial growth.

Closure Actions

A recent sampling of several local health department records showed the following number of facility closures during the last fiscal year:

- Baltimore City - 109 facilities
- Baltimore County - 32 facilities
- Caroline County - 3 facilities
- Cecil County - 3 facilities
- Howard County - 20 facilities
- Kent County - 3 facilities
- Montgomery County --30 facilities
- Prince Georges County – 80 facilities
- Wicomico County - 5 facilities.

It should be noted that the number of facilities in each jurisdiction varies depending on location and population. The above figures do not reflect the number of critical item violations in a jurisdiction. If a critical item violation is corrected immediately during the inspection then the facility is not closed. Also, not all of the closures reflect food related issues, but may be caused by events external to the facility such as broken water mains and floods.

Foodborne Illness Outbreaks in Maryland

In accordance with COMAR, all illness outbreaks are reported to the Office of the State Epidemiologist within the Department. For foodborne illnesses, a foodborne outbreak in Maryland is defined as:

- Two or more epidemiologically linked cases of illness following the consumption of a common food item or items; or
- One case of botulism, cholera, mushroom poisoning, trichinosis or fish poisoning.

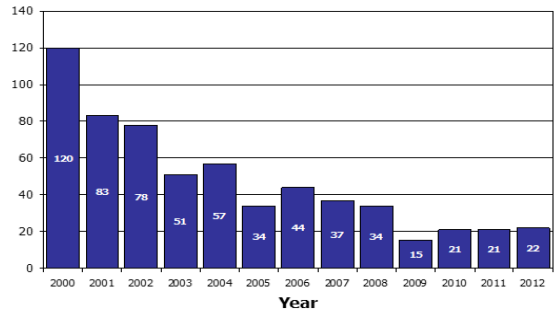

Figure 1. Foodborne outbreaks reported to Maryland Department of Health and Mental Hygiene, 2000-2012

State epidemiologists also monitor a number of national databases sponsored by the U.S. Food and Drug Administration (FDA) and the Centers for Disease Control and Prevention (CDC), such as PulseNet and FoodNet, to facilitate interstate coordination of outbreaks that cross state lines. Figure 1 shows the number of foodborne outbreaks reported to the Department from 2000-2012 and shows a significant reduction of foodborne outbreaks over this time period.

Figure 2 provides a breakdown of foodborne outbreaks by attributed source and shows that restaurants are the largest single source of outbreaks. However, while food service facilities are the major attributed source of foodborne outbreaks they may often not be the primary cause of the outbreak. Frequently food service facilities become the focus of a foodborne outbreak, not because of failures in their operating practices, but because the food they served was already contaminated when they received it and they provided it to a sufficient number of customers who became ill. Over the last decade national foodborne outbreaks have become a significant feature of the food industry due to the integration and efficiency of the food supply industry.

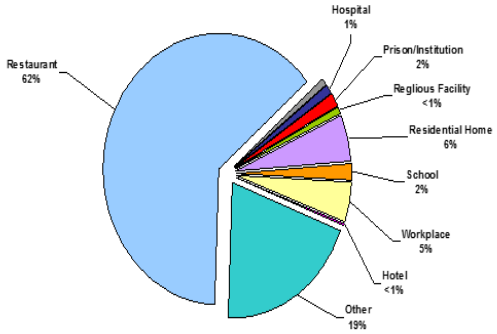

Figure 2. Foodborne Illness Outbreaks by exposure site, 2003-2012

Figure 3 shows a breakdown of the foodborne outbreaks by the organism responsible. From 2003-2012 only 26% of the foodborne outbreaks had their organism source determined although in more recent years this has increased close to 100% in keeping with CDC and FDA guidelines.Dramatic improvements have been made in establishing organism serotypes by "DNA fingerprinting" techniques.

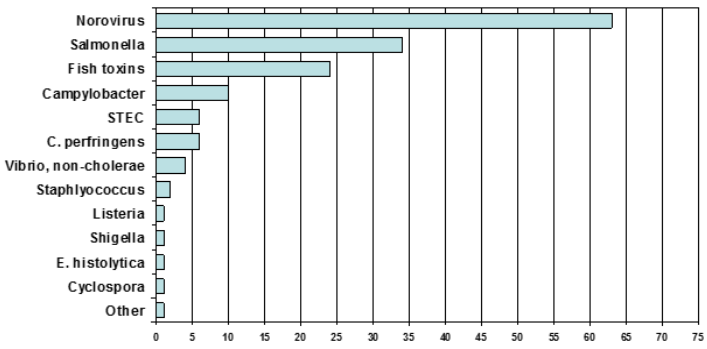

Figure 3. Foodborne Illness Outbreaks by Etiology, 2003-2012

FOOD SAFETY TRAINING

Current Training

The Department conducts standardization of at least one EHS in each of the 24 jurisdictions. Standardization is a process of training and evaluation designed to promote uniformity among retail food inspection staff in the interpretation of laws and regulations during food facility inspections. The goal is to provide consistency throughout the State with inspections and enforcement procedures. The local standardization officer (LSO) is then required to train their staff on the same HACCP inspection protocols. In general, the State and local health departments do not provide regular training courses onfood safety but will, in the event of a food safety issue, work with individual facilities on re-training staff as a method of overcoming persistent operational weaknesses. The exception to this is when significant changes occur in the State law and food safety regulations. In those circumstances, outreach programs are initiated to make the food industry aware of the changing regulations.

Currently, five local health departments in Maryland have established Food Manager Certification programs; Baltimore City, Montgomery, Prince Georges, Howard and Baltimore Counties. These municipalities formed the Inter-jurisdictional Certified Food Manager Committee (the Committee), which meets to discuss and establish operational procedures in accordance with their local statutes. The Committee also maintains a database of course instructors who can provide food safety training to food service facilities, for a negotiable fee, in a variety of languages. Prince Georges and Baltimore Counties also have a limited certified food manager training course available for non-profit organizations that meet certain criteria at a minimal fee or no charge respectively.

Food Manager Certification National Training Courses and Examinations

There are many courses available to teach individuals in the food service industry about food safety and prepare them for a Conference of Food Protection accredited examination (ANSI/CFP) to become a Certified Food Protection Manager. The National Restaurant Association (NRA), Food Marketing Institute, National Environmental Health Association and others provide third party training courses for food service facility employees that rely on the most current FDA Food Code as well the CDC's foodborne illness reports. There are currently four ANSI/CFP examination providers in the nation:

- Learn2Serve;
- National Registry of Food Safety Professionals;
- National Restaurant Association/ ServSafe; and
- Prometric, Inc.

Each provider follows the same standards to ensure consistency in the way the examination is created and the topics covered as well as how they are administered to individuals.

Other States' Activities

A web-based survey of a number of states across the country indicates that most states do not operate regular general training courses but work with individual facilities on training when necessary to resolve persistent issues.

The biggest training trend across many states is to adopt a formal certification requirement for food service facilities in the form of Food Protection Manager Certification. The following studies by the FDA provide more information on this issue:

- http://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodborneIllnessRiskFactorReduction/ucm224334.htm ; and
- http://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodborneIllnessRiskFactorReduction/ucm093797.htm#new

These studies have shown that adopting Food Protection Manager certification requirements can significantly reduce the incidence of foodborne illness outbreaks at food service facilities. The details were established by the Conference for Food Protection and can be found in the current version of the Food Code as follows:

> "2-102.12 Certified Food Protection Manager
> (A) At least one employee that has supervisory and management responsibility and the authority to direct and control food preparation and service shall be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program."

The certification program is one that has been evaluated and listed by a Conference for Food Protection-recognized accrediting agency as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification.

Finding 1: Food Protection Manager Certification

Based on evidence provided to the Task Force, Maryland has significantly reduced the incidence of foodborne illness outbreaks in the past decade, but the downward trend has leveled off in recent years. The FDA has found that adopting Food Protection Manager Certification provides a vehicle that could further reduce the incidence of foodborne illness outbreaks at food service facilities.

Recommendation 1: Food Protection Manager Certification

Based on the findings above, the Task Force recommends:

1. *A food service facility must have on the premises at all times an ANSI-CFP Certified Food Protection Manager.*

The Task Force recommends that the food service facilities in Maryland progressively move to a position where a certified food protection manager must be present at all facilities when food

preparation and service to the general public is taking place. The Department will establish, in regulation, the transition time and requirements for compliance with this regulation. The Department will post on its website a list of third-party training courses which can be taken to prepare for the required certification examination.

The Task Force also encourages local health departments, at their own discretion, to explore low cost options to assist non-profit organizations in obtaining the necessary training and certification to comply with the Certified Food Protection Manager regulation.

ALLERGEN AWARENESS

Clinical Syndromes and Public Health Impact

The prevalence of food allergies in America is estimated to be around 8% in children[1] somewhere less than 10% in the populations as a whole.[2] The number of people with food allergies appears to be growing, but explanations for the increase are uncertain, and studies are complicated by inconsistent case definitions. According to a study released in 2013 by the CDC, food allergies among children 0 – 17 years of age increased from 3.4% to 5.1%, an increase of 50%, between 1997 and 2011.[3] The eight most common food allergens, which account for 90% of food allergies, include cow's milk, eggs, peanuts, tree nuts, fish, shellfish, soy and wheat.[4] When an individual with a food allergy consumes food containing their allergen, the spectrum of reactions may range from mild to severe. Symptoms may range from itching and tingling all the way to severe and potentially fatal reactions such as anaphylaxis involving circulatory collapse and cardiac arrest. Although scientific studies are ongoing, there is currently no preventive treatment or cure for food allergies; only strict avoidance will avert a reaction. Although specific estimates are unavailable for Maryland, a recent study estimated the national cost of food allergies in 2007 was $225 million in direct medical services, with another $115 million in indirect costs.[5]

See Appendix 4 for a more detailed overview of the issues associated with living with allergies.

Food Service Facility Operational Issues

Most food service facilities are designed to provide a hygienic environment in which food can be safely prepared, cooked and served to customers. As such the primary focus of a food service facility is to minimize the risk of microbial contamination of prepared food. This is achieved by adequate sanitation of the facilities, cooking to the appropriate temperatures and avoiding cross-contamination between raw and ready to eat products during service and preparation.

Allergens require a new awareness by food service facilities that can necessitate a more individualized approach to minimize the risk of potentially hazardous cross-contact. This approach will require knowledge of the ingredients of all food components in the facility and strategies to minimize cross-contact risks at all stages, in food storage, preparation and serving for food allergic individuals.

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[1] Gupta RS, Springston EE, Warrier MR, Smith B, Kumar R, Pongracic J, Holl JL. The prevalence, severity, and distribution of childhood food allergy in the United States. Pediatrics. 2011 Jul;128(1):e9-17. doi: 10.1542/peds.2011-0204. Epub 2011 Jun 20.

[2] Chafen JJ, Newberry SJ, Riedl MA, Bravata DM, Maglione M, Suttorp MJ, Sundaram V, Paige NM, Towfigh A, Hulley BJ, Shekelle PG. Diagnosing and managing common food allergies: a systematic review. JAMA. 2010 May 12;303(18):1848-56. doi: 10.1001/jama.2010.582.

[3] U.S. National Center for Health Statistics. Trends in Allergic Conditions Among Children: United States, 1997–2011. NCHS Data Brief (No. 121), May 2013. Accessed 12/22/2013 at: http://www.cdc.gov/nchs/data/databriefs/db121.pdf.

[4] 3.Boyce JA, Assa'ad A, Burks AW, et al; NIAID-Sponsored Expert Panel. Guidelines for the diagnosis and management of food allergy in the United States: report of the NIAID-sponsored expert panel. J Allergy Clin Immunol. 2010;126(suppl 6):S1-S58.

[5] Patel DA, Holdford DA, Edwards E, et al.. Estimating the economic burden of food-induced allergic reactions and anaphylaxis in the United States. J Allergy Clin Immunol. 2011; 128: 110–115.

Some food service facilities will be unable to provide an accommodation for certain food-allergic patrons, because their featured concept or product may include a food allergen as the main ingredient of what they promote as a popular food product.

Federal Guidance: The Food Code

Reference to the current version of the Food Code (2013) provides some guidance on food allergies. Section 2-103.11 (M) of the Food Code requires that employees are properly trained in food safety, including food allergy awareness, as it relates to their assigned duties. It is important to note that the Food Code only focuses on the eight major food allergens and does not address food allergens in general. The Annex to the Food Code amplifies this, indicating that restaurant and retail food service managers need to be aware of the serious nature of food allergies, including allergic reactions, anaphylaxis, and death. It also indicates that restaurant and retail food service managers need to:

- Know the eight major food allergens (listed above), which account for 90% of allergies;
- Understand food allergen ingredient identities and labeling; and
- Avoid cross-contact during food preparation and service.

The Annex also indicates that allergens fall under the category of potential chemical hazards.

It is important to remember, however, that the Food Code is not a regulation or federal law, but simply a Model Ordinance designed and provided for individual states use as a basis for state laws and regulations.

State and Federal Legislation

Currently, Maryland's only state law relating to food allergy awareness is Chapter 262, HB9 (2013). This statute created the Task Force and the requirement to post allergen awareness posters.

At the federal level, two statutes exist which relate to allergens in food:

- Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA);
- FDA Food Safety Modernization Act of 2011 (FSMA)

FALCPA only applies to packaged food items and as such does not apply to food service facilities. It is, however, instructive for the insight it gives into legislative thinking on allergens:

- The Legislation only applies to the designated eight foods known collectively as the "major food allergens". The FDA notes this group of allergens accounts for 90% of all food allergies. Although there are other foods to which sensitive individuals may react, the labels of packaged foods containing these other allergens are not required to be in compliance with FALCPA".
- FALCPA did not require the FDA to establish a threshold level for any food allergen.

FSMA amends Chapter IV (21 U.S.C. 341 et seq.) such that the operator of a facility should have a written plan that:

- Identifies and evaluates known and reasonably foreseeable hazards associated with the facility;
- Identifies and implements preventive controls to minimize the risks;
- Monitors the effectiveness of the controls;
- Establishes corrective actions for failures of the preventative controls;
- Verifies the functioning of the plan; and
- Maintains records to demonstrate the correct functioning of the risk management plan.

Allergens are included in the list of foreseeable hazards to be evaluated in the risk management plan.

At the state level, the State of Massachusetts has enacted an Allergy Awareness Bill. This law requires food service facilities to:

- Display an educational poster in the employee work area covering allergens and related issues;
- Display on menus, menu boards or at the point of service the following "Before placing your order, please inform your server if a person in your party has a food allergy"; and
- Have at least one certified food protection manager to have a food allergen awareness training certificate.

The State of Rhode Island has recently passed similar legislation. Additionally, Illinois, Connecticut, and New York have legislation that is currently being considered and pending legislative action as follows:

- **Illinois Senate Bill 37** which would mirror the MA Food Allergy Awareness Act;
- **Connecticut Senate Bill 263** which would mirror the MA Food Allergy Awareness Act;
- **Connecticut Senate Bill 895** which would require restaurants to establish written procedures to serve customers with food allergies; and
- **New York Senate Bill 214** which would:
    - Require the creation of a food allergy poster by the department of health;
    - Require the posting of the food allergy poster in all food service establishments; and
    - Authorize the department to charge a fee to cover printing, postage and handling expenses of the posters.

Massachusetts Allergen Law

The full details of the Allergen Awareness Act, M.G.L. c. 140, § 6B, can be found in. Appendix 5 together with a link to the frequently asked questions and other guidance released by the Massachusetts Department of Public Health (MDPH) Public Health Council.

The Americans with Disabilities Act Compliance, Legal Liability

> **Disclaimer:** The following section of the report is a brief summary of the potential significance of legal topics related to allergens but is not a legal opinion on any of the items covered.

In the absence of specific legislation, consumers with food allergies have used a variety of approaches to seek redress for an allergen reaction including:

- Common law product liability actions;
- Failure to warn of a product or manufacturing defect;
- State consumer protection laws; or
- The Americans with Disabilities Act (ADA).

These actions appear to have met with little success, although recent amendments to the ADA may have some impact in the allergen area and food allergies have now been interpreted to be a disability under the law. However, overall there is little history of food allergen litigation in the United States of America.

In response to an inquiry from the Task Force, the Office of the Attorney General indicated (Appendix 6) that it is likely that the Task Force proposals do not create any new legal cause of action for restaurant consumers or expose restaurants owners to new legal liability.

Food Allergen Training

While a significant number of restaurants operate on a "cook-to-order" basis, which often gives them the flexibility to accommodate food-allergic customers, restaurant employees generally receive little or no training on the serious nature of food allergies. As a result, restaurant staff often cannot accurately respond to inquiries from food-allergic customers or help them select safe menu items and may be vastly misinformed.

In a survey given to one hundred restaurant personnel, including managers, chefs, and wait-staff, one-quarter of the respondents incorrectly indicated that removing an allergen from a finished meal (e.g., taking off nuts) was safe; and one-quarter incorrectly indicated that consuming a small amount of an allergen would be safe. This lack of understanding could have life threatening consequences for customers with food allergies.[6]

Restaurants recognize the importance of education in this area. According to a survey by the National Restaurant Association, some 87% of restaurants believe food allergies are extremely important and expect increased attention to it. Yet 43% concede they do not train their staff on food allergens.[7]

[6] Source: Pre-publication information presented by National Restaurant Association Task Force member.
[7] Source: Pre-publication information presented by National Restaurant Association Task Force member.

Food Allergen Training in Maryland

Currently, there is no requirement in the State of Maryland for retail food service facilities to have training on food allergen awareness. Additionally, there is no statewide training that covers food allergen awareness for food service facilities.

National Training Courses

While there are a number of food allergen related training courses available from third parties there are very few food allergen awareness courses that focus on food service operations. The first of these has been established by the National Restaurant Association and it is anticipated that additional courses will become available as more states address food allergen issues.

Food Allergy Training Activities in Other States

A survey of states with pending food allergen related legislation indicated that these states are looking at training activities used in Massachusetts as a model for their training programs, as there are not many other programs available at this time. A concern many states have is that there are few options available for people who speak English as a second language and these states are looking at the training industry to create programs, either online or in classrooms that can accommodate this need.

Finding 2: Food Allergy Training

Allergen mediated health issues impact a growing segment of the population of the United States and Maryland. At present, there is no Maryland law or regulation that places allergen awareness training requirements on food service facilities.

The Department does not currently track reports of food allergy reactions but does include food allergy questions in its foodborne illness investigations.

Recommendation 2: Food Service Facility Training and Prevention Recommendations Related to Food Allergies

The following recommendations are made to promote education and awareness of food allergies in food service facilities. They are not intended to require restaurants to alter their recipes to accommodate food allergic customers, only to educate staff about food allergies so they may better respond to consumers' inquiries. This may mean in some cases, after consulting with a food allergic individual, the restaurant in conjunction with the patron may determine that the restaurant is not able to safely meet the needs of the patron.

The Task Force recommends that:

1. By six months after implementation, food service facilities display on their menus, menu boards or at the point of service the request that patrons with known food allergies notify their server of the allergies, prior to ordering food;
2. Food service facilities have available at all times, on their premises, a member of the staff, who has taken a food allergen awareness training course, approved by the Department, and passed an accredited test, for consultation with patrons to discuss meal options so as to minimize potential allergen risks. The timing for this requirement is to be established by the Department in regulation;
3. The Department will provide and post on its website a list of acceptable third-party online and in-person food allergen awareness training courses consistent with ANSI-ASTM 2659. Additionally, the Department will also list resources for restaurants and consumers to learn more about food safety and food handling protocol as it relates to food allergies; and
4. The Department will initiate tracking of food allergy reactions as new resources are made available for the Department to do so.

GRADING AND CLASSIFYING HEALTH INSPECTION RESULTS

Current Maryland Practice

Food service facilities in Maryland are regulated under COMAR 10.15.03, *Food Service Facilities.* Facility inspections are based on the HACCP methodology and an inspection form that is in general use by the local health department (see Appendix 7). The inspection form has two main components with the first section covering those items that are most closely linked to public health and collectively known as the critical items. The second segment is comprised of Good Retail Practice (GRP) items that contribute to general safe operation of the facility. Each item that is observed during the inspection is designated as a "pass" or a "fail" depending on whether the items complies with regulatory requirements or not. For items in the critical section of the form, in the event of a "fail" the item must be corrected immediately or the facility is closed. For items in the GRP section of the form a correction plan is developed by the facility staff and a completion time for the corrective action is given by the EHS. A follow-up inspection may be used to verify the GRP items have been corrected as agreed or by the next routine inspection.

Other States' Grading Practices

A number of jurisdictions across the country have introduced letter grading of inspections as a means of public outreach. New York City and Los Angeles County in California represent the two most widely known systems currently in use. (Appendix 8 and 9). A detailed review of these two typical letter grading schemes shows that:

- In general not all of the items on the inspection report are scored, which can lead to de-emphasis of the non-scored items and influence facility safety;
- Depending on the methodology, some items of the inspection occur more than once in the scoring system leading to choice in how the item is scored or allowing for double scoring under some circumstances;
- There is no general agreement on what numerical value or "weight" is assigned to specific items on the inspection report; and
- There is no general agreement on how the actual scores are assigned a given letter grade so differences may occur between jurisdictions or states.

Overall, there is no clear indication of how a grade A facility differs from a grade B facility or how this relates to the average jurisdiction inspection grade. It is also not clear how the grade impacts public health risks for patrons. The grade could be the result of a larger number of more lower scored items, for example related to GRP issues or a very small number of highly scored critical items. There is a large risk that the general public with its general familiarity with Grade A, Grade B, etc., ratings may be misled into reading more into the grade than is warranted.

At this time, there is no significant independent body of information that could support the idea that the introduction of letter grading has led to a significant reduction in foodborne illness outbreaks associated with food service facilities.

While no definitive costs have been published, it does appear that adding the additional step of letter grading, inspection reports will require more resources on behalf of the inspecting agency and may lead to more frequent requests for re-inspections as food service facilities strive to improve a grading.

Among the concerns expressed on behalf of the Environmental Health Specialists, who inspect food service facilities were:

- Assigning a "grade" to an inspection report could lead to the creation of false expectations with the public at large;
- The grade could quickly become a "marketing" tool;
- Pressure to get a "good grade" could shift the focus of inspections away from the current focus on public health;
- Limited inspection resources could be overloaded by facilities requesting frequent re-inspections to improve their grading; and
- Facility/Inspector relationships could be degraded by pressures to achieve a desired score, particularly if the scoring system has a range of scores that could be assigned to a given violation.

Alternative Public Outreach Methodologies

A review of practices both in Maryland and in other states indicates that there is a wide range of practices designed to inform the general public about the food safety performance of food service facilities. Food service facility inspection reports are a matter of public record and as a result a wide range of strategies have been employed both in Maryland and other states to highlight inspection findings. These include:

1. Posting of the latest inspection report at a prominent point in the facility.
2. Posting of the latest inspection results on a State or local jurisdiction website.
3. Providing a chronology of inspection results on a State or local jurisdiction website.
4. Posting only the critical violation results on a State or local jurisdiction website.
5. Posting only food service facility closings on a State or local jurisdiction website.
6. Utilizing local media to publicize closings or critical violation results at a food service facility.

Increasing public outreach by the above methodologies results in two challenges:

- Finding the resources to provide and maintain the public display of information; and
- Providing significant public education as to the significance of the reported information.

Finding 3: Letter Grading of Food Service Facilities

The implementation of letter grading of food service facility inspections does not appear to provide a useful tool for improving public health safety for the patrons of food service facilities and is likely to increase the resources committed to regulatory activities without an identifiable benefit.

There is no statewide readily accessible source of food service facility inspection information that the general public could use to influence their choice of eating facilities.

Recommendation 3: Letter Grading of Food Service Facilities

The Task Force does not recommend adopting any form of Letter Grading or scoring of inspection reports of food service facilities. The Task Force did consider alternatives to letter grading, and recommends the following:

Recommendation 4: Alternatives to Letter Grading of Food Service Facilities

The Task Force encourages the routine publication of those parts of facility inspection reports, which relate to those items, generally known as the critical items, most closely related to public health**.**

The Task Force had no particular preference for publication method but recognized that publication of inspection results and maintenance of a website will place a resource burden on the enforcement organizations which would require additional funds be made available to support this activity in the interests of public health and transparency.

APPENDIX 1: Task Force Membership

Name	Membership Category
Honorable Shawn Tarrant	Maryland House of Delegates
Honorable Jamie Raskin	Member of the Maryland Senate
Alan Brench	Maryland Department of Health and Mental Hygiene (DHMH)
Dr. Cynthia Tucker	Baltimore City Council representative
Susan Thweatt	Prince George's County Health Department
George Dahlman	Food Allergy Research and Education
Mike Bacharach	Consumer with a food allergy
Marianne Quinn	Parent of a child with a food allergy
Anthony Clarke	Restaurant Owner/Operator (Irish Restaurant Company)
William Weichelt	National Restaurant Association
Keith Sykes	Maryland Retailers Association (Safeway)
Katie Doherty	Maryland Hotel and Lodging Association (ARAMARK Corp.)
Clark Beil	Inter-Jurisdictional Food Service Manager Program Committee
Susan Kelly	Maryland Association of County Health Officers (MACHO) (Harford Co.)
Yvonne DeLoatch	Maryland Conference of Local Environmental Health Officers (Baltimore Co.)

APPENDIX 2: Chapter 252 – House Bill 9 (2013 Legislative Session)

HOUSE BILL 9

J1, P1 3lr0725

(PRE–FILED) CF SB 390

By **Delegates Hixson, Valderrama, Howard, and Simmons**
Requested: November 8, 2012
Introduced and read first time: January 9, 2013
Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 17, 2013

CHAPTER _____

AN ACT concerning

Health – Food Allergy Awareness, Food Safety, and Food Service Facility Letter Grading – Posting Requirement and Task Force

FOR the purpose of requiring certain food establishments to display, in a certain manner and location, a certain poster relating to food requiring, on or before a certain date, the Department of Health and Mental Hygiene, in consultation with certain entities, to create and make available on its Web site a certain poster*;* establishing a Task Force to Study Food Allergy Awareness, Food Safety, and Food Service
Facility Letter Grading; providing for the membership and chair of the Task Force; authorizing the Task Force to form subcommittees from among its members; requiring the Department of Health and Mental Hygiene to provide 3 staff for the Task Force; providing that a member of the Task Force may not 4 receive certain compensation but is entitled to certain reimbursement; 5 providing for the duties of the Task Force; requiring the Task Force to report 6 certain findings and recommendations, on or before a certain date, to the 7 Governor and certain committees of the General Assembly; providing for the 8 effective dates of this Act; providing for the termination of certain provisions of 9 this Act; and generally relating to food allergy awareness, food safety, and food 10 service facility letter grading.

BY adding to Article – Health – General Section 21–330.2 Annotated Code of Maryland (2009 Replacement Volume and 2012 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health – General 21–330.2.

(A) Beginning March 1, 2014, a food establishment shall display prominently in the staff area 28 **of the food establishment a poster relating to food allergy awareness that includes information regarding the risk of an allergic reaction**.

(b) On or before January 1, 2014, the department, in consultation with the restaurant association of Maryland and food allergy research and education, shall create and make available on its web site the poster required to be displayed under paragraph (1)(i) of this subsection (a) of this section.; and

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) There is a Task Force to Study Food Allergy Awareness, Food Safety, and 17 Food Service Facility Letter Grading.

(b) The Task Force consists of the following members:

(1) one member of the Senate of Maryland, appointed by the President 20 of the Senate;
(2) one member of the House of Delegates, appointed by the Speaker of 22 the House;
(3) one representative of the Department of Health and Mental Hygiene, appointed by the Secretary of Health and Mental Hygiene;
(4) the President of the Baltimore City Council, or the President's 26 designee;
(5) the Prince George's County Health Officer, or the Health Officer's 28 designee; and
(6) the following members, appointed by the Governor:
(i) one representative of Food Allergy Research and Education;
(ii) one consumer with a food allergy;
(iii) one parent of a child with a food allergy;
(iv) one representative of the Restaurant Association of Maryland;
(v) one representative of the National Restaurant Association;
(vi) one representative of the Maryland Retailers Association;
(vii) one representative of the Maryland Hotel and Lodging Association;
(viii) one representative of the Inter–Jurisdictional Food Service Manager Program Committee;
(ix) one representative of the Maryland Association of County Health Officers who is not from a jurisdiction with a certified food service manager program; and

(x) one representative of the Maryland Conference of Local Environmental Health Directors.

(c) The President of the Senate and Speaker of the House jointly shall designate the chair of the Task Force.

(d) The Task Force may form subcommittees from among its members.

(e) The Department of Health and Mental Hygiene shall provide staff for the Task Force.

(f) A member of the Task Force:

(1) may not receive compensation as a member of the Task Force; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(g) The Task Force shall:

(1) study and make recommendations regarding:

(i) food allergy awareness and food allergy training for food service facilities in the State;

(ii) food safety training for food service facilities in the State; and

(iii) the use of systems for grading and classifying health inspection results for food service facilities in the State;

(2) review food safety efforts at the State and local level, including:

(i) the frequency of food service facility inspections,

(ii) the most common violations, and the reasons for closures;

(iii) the number of food–borne illness cases that have been linked to food service facilities; and

(iv) the impact of local food service manager certification programs;

(3) study: the most common food allergies and issues related to

(i) food preparation and cross–contamination in food service facilities;

(ii) existing and planned food allergy training material, programs, and certifications;

(iii) food allergy awareness and training mandates for food service facilities in other states;

(iv) legal issues related to food allergens, including potential civil liability, compliance with the Americans with Disabilities Act, and negligence issues;

(v) the use of grading and classifying health inspection results for food service facilities by other jurisdictions; the frequency of food–borne illness cases linked to food service facilities in jurisdictions that grade and classify health

inspection results compared to similar jurisdictions that do not use grading and classification systems;

(vi) the costs of implementing and administering grading and classifying systems, how the costs of these systems are paid for, and any cost–benefit analyses of these systems that have been completed;

(vii) the alternatives to grading and classifying health inspection results, including the State's existing pass–fail inspection system, online posting of health inspection results, a system that informs consumers regarding the frequency of health inspections at food service facilities, and any other options the Task Force considers appropriate; and

(viii) any other issues the Task Force considers appropriate; and

(4) study and evaluate: mandated food service manager certification and mandated food handler training options; and online food safety training programs for certification and recertification.

(h) On or before January 1, 2014, the Task Force shall report its findings and recommendations related to food allergy awareness and training, food safety training, and the use of grading and classifying health inspections results for food service facilities to the Governor and, in accordance with § 2–1246 of the State Government Article, the Senate Finance Committee and the House Health and Government Operations Committee.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect October 1, 2013.

SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in Section 3 of this Act, this Act shall take effect June 1, 2013. Section 2 of this Act shall remain effective for a period of 1 year and 1 month and, at the end of June 30, 2014, with no further action required by the General Assembly, Section 2 of this Act shall be abrogated and of no further force and effect.

APPENDIX 3: Task Force Activity Meetings

The Task force met on an approximately two week time cycle with each meeting comprising of mixture of subject matter presentations followed by a period of discussion.

Meeting Date.	Time.	Location.
August 15, 2013	10:00 hrs.	Dept. of Transport Headquarters Building
September 12, 2013	14:00 hrs.	Dept. of Transport Headquarters Building
October 3, 2013	13:00 hrs.	Dept. of Transport Headquarters Building
October 17, 2013	9:30 hrs.	House Office Building
November 7, 2013	13:00 hrs.	Dept. of Transport Headquarters Building
November 21, 2013	14:00 hrs.	Dept. of Transport Headquarters Building
December 12, 2013	13:00 hrs.	Dept. of Transport Headquarters Building

APPENDIX 4: Overview of Issues Associated with Living with Food Allergies.

(Provided by Food Allergy Research & Education (FARE))

The Physical Impact of Food Allergies

The job of the body's immune system is to identify and destroy germs (such as bacteria or viruses) that make you sick. A food allergy results when the immune system mistakenly targets a harmless food protein – an allergen – as a threat and attacks it.

Unlike other types of food disorders, such as intolerances, food allergies are "IgE mediated." This means that your immune system produces abnormally large amounts of an antibody called immunoglobulin E — IgE for short. IgE antibodies fight the "enemy" food allergens by releasing histamine and other chemicals, which trigger the symptoms of an allergic reaction.

When an individual with a food allergy is exposed to their allergen, usually by consuming foods containing the forbidden ingredient, their reactions can range from mild to severe, including the potentially life-threatening condition known as anaphylaxis. During anaphylaxis, allergic symptoms can affect several areas of the body and may threaten breathing and blood circulation. A food allergic reaction may affect an individual's skin (hives/swelling), the gastrointestinal tract (diarrhea/discomfort), the respiratory tract (difficulties breathing), and, in the most serious cases, the cardiovascular system (cardiac arrest).

There is no cure for food allergies and only strict avoidance to even minute quantities of the allergen will prevent a reaction.

The following facts are vital to understanding food allergies.

- Every 3 minutes, a food allergy reaction sends someone to the emergency department – that is more than 200,000 emergency department visits per year.
- The U.S. Centers for Disease Control reported that food allergies result in more than 300,000 ambulatory-care visits a year among children under the age of 18. Food allergy is the leading cause of anaphylaxis outside the hospital setting.
- Food allergy results in approximately 150-200 fatalities per year.
- Once an anaphylactic reaction starts, a medication called epinephrine is the first line of defense to treat the reaction.
- Teenagers and young adults with food allergies are at the highest risk of fatal food-induced anaphylaxis.
- Individuals with food allergies who also have asthma may be at increased risk for severe/fatal food allergy reactions.
- Symptoms of anaphylaxis may recur after initially subsiding and experts recommend an observation period of about four hours to monitor that the reaction has been resolved.
- Failure to promptly (i.e., within minutes) treat food anaphylaxis with epinephrine is a risk factor for fatalities.

- There is no cure for food allergies. Strict avoidance of food allergens and early recognition and management of allergic reactions to food are important measures to prevent serious health consequences.

The Restaurant Setting

Dining in restaurants is especially challenging for food allergic individuals who must constantly guard themselves against accidental exposure, especially in a venue where food is being prepared by individuals who are unfamiliar with food allergies. Even trace amounts of the food allergen can cause a reaction. The situation is especially dangerous in a restaurant setting, where food allergens can be hidden in menu items, and there is a substantial risk of cross-contact during food preparation in the kitchen. In fact, a significant number of fatal and near-fatal reactions are triggered by restaurant food. In two published studies, food service establishments including restaurants were the cause of fatal food allergic reactions approximately one-third to one half of the time.

Communication and education strategies are the most effective means of reducing the risks of accidental exposures. In a recent study, 62% of recorded adverse reactions, the restaurant was not properly notified of the allergy. A clear line of communication between patron, server, and food preparer can alleviate risk.

Restaurant employees generally receive little or no training on the serious nature of food allergy; reading ingredient labels; the importance of strict allergen avoidance; and avoiding cross-contact during food preparation. As a result, restaurant staff often cannot accurately respond to inquiries from food-allergic customers or help them select safe menu items and may be vastly misinformed. The wide-spread lack of understanding contributes to the risk of fatal reactions.

Lack of awareness in this area is both prevalent and dangerous. In a survey given to one hundred restaurant personnel, including managers, chefs, and waitstaff, one-quarter of the respondents incorrectly indicated that removing an allergen from a finished meal (e.g., taking off nuts) was safe; and one-quarter incorrectly indicated that consuming a small amount of an allergen would be safe. This lack of understanding could have life threatening consequences for customers with food allergies.

Restaurants sensitivity to the needs of individuals with food allergy will address risks. Procedures to manage food-allergic patrons, personnel training about food allergies, the potential for trace protein contamination to trigger reactions, methods by which to avoid cross- contact and the means of activating emergency assistance in the event of a reaction would all minimize risk of life-threatening reactions.

The lack of education/training can be a key contributor to fatal reactions, and prevents food-allergic individuals from safely enjoying restaurant meals.

The Food Service Industry

The impact of food allergies is both a challenge and opportunity for the food service industry. According to a survey by the National Restaurant Association, some 87% of restaurants believe food allergies are extremely important and expect increased attention to it. Yet 43% concede they do not train their staff on food allergens.

Currently the revenue lost from food allergy families avoiding restaurant dining is estimated at $45 million – a week. However, the global food market for those with food allergies is expected to grow more than $26.5 billion over the next five years and the increase in revenue by accommodating food allergic patrons is expected to increase 10-25%, according to the National Restaurant Association.

APPENDIX 5: Massachusetts Allergen Law

In response to the law Chapter 10 of Massachusetts State Sanitary Code, 105 CMR (Code of Massachusetts Regulations) 590.000, *Minimum Sanitation Standards for Food Establishments*, was amended to include the following:

- 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 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.
- 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".
- 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) and should be able to be "read from a distance of five feet".
- Training Certificate – Sections 105 CMR 590.009(G)(3) requires at least one certified food protection manager in each food service facility establishment by the regulation 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.

Based on practical experience the above requirements appear to be achieving the planned impact on the operations of Massachusetts food service facilities with respect to allergen awareness and a State report on the implementation of the Act is in preparation. The Act also includes a provision for the development of a "Food Allergy Friendly (FAF)" designation for restaurants and the publication of a list of such facilities. To date this has not been accomplished due to practical difficulties in specifying a FAF restaurant and establishing measurable criteria that could be used to manage compliance with the FAF designation. It should also be noted that the Massachusetts Law only specifically refers the "Major Food Allergens" as defined in the current version of the Food Code.

The Massachusetts Law does provide for the following exemptions:

- 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(G), with the exception of 105 CMR 590.009(G)(3)(b)2., 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.

- Food service operations in institutional settings in which food is prepared and/or served to a specific population (for example, hospitals, nonprofit 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(G)(2).
- Temporary food establishments operated by non-profit organizations are exempt from 105 CMR 590.009(G).

Massachusetts FAQs :

http://www.mass.gov/eohhs/docs/dph/environmental/foodsafety/food-allergen-3-reg-faqs.pdf

APPENDIX 6: AG's Letter on Allergen Legal Summary

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THE ATTORNEY GENERAL OF MARYLAND

OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

October 8, 2013

The Honorable Jamie Raskin
122 James Senate Office Building
Annapolis, Maryland 21401-1991

Dear Senator Raskin:

You have asked for advice concerning the possible liability of restaurants if legislation is adopted creating requirements or voluntary guidelines with respect to protection of consumers with food allergies. It is my view that the adoption of voluntary guidelines would not likely affect the liability of restaurants. Mandatory requirements could have some effect, under certain circumstances, but violation would not automatically establish negligence.

You have not provided specifics of any current proposal. As an example, however, Senate Bill 390 of last year, which was introduced as "Health - Food Allergy Awareness," would have: 1) required a restaurant to display a poster related to food allergy awareness and the risk of allergic reactions in the staff area of the restaurant; 2) required that a statement be included on the menu of a restaurant that a customer should inform the server of any food allergies; and 3) required restaurants to designate a person in charge, who would be present and responsible for operation of the restaurant, and who has watched a video on food allergies and has knowledge about relevant issues concerning food allergies and food preparation. In addition, the bill would have required the Department of Health and Mental Hygiene to issue guidelines and requirements that a restaurant would have to meet to be designated as food allergy friendly.[1] Senate Bill 390 was enacted as Chapter 251 of 2013, but, as enacted, it created a task force, and only the poster requirement was retained from the original bill.

In the absence of specific legislation, consumers with allergy problems have turned to a variety of other remedies, including common law products liability actions, such as actions for failure to warn or product or manufacturing defect, where there has been little success, and the Americans with Disabilities Act, where there has been even less. Jonathan B. Roses, *Food Allergen Law and the Food Allergen Labeling and Consumer Protection Act of 2004: Falling Short of True*

[1] The provisions of Senate Bill 390 as introduced would appear to be based on 140 Mass. Gen. Laws Ann. § 6B. That section expressly states that it "shall not establish or change a private cause of action nor change a duty under any other statute or common law, except as this section expressly provides." § 6B(f).

Protection for Allergy Sufferers, 66 Food and Drug Law Journal 225, 226, 230 (2011).[2] Some cases have also been brought under state consumer protection laws. *Id.* at 230. Overall, however, there is little history of food allergen litigation in the United States.[3] *Id.* at 231.

> To sufficiently plead a cause of action for negligence in Maryland, a plaintiff must 'allege with certainty and definiteness, facts and circumstances sufficient to set forth (a) a *duty* owed by the defendant to the plaintiff, (b) a *breach* of that duty, and (c) injury *proximately* resulting from that breach.' Thus, the initial requisite element is that 'there must exist a duty which is owed by the defendant to the plaintiff to observe that care which the law prescribes in the given circumstances.'

Pace v. State, 425 Md. 145, 154 (2012) (emphasis in original, citations omitted).

A plaintiff may establish a *prima facie* case of negligence by showing a violation of a statute or ordinance if that statute or ordinance was designed to protect a specific class of persons which includes the plaintiff and the violation proximately caused the injury complained of. *Allen v. Dackman*, 413 Md. 132, 143-44 (2010). Proving these two elements does not, however, establish negligence *per se*. *Id.* at 144. Instead, the violation is treated as evidence of negligence, and the trier of fact must "evaluate whether the actions taken by the defendant were reasonable under all the circumstances." *Paul v. Blackburn Limited Partnership*, 211 Md. App. 52, 91 (2013).

Whether a statutory provision would be one that is designed to protect a specific class of persons, as opposed to the public in general, would have to be analyzed on a provision by provision basis, and, like any other issue of statutory construction, might depend in part on the intention of the

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[2] It is possible that recent amendments to the Americans with Disabilities Act may allow success in more cases. The Americans with Disabilities Act Amendments Act of 2008, Pub.L. 110-325, specifically states that the "definition of disability in this Act shall be construed in favor of broad coverage of individuals . . . to the maximum extent permitted by the terms of this Act," and states that the term "'substantially limits' shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008." 42 U.S.C. § 12102(a)(4)(A) and (B). The Maryland Court of Appeals has already determined that it would not interpret the term "handicap" in Maryland laws as strictly as the term "disability" had been in ADA cases prior to the Amendments Act of 2008. *Meade v. Shangri-La Partnership*, 424 Md. 476, 486-491 (2012) (Latex allergy found to be "handicap" under Howard County Code).

[3] I have found only one food allergen case in Maryland. In *Pace v. State*, 425 Md. 145 (2012) a parent sued the State because her child, who had known peanut allergies, was served a peanut butter sandwich as part of the school lunch program. The Court found that the National School Lunch Act did not place a duty on the State to ensure that children with food allergies were not served food with allergens.

legislature as shown by other provisions of the bill and the legislative history. *See also* Section 286 of the Restatement, Second of Torts, entitled "When Standard of Conduct Defined by Legislation or Regulation Will Be Adopted," and Section 288 of the Restatement, Second of Torts, entitled "When Standard of Conduct Defined by Legislation or Regulation Will Not Be Adopted." It seems clear, however, that voluntary guidelines would not establish a duty of care. *Pace v. State*, 425 Md. 145, 167 (2012) (finding that National School Lunch Act did not create a duty to provide alternate food for a child without a disability because that action was discretionary and not mandated by the statute); Jonathan B. Roses, *Food Allergen Law and the Food Allergen Labeling and Consumer Protection Act of 2004: Falling Short of True Protection for Allergy Sufferers*, 66 Food and Drug Law Journal 225, 229, 230 (2011) (taking position that voluntary food allergen guidelines would not create a duty of care to support a negligence action). In addition, even where a statutory duty of care is found, liability will depend on the facts of each case.

Taking the provisions of Senate Bill 390 as examples, the voluntary program to be certified as a food allergy friendly would not create a mandatory duty of care, but a failure to live up to the voluntary guidelines while representing the establishment as food allergy friendly could arguably create an action based on the false representation. The mandatory provisions seem clearly intended to protect persons with food allergies, but it may be difficult to prove that the absence of a poster, of a notice on the menu to tell the server about food allergies, or even of a designated person in charge caused the injury complained of. *See Paul v. Blackburn Limited Partnership*, 211 Md. App. 52, 89 n.22 (2013) (suggesting that a requirement that a swimming pool have a lifeguard does not establish a duty of care).

Sincerely,

Kathryn M. Rowe
Assistant Attorney General

KMR/kmr
raskin07.wpd

APPENDIX 7: Maryland Food Service Facility Inspection Form

MARYLAND DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Authority: Health-General Article §§ 21-211, 21-313 and 21-314, Annotated Code of Maryland

Food Service Facility Inspection Report

Date	Time In	Time Out	Purpose of Inspection (Check All That Apply)			Priority Circle One		
/ /			☐ Comprehensive ☐ Monitoring	☐ Outbreak Investigation ☐ Follow-up	☐ Complaint ☐ Other	High	Moderate	Low

Establishment	Address	City/State	Zip Code

License Number	License Holder	Telephone	# of Seats	Handwash Signs	
				Yes	No

Certified Manager Name (If required)

Based on an inspection this date, the items marked below identify compliance with COMAR 10.15.03, regulations governing Food Service Facilities. Failure to comply with any time limits may result in suspension or revocation of your Food Service Facility license and may subject you to other penalties specified in Health-General Article §§ 21-1214 and 21- 1215, Annotated Code of Maryland.

Circle designated compliance status for each number item.
IN = in compliance **OUT** = not in compliance
N/O = not observed **N/A** = not applicable

CRITICAL ITEMS

Critical items are food safety requirements which must be followed to reduce the incidence of food-related illness and injury

Mark "X" in appropriate box for COS and R
COS = corrected on-site during inspection
R = repeat violation

	Compliance Status		COS	R
Food Source and Protection				
1	IN OUT	Food Obtained from Approved Source.		
2	IN OUT	Food separated and protected from adulteration, spoilage and contamination		
Employee Health and Hand Washing				
3	IN OUT	Food workers with infection or diarrhea restricted in accordance with COMAR 10.06.01		
4	IN OUT N/O	Hands clean and properly washed		
Potentially Hazardous Food				
5	IN OUT N/O N/A	Cooling time and temperature		
6a	IN OUT	Cold holding temperature		
6b	IN OUT N/O N/A	Hot holding temperature		
7a	IN OUT N/O N/A	Cooking time and temperature		
7b	IN OUT N/O N/A	Reheating time and temperature		
Water and Sewage				
8	IN OUT	Potable hot and cold running water provided		
9	IN OUT	Sewage discharged in accordance with all applicable State and local codes		

GOOD RETAIL PRACTICES

Mark "X" in box if numbered item is **not** in compliance
COS = corrected on-site during inspection

Good Retail Practices are preventative measures to control the introduction of pathogens, chemicals and physical objects into foods.

Mark "X" in appropriate box for COS and/or R
R = repeat violation

			COS	R
Food Temperature Control				
10		Thawing methods		
11		Cooling methods		
12		Time-only: procedures and record keeping		
13		Thermometers provided and accurate		
Food Identification				
14		Labeling accurate, truthful, date		
15		Required records available: shellstock tags, egg records		
Prevention of Food Adulteration, Spoilage and Contamination				
16		Adulteration, spoilage, and contamination prevention practices during food preparation, storage and display		
17		Personal cleanliness		
18		No bare hand contact with ready-to-eat food and proper utensil use		
19		Adequate hand washing facilities supplied and accessible		
20		Toxic Substance; use, storage, labeling		
21		Wiping cloths: properly used and stored		
22		Insects, rodents, and animals: not present, control means		
Utensils and Equipment- Design, Installation and Storage				
23		Single-use/single-service articles: use, storage, dispensing		
24		Food-contact surfaces and equipment: cleaned and sanitized, storage		
25		Food-contact surfaces and equipment: properly designed, constructed and used		
26		Warewashing facilities: installed, maintained, used, test strips		
Physical Facilities				
27		Garbage/refuse properly disposed: facilities maintained		
28		Plumbing installed: proper backflow devices		
29		Toilet facilities : properly constructed , supplied, clean		
30		Physical facilities and non-food contact surfaces installed, maintained and clean		
31		Adequate ventilation and lighting		
Miscellaneous				
32		Required postings: license, choking poster, consumer advisory		
33		HACCP plan complies with requirements in COMAR 10.15.03		

Critical items must be corrected immediately. Good Retail Practices must be corrected within 30 days or as specified in a written compliance schedule, while Temporary Facilities must correct Good Retail Practices items within 24 hours.

Person in Charge (Print) _____

(Signature) _____ **Date** / /

Inspector (Print) _____

(Signature) _____

Contact Number ( ) –

Follow-up YES NO (circle one) **Follow-up Date** / /

APPENDIX 8: New York City Food Service Facility Scoring Form

NYC Health

Bureau of Food Safety and Community Sanitation

SELF-INSPECTION WORKSHEET FOR FOOD SERVICE ESTABLISHMENTS

PART ONE - SCORED VIOLATIONS

	CRITICAL VIOLATIONS	CONDITIONS I	II	III	IV	V	SCORE
FOOD TEMPERATURE							
2A*	Food not cooked to required minimum temperature: • Poultry, meat stuffing, stuffed meats ≥ 165°F for 15 seconds • Ground meat and food containing ground meat ≥ 158°F for 15 seconds • Pork, any food containing pork ≥ 155°F for 15 seconds • Rare roast beef, rare beefsteak except per individual customer request ≥ required temperature and time • All other foods except shell eggs per individual customer request ≥ 145°F for 15 seconds	–	–	–	10	28	
2B*	Hot food item not held at or above 140°F.	7	8	9	10	28	
2C	Hot food item that has been cooked and refrigerated is being held for service without first being reheated to 165°F or above within 2 hours.	5	6	7	8	–	
2D	Precooked potentially hazardous food from commercial food processing establishment that is supposed to be heated, but is not heated to 140°F within 2 hours.	5	6	7	8	–	
2E	Whole frozen poultry or poultry breasts, other than a single portion, is being cooked frozen or partially thawed.	5	6	–	–	–	
2F	Meat, fish or molluscan shellfish served raw or undercooked without prior notification to customer.	–	–	–	8	–	
2G*	Cold food item held above 41°F (smoked fish and reduced oxygen packaged foods above 38°F) except during necessary preparation.	7	8	9	10	28	
2H*	Food not cooled by an approved method whereby the internal product temperature is reduced from 140° F to 70° F or less within 2 hours, and from 70°F to 41°F or less within 4 additional hours.	7	8	9	10	28	
2I	Food prepared from ingredients at ambient temperature not cooled to 41°F or below within 4 hours.	5	6	7	8	–	
2J*	Reduced oxygen packaged (ROP) foods not cooled by an approved method whereby the internal food temperature is reduced to 38°F within two hours of cooking and if necessary further cooled to a temperature of 34°F within six hours of reaching 38°F.	7	8	9	10	28	
FOOD SOURCE							
3A*	Food from unapproved or unknown source or home canned. Reduced oxygen packaged (ROP) fish not frozen before processing; or ROP foods prepared on premises transported to another site.	–	–	–	10	28	
3B*	Shellfish not from approved source, improperly tagged/labeled; tags not retained for 90 days.	–	–	–	10	28	
3C*	Eggs found dirty/cracked; liquid, frozen or powdered eggs not pasteurized.	7	8	9	10	28	
3D*	Canned food product observed swollen, leaking or rusted, and not segregated from other consumable food items.	7	8	9	10	28	
3E*	Potable water supply inadequate. Water or ice not potable or from unapproved source. Cross connection in potable water supply system observed.	–	–	–	10	28	
3F*	Unpasteurized milk or milk product present.	–	–	–	10	28	
3G	Raw food not properly washed prior to serving.	5	6	7	8	–	
FOOD PROTECTION							
4A	Food Protection Certificate not held by supervisor of food operations.	–	–	–	–	10	
4B*	Food worker prepares food or handles utensil when ill with a disease transmissible by food, or has exposed infected cut or burn on hand.	–	–	–	10	28	
4C*	Food worker does not use proper utensil to eliminate bare hand contact with food that will not receive adequate additional heat treatment.	7	8	9	10	28	
4D*	Food worker does not wash hands thoroughly after using the toilet, coughing, sneezing, smoking, eating, preparing raw foods or otherwise contaminating hands.	–	–	–	10	28	
4E*	Toxic chemical improperly labeled, stored or used such that food contamination may occur.	7	8	9	10	28	
4F*	Food, food preparation area, food storage area, area used by employees or patrons contaminated by sewage or liquid waste.	–	–	–	10	28	
4G*	Unprotected potentially hazardous food re-served.	–	–	–	10	28	
4H*	Raw, cooked or prepared food is adulterated, contaminated, cross-contaminated or not discarded in accordance with HACCP plan.	7	8	9	10	28	
4I	Unprotected food re-served.	5	6	7	8	–	

* Public Health Hazards (PHH) must be corrected immediately

+ Pre-permit Serious (PPS) Violations that must be corrected before permit is issued

4J	Appropriately scaled metal stem-type thermometer or thermocouple not provided or used to evaluate temperatures of potentially hazardous foods during cooking, cooling, reheating and holding.	–	–	–	8	–	
4K	Evidence of rats or live rats present in facility's food and/or non-food areas.	5	6	7	8	28	
4L	Evidence of mice or live mice present in facility's food and/or non-food areas.	5	6	7	8	28	
4M	Live roaches present in facility's food and/or non-food areas.	5	6	7	8	28	
4N	Filth flies or food/refuse/sewage-associated (FRSA) flies present in facility's food and/or non-food areas. Filth flies include house flies, little house flies, blow flies, bottle flies and flesh flies. Food/refuse/sewage-associated flies include fruit flies, drain flies and Phorid flies.	5	6	7	8	28	
4O	Live animals other than fish in tank or service animal present in facility's food and/or nonfood areas.	5	6	7	8	–	
FACILITY DESIGN							
5A*	Sewage disposal system improper or unapproved.	–	–	–	10	28	
5B*	Harmful, noxious gas or vapor detected. CO ≥ 13 ppm.	–	–	–	10	28	
5C+	Food contact surface improperly constructed or located. Unacceptable material used.	7	8	9	10	28	
5D+	Hand-washing facility not provided in or near food preparation area and toilet room. Hot and cold running water at adequate pressure to enable cleanliness of employees not provided at facility. Soap and an acceptable hand-drying device not provided.	–	–	–	10	28	
5E+	Toilet facility not provided for employees or for patrons when required.	–	–	–	10	28	
5F+	Insufficient or no refrigerated or hot holding equipment to keep potentially hazardous foods at required temperatures.	–	–	–	10	28	
5G+	Properly enclosed service/maintenance area not provided. (Mobile Food Commissary)	–	–	–	10	28	
5H+	No facilities available to wash, rinse and sanitize utensils and/or equipment.	–	–	–	10	28	
5I+	Refrigeration used to implement HACCP plan not equipped with an electronic system that continuously monitors time and temperature.	–	–	–	10	28	
PERSONAL HYGIENE & OTHER FOOD PROTECTION							
6A	Personal cleanliness inadequate. Outer garment soiled with possible contaminant. Effective hair restraint not worn in an area where food is prepared.	5	6	7	8	–	
6B	Tobacco use, eating, or drinking from open container in food preparation, food storage or dishwashing area observed.	5	6	7	8	–	
6C	Food not protected from potential source of contamination during storage, preparation, transportation, display or service.	5	6	7	8	–	
6D	Food contact surface not properly washed, rinsed or sanitized after each use and following any activity when contamination may have occurred.	5	6	7	8	–	
6E	Sanitized equipment or utensil, including in-use food-dispensing utensil, improperly used or stored.	5	6	7	8	–	
6F	Wiping cloths soiled or not stored in sanitizing solution.	5	6	7		–	
6G*	HACCP plan not approved or approved HACCP plan not maintained on premises.	–	–	–	10	28	
6H	Records and logs not maintained to demonstrate that HACCP plan has been properly implemented.	–	–	–	–	28	
6I	Food not labeled in accordance with HACCP plan.	–	–	–	10	28	
OTHER CRITICALS							
7A	Duties of an officer of the Department interfered with or obstructed.	–	–	–	–	28	
	CRITICAL VIOLATIONS TOTAL						

GENERAL VIOLATIONS		**CONDITIONS** I	II	III	IV	V	**SCORE**
VERMIN / GARBAGE							
8A	Facility not vermin proof. Harborage or conditions conducive to attracting vermin to the premises and/or allowing vermin to exist.	–	–	4	5	–	
8B	Covered garbage receptacle not provided or inadequate, except that garbage receptacle may be uncovered during active use. Garbage storage area not properly constructed or maintained; grinder or compactor dirty.	2	3	4	5	–	
8C	Pesticide use not in accordance with label or applicable laws. Prohibited chemical used/stored. Open bait station used.	2	3	4	5	28	
FOOD SOURCE							
9A	Canned food product observed dented and not segregated from other consumable food items.	2	3	4	5	–	
9B	Thawing procedures improper.	2	3	4	5	–	
9C	Food contact surface not properly maintained.	2	3	4	5	–	

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+ Pre-permit Serious (PPS) Violations that must be corrected before permit is issued

FACILITY MAINTENANCE							
10A	Toilet facility not maintained and provided with toilet paper, waste receptacle and self-closing door.	2	3	4	5	–	
10B	Plumbing not properly installed or maintained; anti-siphonage or backflow prevention device not provided where required; equipment or floor not properly drained; sewage disposal system in disrepair or not functioning properly.	2	3	4	5	28	
10C	Lighting inadequate; permanent lighting not provided in food preparation areas, ware washing areas, and storage rooms.	2	3	4	5	–	
10D	Mechanical or natural ventilation system not provided, improperly installed, in disrepair and/or fails to prevent excessive build-up of grease, heat, steam condensation vapors, odors, smoke and fumes.	2	3	4	5	–	
10E	Accurate thermometer not provided in refrigerated or hot holding equipment.	2	3	4	5	–	
10F	Non-food contact surface improperly constructed. Unacceptable material used. Non-food contact surface or equipment improperly maintained and/or not properly sealed, raised, spaced or movable to allow accessibility for cleaning on all sides, above and underneath the unit.	2	3	4	5	–	
10G	Food service operation occurring in room used as living or sleeping quarters.	2	3	4	5	–	
10H	Proper sanitization not provided for utensil ware washing operation.	2	3	4	5	–	
10I	Single service item reused, improperly stored, dispensed; not used when required.	2	3	4	5	–	
10J	"Wash hands" sign not posted at hand-wash facility.	2					
OTHER GENERALS							
99B	Other general.	2	3	4	5	28	
	GENERAL VIOLATIONS TOTAL:						
	CRITICAL AND GENERAL COMBINED TOTAL:						

PART TWO – UNSCORED VIOLATIONS

		CONDITION OBSERVED YES	NO
DISTRIBUTION OF TOBACCO PRODUCTS THROUGH VENDING MACHINES			
15A	Tobacco vending machine present where prohibited.		
15B	Tobacco vending machine placed less than 25 feet from entrance to premises.		
15C	Tobacco vending machine not visible to the operator, employee or agent.		
15D	Durable sign with license number, expiration date, address and phone number not posted.		
TOBACCO PRODUCT REGULATION ACT			
15E	Out-of-package sale of tobacco products observed.		
15F	Employee under the age of 18 selling tobacco products without direct supervision of an adult retail dealer or dealer.		
15G	Sale to minor observed.		
15H	Sign prohibiting sale of tobacco products to minors not conspicuously posted.		
SMOKE-FREE AIR ACT			
15I	"No Smoking" and/or "Smoking Permitted" sign not conspicuously posted. Health warning not present on "Smoking Permitted."		
15J	Ashtray present in smoke-free area.		
15K	Operator failed to make good faith effort to inform smokers of the Smoke-Free Air Act prohibition of smoking.		
15L	Smoke free workplace smoking policy inadequate, not posted, not provided to employees.		
15M	Use of tobacco product on school premises (at or below the 12th grade level) observed.		
15N	Smoking permitted and/or allowed in smoking prohibited area under the operator's control.		
SALE OF HERBAL CIGARETTES			
15O	Sale of herbal cigarettes to minors observed.		
TOBACCO HEALTH WARNING AND SMOKING CESSATION SIGN			
15P	No tobacco health warning and smoking cessation sign(s) are posted.		
15Q	Tobacco health warning and smoking cessation sign(s) are obstructed and/or not prominently displayed.		
15R	No large tobacco health warning and smoking cessation sign is posted where tobacco products are displayed; small sign(s) are not posted at each register or place of payment.		

		CONDITION YES	OBSERVED NO
RESTRICTION ON THE SALE OF CERTAIN FLAVORED TOBACCO			
15S	A flavored tobacco product sold or offered for sale in an establishment other than a tobacco bar.		
15T	Original label for tobacco product sold or offered for sale not maintained on site.		
ARTIFICIAL TRANS FAT			
16A	A food containing artificial trans fat, with 0.5 grams or more of trans fat per serving, is being stored, distributed, held for service, used in preparation of a menu item, or served.		
16B	The original nutritional fact labels and/or ingredient label for a cooking oil, shortening or margarine or food item sold in bulk, or acceptable manufacturer's documentation not maintained on site.		
CALORIE MENU LABELING			
16C	Caloric content not posted on menus, menu boards or food tags, in a food service establishment that is 1 of 15 or more outlets operating the same type of business nationally under common ownership or control, or as a franchise or doing business under the same name, for each menu item that is served in portions, the size and content of which are standardized.		
16E	Caloric content range (minimum to maximum) not posted on menus and or menu boards for each flavor, variety and size of each menu item that is offered for sale in different flavors, varieties and sizes.		
16F	Specific caloric content or range thereof not posted on menus, menu boards or food tags for each menu item offered as a combination meal with multiple options that are listed as single items.		
ADMINISTRATION AND DOCUMENTATION			
18A	Current valid permit, registration or other authorization to operate establishment not available.		
18B	Document issued by the Board of Health, Commissioner or Department unlawfully reproduced or altered.		
18C	Notice of the Department of Board of Health mutilated, obstructed, or removed.		
18D	Failure to comply with an Order of the Board of Health, Commissioner, or Department.		
18E	Failure to report occurrences of suspected food borne illness to the Department.		
18F	Permit not conspicuously displayed.		
18G	Manufacture of frozen dessert not authorized on Food Service Establishment permit.		
18H	Failure of event sponsor to exclude vendor without a current valid permit or registration.		
SIGNAGE			
20A	Food allergy information poster not conspicuously posted where food is being prepared or processed by food workers.		
20B	Food allergy information poster not posted in language understood by all food workers.		
20C	Food allergy poster does not contain text provided or approved by Department.		
20D	"Choking first aid" poster not posted. "Alcohol and pregnancy" warning sign not posted. Resuscitation equipment: exhaled air resuscitation masks (adult & pediatric), latex gloves, sign not posted. Inspection report sign not posted.		
20E	Letter Grade or Grade Pending card not conspicuously posted and visible to passersby.		
20F	Current letter grade card not posted.		
NUISANCE AND OTHER MISCELLANEOUS			
22A	Nuisance created or allowed to exist. Facility not free from unsafe, hazardous, offensive or annoying conditions.		
22B	Toilet facility used by women does not have at least one covered garbage receptacle.		
22C	Bulb not shielded or shatterproof, in areas where there is extreme heat, temperature changes, or where accidental contact may occur.		
22E	ROP Processing equipment not approved by DOHMH.		

* Public Health Hazards (PHH) must be corrected immediately

+ Pre-permit Serious (PPS) Violations that must be corrected before permit is issued

NYC Health

Bureau of Food Safety and Community Sanitation Contact Information
Phone: (212) 676-1600
Fax: (212) 676-1666
web: www.nyc.gov/health

APPENDIX 9: Los Angeles County Inspection and Scoring Form

DATE VIOLATIONS CORRECTED: | EHS INITIALS: | OPERATOR INITIALS:

RETAIL FOOD OFFICIAL INSPECTION REPORT

PAGE 1: FRONT SIDE

COUNTY OF LOS ANGELES ˜ DEPARTMENT OF PUBLIC HEALTH
ENVIRONMENTAL HEALTH

SCORE | GRADE

☐ No Violations Observed At Time Of Inspection ☐ Complaint Allegations Not Observed

OUT=Out of Compliance N/A=Not Applicable N/O=Not Observed COS=Corrected On Site

ENVIRONMENTAL HEALTH OFFICE

INSPECTION DATE: | TIME IN: | TIME OUT:

DBA / NAME:

ADDRESS: | CITY / STATE: | ZIP CODE: | COMPLIANCE DATES:

PERMIT HOLDER: | EHS: (PRINT) | EHS: (SIGNATURE) | BUS. E-MAIL ADDRESS:

RECEIVED BY: (PRINT) | (SIGNATURE) | POSITION: | BUSINESS PHONE #: | EMERGENCY PHONE #:

PROGRAM ELEMENT: | SERVICE | SITE #: | PERMIT #: | EXPIRATION YEAR: | SUBDISTRICT: | DISTRICT:

TOTAL PAGES: | 001 | 002 | 004 | OTHER:

SECTION I

(POINT VALUE – 6 POINTS FOR VIOLATIONS IN EACH CATEGORY IN SECTION I – MAXIMUM POINTS DEDUCTIBLE = 36)

POINTS

OUT	N/A	N/O	COS	FOOD-TEMPERATURES
1	2	3	4	1. Holding of PHF - Multiple Servings (Major)
5	6	7	8	2. Holding of Unpasteurized Pooled Eggs
9	10	11	12	3. Cooking
13	14	15	16	4. Reheating (Major)
17	18	19	20	5. Cooling (Major)

OUT	N/A	N/O	COS	EMPLOYEE HEALTH
21	22	23	24	6. Disease Transmission – Carrier / Wound (Major)
25	26	27	28	7. Hand Washing (Major)

OUT	N/A	N/O	COS	SEWAGE
29	30	31	32	8. Sewage Disposal System (Major)
33	34	35	36	9. Toilets (Major)

OUT	N/A	N/O	COS	FOOD
37	38	39	40	10. Adulterated Food (Major)
41	42	43	44	11. Highly Susceptible Populations
45	46	47	48	12. Unapproved Source - PHF (Major)

OUT	N/A	N/O	COS	VERMIN
49	50	51	52	13. Rodents (Major)
53	54	55	56	14. Cockroaches (Major)
57	58	59	60	15. Flies (Major)

OUT	N/A	N/O	COS	WATER / SANITIZATION
61	62	63	64	16. Cleaning / Sanitizing – Food Contact Surfaces (Major)
65	66	67	68	17. No Water / No Hot Water – Food Preparation Facility (Major)

SECTION II

(POINT VALUE – 4 POINTS FOR VIOLATIONS IN EACH CATEGORY IN SECTION II – MAXIMUM POINTS DEDUCTIBLE = 36)

POINTS

OUT	N/A	N/O	COS	FOOD
69	70	71	72	18. Holding of PHF – Multiple Servings (Minor)
73	74	75	76	19. Holding of PHF – A Single Serving (Minor)
77	78	79	80	20. Holding of unpasteurized Raw Shell Eggs
81	82	83	84	21. Cooling/Reheating – Improper Method (Minor)

OUT	N/A	N/O	COS	FOOD STORAGE
85	86	87	88	22. Improper Holding – Unpackaged / Elevated
89	90	91	92	23. Raw/Ready-to-Eat Foods – Exposed to Possible Cross-Contamination
93	94	95	96	24. Food Not Protected From Consumer

OUT	N/A	N/O	COS	PLUMBING / FIXTURES
97	98	99	100	25. Backflow / Backsiphonage
101	102	103	104	26. Critical Supply of Water (Hand wash / Warewash / Janitorial / Food Preparation)

OUT	N/A	N/O	COS	OPERATIONS
105	106	107	108	27. Risk For Contamination
109	110	111	112	28. Unapproved Source – Non-PHF (Minor)
	114	115	116	29. Reused / Re-served
OUT	N/A	N/O	COS	OPERATIONS
117	118	119	120	30. Hazardous Materials / Chemicals (Major)
121	122	123	124	31. Employee Practices (Minor)

OUT	N/A	N/O	COS	CONSUMER PROTECTION
125	126	127	128	32. Gulf Coast Oyster Warning Signs
129	130	131	132	33. Labels / Misrepresented – Consumer Foods
133	134	135	136	34. Disclosure Notification

OUT	N/A	N/O	COS	FOOD SAFETY CERTIFICATE
137	138	139	140	35. Valid Food Safety Certification

SECTION III

POINT VALUE – 1 POINT VIOLATION FOR EACH SUBCATEGORY IN SECTION III – MAXIMUM POINTS DEDUCTIBLE = 36)

POINTS

OUT	FOOD / METHODS
142	36. Thawing
143	37. Adulterated Food (Minor)
144	38. Improper Inspection at Delivery / Transportation
OUT	OPERATIONS
144	39. Improper Self-Service Utensils
145	40. Employee Washing (Minor)
146	41. Hair Restraints / Outer Garments / Nails / Rings
147	42. Shellfish Tags / Labels
148	43. Hazardous Materials / Chemicals (Minor)
149	44. Spoils Area
150	45. Interior Premises / Linens / Living – Sleeping Quarters
151	46. Animal / Pets
OUT	UTENSILS / EQUIPMENT / SHELVING / CABINETS
152	47. Disrepair
153	48. Cleaning – Non-Food Contact Surfaces
154	49. Storage
155	50. Unapproved Type / Improper Use / Improper Installation
156	51. Wiping Cloths
157	52. Cleaning / Sanitizing – Food Contact Surfaces (Minor)
158	53. Thermometer
OUT	WALLS / CEILINGS / FLOORS
159	54. Deterioration / Unapproved Materials
160	55. Not Clean

OUT	VERMIN
161	56. Rodents (Minor)
162	57. Cockroaches (Minor)
163	58. Flies/Other Insects (Minor)
164	59. Open Door / Air Curtain / Not Fully Enclosed
OUT	PLUMBING / FIXTURES / EQUIPMENT
165	60. Sinks / Fixtures / Supply Line
166	61. Drain Lines / Floor Sinks / Floor Drains
167	62. No Hot or No Warm Water (Minor)
OUT	VENTILATION / LIGHTING
168	63. Hood – Not Clean / Disrepair / Missing Filter(s)
169	64. Hood – Missing / Incorrect Type / Improper Installation
170	65. Ventilation – General
171	66. Lighting / Light Shields
OUT	TOILETS / DRESSING ROOMS
172	67. Toilets / Toilet Rooms (Minor)
173	68. Dressing Room / Personal Items
OUT	REFUSE / PREMISES / JANITORIAL
174	69. Janitorial – Storage & Conditions
175	70. Refuse / Containers
176	71. Exterior Premises

See Reverse Side For The General Requirements That Correspond To Each Violation Listed Above

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