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DATE: March 31, 2008

TO: All Local Health Departments (LHD's)
Attn: Medical Director / Health Officer / Director of Environmental Health
Michigan Department of Agriculture (MDA)
Attn: Food and Dairy Division Managers

FROM: Kevin Besey, Manager
Food Section
Food and Dairy Division

SUBJECT: Guidance on 2007 Food Law Updates

A handwritten signature in black ink, appearing to read "K. Besey".

Introducing Food Law Changes

MDA's recommendation is to begin discussing law changes with operators and industry groups as soon as soon as practical. Suggested documents to provide to the industry, as needed, include:

- "Key Changes to the Food Law" Fact Sheet
- Copy of 2005 Food Code
- Additional fact sheets as needed

During evaluation visits, please discuss applicable changes and conduct a risk-based evaluation to review compliance of highest risk operations with remaining time available. While many requirements have been simplified, there may be some new requirements that the establishment may not yet be aware of. Taking an educational approach is recommended during the first evaluation.

Follow-Up Confirmations

The food law, section 6129(3), now requires critical violation corrections be confirmed, but does not require a follow-up visit. Although it is still recommended that follow-up inspections be made to confirm corrections, this change was made to allow agencies flexibility to use resources wisely. MDA recommends that agencies develop their own specific policies. The extent to which an agency uses this option and the adequacy of submitted documents will not be part of the accreditation review process.

Whether a correction is confirmed by a visit or in some other manner, normal follow-up documentation on approved forms must be completed and a copy provided to the establishment

operator. Documentation should be clear as to the methods of correction confirmation (i.e. specific photo, type of document, phone call and date received) and report delivery method (i.e. mailed, faxed, e-mailed). When not delivered in person during an on-site visit, a PIC signature is not needed on the evaluation report.

An example of a comment made on an evaluation reviewed in-office follow-up evaluation might be as follows: **(Cite violation on follow-up report as normal.) Violation corrected by (insert details) as shown in photo submitted by PIC on 3/24/08. No on-site visit made. Report mailed to establishment.**

Photos and Trade Secrets

Section 2111(3) was added to the food law and states: “The director may take photographs or copy records as part of an evaluation. When a food establishment identifies by written document or mark that a certain area or record contains visible trade secrets, the director shall identify any photographs of that area or record as being confidential and shall diligently protect the confidentiality.”

Michigan’s Freedom of Information Act (PA 442 of 1976), states:

Sec. 13 (1) A public body may exempt from disclosure as a public record under this act any of the following: ...

(d) Records or information specifically described and exempted from disclosure by statute.

The main two points relating to the handling of trade secret information is to:

- Avoid obtaining trade secret information unless necessary.
- If obtained, immediately and specifically identify this information as a trade secret exempt from FOIA requirements. Having such an identifying document signed by the Health Officer, is recommended.
- Store and handle such material in a manner that minimizes accidental dissemination.

PHF/TCS Foods

With the new “time/temperature control for food safety” definition, the charts provided in the 2005 Food Code provide a simple way to determine if many foods need temperature control, providing pH and A_w are known. However, some combinations of pH and A_w indicate a product assessment is needed. The product assessment guidance is being developed nationally and is not yet available, but we hope to have more information following the Conference for Food Protection in April, 2008.

Citable Sections of the Food Law, Code of Federal Regulations (CFR’s), etc. *

2105 through 2111- Seizure, Sampling and Destruction of Food

While documenting voluntary removal and destruction of food found in violation of the law is often effective, utilizing the food laws’ formal seizure authority is often necessary and more appropriate. Seizing food assures that legal control is maintained over the product, provides thorough documentation of the action and provides the establishment with a formal record for insurance purposes. Especially during recall effectiveness checks, the ability to formally seize recalled product still in commerce is critical.

MDA plans to provide specific guidance and model seizure forms for local health use.

2113, 2121, 2123- Order to Cease Operations, License Limitation
These sections should be cited as appropriate during enforcement.

2129- Manager Certification

Once the manager certification requirement becomes effective in July, 2009, this section should be used when citing non-compliance. Rules to supplement the law and additional implementation guidance are currently being developed. Citing a particular rule section may also be appropriate.

5101- Prohibited Acts

This section contains a number of prohibited acts that can be cited alone or in addition to specific Food Code sections. Examples of subsections typically cited by MDA:

- a-c: adulterated or misbranded food,
- d: selling food without a license
- j: false labeling
- k: insanitary conditions

6140- Milk and Milk Products

This section should be cited when appropriate, such as when unpasteurized eggs are used to make ice cream or when unsafe additives are added to a milk product.

6141- Antichoking Poster Display

This section should be cited when necessary poster is not displayed.

6149- Consumer Advisory

The food law now gives establishments the option of complying with 2005 Food Code section 3-603.11 or complying with another menu advisory option described in food law section 6149. Cite the applicable document and section, based upon which option the establishment has chosen.

Chapter 8: contains numerous citable sections relating to labeling and advertising.

Other Regulations

Various CFR sections as well as the Smoked Fish Rules may be cited as applicable, when your agency is involved in reviewing processing operations within a food service establishment. Please contact your food service consultant for guidance, as needed.

*MDA has made recommendations whether these sections should be cited as critical or non-critical in the excel code language update document recently provided to LHDs. MDA recommends allowing the same correction time frames for critical / non-critical food law violations as currently allowed for Food Code violations, including repeat, chronic and recurring violations.

Distribution List:

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MDA Food Section Staff