



Federal Menu Labeling Regulation Goes Into Effect

The Department of Public Health Takes Action on Two Major Restaurant Issues

BY JON B. HURST

In May of 2009, the Massachusetts Public Health Council (PHC) voted unanimously to adopt a state-wide menu labeling regulation. The effective date was set to place on November 1st. In the meantime, the federal debate on menu labeling led to a compromise that was included in the federal health care bill.

THE REGULATIONS

The federal law applies to more restaurants than the MA regulation as it covers any restaurant that has 20 or more locations nationally, and the MA regulation applies only to those that have 20 or more in-state locations. The federal law also creates a reasonableness standard and gives liability protection. Thankfully, for uniformity purposes, the federal law preempts all state and local laws in requiring menu labeling.

Initially there was some confusion as to whether or not the pre-emption would be effective prior to the FDA-issuing regulations. The law specifically states that pre-emption is upon enactment, however, there was a discussion as to whether or not the Massachusetts regulation could go into effect in November and stay in effect until the federal Food and Drug Administration (FDA) issues their regulations which could take some time.

The Department of Public Health announced at the PHC meeting on June 9th that they intend to officially

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rescind the regulation. Without two separate rules to comply with, restaurants will now have one clear standard to follow once the FDA issues regulations. RAM maintained the position during the comments period for the MA regulation that one uniform national standard is the only way to fairly regulate menu labeling. The MA regulation put businesses in the Commonwealth at a disadvantage to their competitors in other states, and we are relieved that DPH is officially rescinding their regulation.

FOOD ALLERGEN DECISION

The food allergen regulation was also discussed at the PHC meeting on June 9th. The final regulation passed with a unanimous vote. DPH will not be releasing the final regulation until it is officially registered with the Secre-

tary of State. However, DPH gave a presentation at the PHC meeting outlining the key provisions of the regulation. The final regulation requires restaurants to put up a poster regarding allergens in their staff area by October 1st. This poster will be available for free on the DPH website. Restaurants, and other prepared food sellers, will also have to place a notice on menus and menu boards telling customers to inform their server if anyone in their party has a food allergy. If a restaurant chooses to do so, they can place that statement at the point of sale rather than on their menu board. Food Protection Managers will have to be certified in allergy awareness training by February 1st. In order to become certified they must watch a 30 minute training video. The certificate is good for five years. RAM will post the final regulation on our website as soon as it becomes available.

With two major restaurant issues finally resolved, we are hopeful that businesses can now move forward with a clearer understanding of the new mandates and return their focus back to their customers. ■

Jon Hurst is president of the Retailers Association of Massachusetts (RAM). As the chief executive officer of the 2,000 member statewide trade association, Hurst manages the staff, business affairs, member services, public affairs and governmental affairs of the organization. He also serves as chairman of the board of directors of the Massachusetts Retail Merchants Workers Compensation Group, Inc., a self insurance group organized by RAM in 1991.