

Michigan Food Law of 2000

Questions and Answers

This is a draft document created for training purposes. It should not be considered a totally accurate explanation of the Michigan Food Law of 2000. The comments do not necessarily reflect the official policy of the Michigan Department of Agriculture.

General Questions

GQ - 1 Why are there two documents, the Michigan Food Law of 2000 and the 1999 FDA Food Code?

The FDA Food Code provides model standards for retail food establishments (restaurants, grocery, and convenience stores). Model codes, like the FDA Food Code, promote uniformity across state lines, and also reflect initiatives and strategies recommended by national food safety organizations, such as the Conference for Food Protection.

The Michigan Food Law 2000 is the state statute that gives the model Food Code the force and effect of law. It also provides the MDA essential powers, authorities, duties, and penalties to administer the program. In addition, since the Michigan Food Law of 2000 regulates all food establishments in the State of Michigan, it provides standards and requirements for wholesale facilities and processing plants not covered by the Food Code.

GQ – 2 Can the same food establishments be regulated by the Food Law, the Food Code, and the federal Good Manufacturing Practices (GMPs)?

Yes. The Food Law provides for oversight of all food establishments. For example, the Food Law's broad prohibitions against adulteration and misbranding apply to all food establishments in Michigan. The Food Code and Good Manufacturing Practices (GMPs) contain more detailed and technical requirements for specific establishments.

GQ – 3 What regulatory standard should be used if a facility has both retail and processing operations (e.g., a food processing plant with a retail store out front)?

First, it is important to realize licensing categories are not the same as the regulatory categories. For example, a firm will be licensed according to the predominant type of operation present in the facility, however, the appropriate regulatory standard is based upon the food operations present. In general, the Food Code applies to retail establishments, even if the establishments conduct processing and wholesale. The GMPs apply to processing plants and warehouses without a retail store (or where a retail store is attached but discrete). Unusual situations should be identified to your supervisor to ensure consistent statewide application. Here are some different examples:

1. A retail bakery that wholesales some of its bread. The Food Code applies.
2. A large wholesale bread plant with a retail thrift store in front. The GMPs apply to the wholesale manufacturing while the Food Code applies to the thrift store.

3. A restaurant that processes and distributes salsa. The Food Code applies (but the salsa must meet all other standards, such as the acidified food regulation).

GQ – 4 The new Food Law adopts many federal regulations. What will inspectors need to know on a routine inspection?

MDA staff should have a working knowledge of each of the adopted federal regulations.

For example, a bottled water processing plant must comply with:

21 CFR part 110	Good Manufacturing Practices
21 CFR part 129	Processing and Bottling of Bottled Drinking Water
21 CFR part 101	Food Labeling
9 CFR part 317	Labeling, Marking Devices and Containers
9 CFR part 381 subpart N	Labeling and Containers

GQ – 5 Why does the Michigan Food Law of 2000 have so many specific requirements for food service facilities compared to grocery stores?

Unlike the previous Food Law of 1968, the Michigan Food Law of 2000 applies to food service establishments. Requirements that were in Part 129 of the Public Health Code are now in the Food Law.

GQ – 6 How can establishments get copies of the new laws and regulations?

Copies of the Food Code and the Food Law can be down loaded from the MDA website: www.mda.state.mi.us Copies of the Food Code may also be down loaded from the FDA website: www.fda.gov. Copies of the Code of Federal Regulations can be downloaded from www.access.gpo.gov/cgi-bin/cfrassemble.cgi?title=199921. An information sheet is available for distribution to explain other sources.

The MDA is also printing copies of the Food Law, Food Code, and adopted federal regulations. Single copies are available free upon request. Newly licensed retail firms will receive a copy of the Food Code with their license application or first license (as required by § 8-304.10).

Chapter I: Short Title, Scope, Definitions

Section 1105

Why is the Food Law’s definition for food establishment different from the Food Code’s definition? It’s confusing.

The definition of “food establishment” varies in the two documents because of the difference in the scope of the Food Law and the Food Code. In the Food Law “food establishment” is a universal term that incorporates all Michigan food facilities that fall under the law’s requirements. The term is used in the Food Code to identify all retail food facilities that must comply with the Code’s requirements. (Also See FLG – 1 for a discussion of which requirements apply to various food establishments.)

Could you please provide a definition for “public,” as used in the definition of a “food service establishment”?

“Public” in this context has been held to mean a place where the public may be served, not necessarily an establishment devoted solely to the use of the public, but an establishment serving many persons of the public, and usually accessible to some part of the public.

Section 1107 (k)(v)

Which child care organizations under PA 116 of 1973 are exempt from the Food Code?

The Michigan Department of Consumer & Industry Services (CIS) licenses child care facilities such as Head Start.

Section 1117 (3)

When must food service establishments meet the 41°F cold holding temperature requirement?

Equipment installed after the Food Law was signed into law (May 8, 2000), must meet the 41°F cold-holding temperature requirement on November 8, 2000.

Existing equipment capable of maintaining 41°F with normally expected maintenance and proper food storage practices must meet the 41°F cold-holding temperature requirement on May 8, 2001.

Equipment in food service establishments prior to May 8, 2000 not capable of meeting the above criteria must comply with the 41°F requirement no later than May 8, 2006.

Note: refrigeration equipment in retail groceries have had to be capable of meeting 41°F or less prior to the new law, so none of the above exceptions apply.

Chapter II: Powers and Duties of the Department

Section 2103

What is the retail food advisory board?

A “food service advisory board” existed under the Public Health Code, and was created to advise the director on the implementation of the law and rulemaking. It was brought into the Food Law and expanded to include all retail establishments. Members are from the food industry (food service and retail grocery), local health department, and the general public.

Section 2121

If a facility’s ventilation system is inadequate for year round operation (example: insufficient make up air), can regulators impose a license limitation to forbid winter operation?

Yes. The license-limitation provision gives regulators additional licensing options, allowing food facilities to operate without compromising food safety standards. In most cases, license limitation benefits the operator because it allows special types of operations where they would otherwise be prohibited.

Section 2127

What is meant by may require certain individuals to complete manager food safety training for that facility?

“May” means that the regulatory authority has the option of requiring training under certain circumstances. Keep in mind that this does not refer to manager certification. Other forms of training may be used for specific circumstances. Requiring manager food safety training can be used alone or in conjunction with other regulatory options. The enforcement guide will address the use of this option.

How many are “repeated” violations and what time frame between them is allowed before you are forced to complete a food safety-training program.

This section contains general terminology to permit the regulator the flexibility needed to address diverse situations that occur in the real world. This section highlights key principles that must be followed:

1. Training cannot be required for a first time failure to correct a critical violation.
2. When taking any enforcement action, regulators must follow due process as outlined in the Administrative Procedures Act, Act 306, P.A. 1969.
3. Lack of manager knowledge is not the only contributing factor to repeated noncompliance.

What if the manager has already attended an approved manager certification food safety-training program?

Attending a training program, and passing a valid test, is a nationally recognized method of demonstrating manager knowledge. The Department accepts this standard when actual practices in the facility comply with critical requirements. Documentation of repeated failure to correct critical violations gives regulators sufficient evidence to question whether the problem results from lack of knowledge, inappropriate behavior, or both. Regardless of attendance at previous training courses, this section authorizes the regulatory authority to require additional management training if inadequate knowledge is a contributing factor to non-compliance.

Section 2129

Certified manager food courses ought to include assertiveness training, and effective communication skills so that the person in charge motivates employees to: disclose their illnesses, practice good hygienic procedures, and ask food questions.

The Food Code requires the person in charge at retail food establishments to know certain food safety information (Section 2-102.11) and to ensure that facility employees comply with regulatory requirements (2-103.11). Several excellent training programs have been developed to help food managers meet these requirements. The trend at the national level is to: 1) conduct a job

analysis that identifies the key knowledge areas required by retail food managers, 2) develop training materials that address these areas, and 3) develop a valid test that assesses the learner's comprehension of knowledge in these areas. Although improved manager training will not immediately result in changed employee behavior, this section of the Food Law recognizes that training is an important aspect of food safety regulation.

Under the new state law, does MDA approve all manager certification class content and materials? What is the process for approving class materials, and what are the criteria for approving instructors? Will LHDs be included in review process?

The new law authorizes MDA to review and issue approval of food safety training material upon request. The law does not require MDA approval.

The MDA will be reviewing and approving submitted manager certification training materials and training programs, but will not be approving individual instructors. Approval of a manager certification program includes evaluation of the program's procedures for ensuring instructor competency and the validity of testing to assess comprehension. Content of recognized programs will be:

1. Consistent with new Food Law requirements.
2. Consistent with 1999 Food Code requirements.
3. Address the knowledge requirements of section 2-102.11 (Demonstration of knowledge by the person-in-charge).

LHD representatives serve on advisory boards that provide the MDA with guidance on how to implement the Food Law (see Sections 2103 and 4117 of the Law).

A list of approved courses is maintained on the MDA website.

Chapter III: Delegation

Section 3105

How is "predominance" used to determine licensing jurisdiction?

Applied with common sense, this rule allows the vast majority of dually licensed establishments to be sorted out quickly and efficiently by visually assessing the types of food offered for sale at the establishment. If it looks like a market, MDA will license the firm. If it looks like a food service establishment, LHD will license the firm. Borderline decisions should be handled at the regional-local level when possible using MDA guidance documents. To ensure statewide consistency, the Lansing office will assist where borderline cases involve retail chain establishments in multiple counties.

When a bagel outlet prepares and serves deli sandwiches (bagel sandwiches), soups and coffee, who will license them? Their intent is to sell bagels.

The first determination is the overall appearance of the establishment (does it look like a bakery or a sandwich shop?). Then decide if the bakery (bulk bagel sales) is predominant with incidental sandwich making, or is sandwich preparation and service (food service sales, seating, etc.) predominant?

If a firm is a restaurant licensed by a local health department (LHD), but manufactures and wholesales salad dressing, and the establishment is on the FDA contract, what agency will they contact: LHD or MDA?

It is unlikely such an establishment would appear on FDA's contract list. However, in a situation like this, MDA would most likely excise the firm from the contract and replace it with another.

Who will license and inspect the mobile food trucks and their commissaries?

MDA retains jurisdiction over mobile food establishments that are predominantly mobile retail groceries. (However, many are exempt from licensing under the new law because they sell only prepackaged, non-potentially hazardous foods.) Mobile food establishments that are predominantly food service are delegated to the local health departments.

Mobile food establishment commissaries are delegated to the local health departments if they are predominantly a food service establishment. Otherwise, they are retained under MDA direct regulation.

In counties that require certification of food service managers, will MDA enforce the county requirement in the food service establishments that it regulates (example: a McDonalds in the gas station)?

No, MDA does not enforce such county requirements. Regarding local health department enforcement of county requirements inside food establishments where MDA is the regulatory authority, LHDs should seek the advice of their legal counsel. To answer this question, the language of the county ordinance needs to be reviewed and a determination made if it conflicts with the Food Law and the limits of the requirement. For example, if the county requirement refers to a "licensee", then in this example it may not apply.

Section 3119

Is the special transitory food unit license fee the only license fee set for LHDs by the Food Law?

Correct. All local health departments and the state will charge \$122 for a STFU license. Each LHD set the fees for all other food service establishments for which they are delegated responsibility.

Section 3123

Regarding inspections, should we make 1 appointment and 1 unannounced this coming year?

Several implementation initiatives are being discussed, but the simplest, most effective approach is to conduct an "education inspection" as the first inspection under Act 92, P.A. 2000. The education inspection meets the requirement of timely inspections, but more importantly, will serve as the instructional/training/transitional interface which all operators/managers need. Critical violations should be noted during this opportunity, but the focus should rest on education during this first round.

**Will MDA inspectors and LHD inspectors be operating on the same inspection frequency?
Will retail convenience stores inspected by local health departments be inspected more than those that are not?**

Local Health Departments must conduct unannounced inspections at least once every six months unless a reduced frequency of inspection has been approved. Those food service establishments that MDA inspects will also be inspected every 6 months.

How much additional time is going to be needed to conduct inspections under the new code (example: include menu reviews in inspections)?

Based on information provided by other jurisdictions that have already implemented the 1997 or 1999 Food Code, MDA is not currently anticipating a significant increase in time needed to conduct routine inspections. We are asking local health departments to closely monitor the time spent on inspections. We will carefully evaluate information provided to us by LHD's regarding time required to implement the new law.

Section 3129

If the MDA licenses a food establishment implicated in an outbreak, will MDA staff conduct the foodborne illness investigation?

Please refer to the recent interpretive memorandum issued that clarifies complaint handling involving alleged illness.

Regarding foodborne illness investigations involving MDA licensed facilities, how does a LHD enforce violations such as insufficient number of hand sinks, cross contamination, or other critical violations documented during epidemiology investigations in MDA inspected facilities?

The MDA is responsible for enforcing requirements in the facilities that they regulate. The Food Law establishes a uniform regulatory standard for food facilities regardless of the agency conducting the evaluation.

Chapter IV: Licensing

Section 4105

If a firm is exempt from inspection requirements in the Food Code, is the same firm exempt from the licensing requirements in the Food Law?

No. The Food Code covers only retail establishments. The Food Law of 2000 includes processing plants and wholesale food operations (see licensing exemptions in section 4105). In addition, some retail establishment may fall outside the Food Code, but still require licensing. For example, a food establishment selling only prepackaged, non-potentially hazardous food is

exempt from all the requirements in the Food Code, but may need to be licensed if it sells more than incidental amounts of this type of food as stated in section 4105(g)ii.

Please define “incidental amount” as used in the section 4105(1)(b) licensing exemption.

Incidental is intentionally not defined to allow the flexibility needed to address diverse situations. Incidental generally means insignificant or minor amounts or of an insubstantial nature. There are three criteria for this exemption:

1. The food must be prepackaged;
2. It must be considered non-potentially hazardous; and
3. It must be present in incidental amounts.

This exemption applies predominantly to nonfood establishments. Examples include:

1. Hallmark stores selling small amounts of boxed candy.
2. Video or hardware stores with a rack of prepackaged candy and a couple cases of 2 liter bottles of pop.

Remember, if a complaint is received on food offered for sale, MDA still has authority to investigate the complaint regardless of whether the facility is licensed or not.

What about non-profit exemptions?

A three-part test apply to the exemption of non-profit organizations under the definitions of food establishment:

1. The food must be home-prepared or home-baked *only* – no mixture of home and commercial sources;
2. The "organization" (not an individual) must be non-profit; *and*
3. The event (not ongoing) must be associated with an organizational meeting or fundraiser.

All three must be met for the exemption to apply.

The Food Law exempts from licensing temporary food establishments with no food preparation using only single-service articles and serving only non-potentially hazardous food or beverage. What is considered preparation?

“Preparation” means the acts involved in the process of preparing the food, such as slicing, dicing, and assembly. Essentially, the food must have been made ready for sale beforehand and merely served at the temporary location. Examples: dispensing beer, soda pop, lemonade, or coffee into disposable cups, scooping peanuts, chips, or popcorn into paper bags, and selling candied apples.

The intent of this exemption is to deregulate temporary food service operations where just the serving of non-potentially hazardous food occurs. Good judgment would usually indicate that merely brewing coffee or mixing lemon concentrate with water should be included under this exemption since they meet the intent of the exemption.

Keep in mind that this exemption does not apply to any establishment selling potentially hazardous food.

How will seasonal establishments that will not need to be licensed in 2001 be handled; i.e., produce stands?

Each inspector should assess, among all present licenses, which operations may qualify for exemptions next year. A form letter will be developed informing these license holders that licenses are no longer required.

Can we legally “delete” a license from the database when they are transferred to another regulatory authority? Is it true that firms cannot be deleted unless the owner voluntarily agrees to give up the license?”

All records (electronic and paper) of previously licensed establishments will be retained until the standard time has elapsed for record retention.

“Deleting” a licensing record in certain circumstances is a license revocation. A license may not be revoked unless the proper procedures called for by the Food Law of 2000, the Administrative Procedures Act, and the Due Process Clauses of the Constitution are followed. However, dually licensed food establishments that are being transferred to single agency’s jurisdiction are not having their licenses taken away. The two licenses are being consolidated into a single license.

License exemptions: Satellite serving locations are exempt. Are school satellite operations not licensed and inspected?

“Satellite” is not a term used in the Michigan Food Law of 2000. The exemption under section 4105(3) is for specific and limited types of fixed, temporary serving locations. Most school “satellite” operations do not meet all the conditions required to invoke this exemption, for example, most schools are not temporary. This exemption generally applies to licensed catering operations that serve food at off-site locations.

Section 4109

What is the license fee for state and county fair concessions? What about farmer’s markets?

There is no longer one set fee for firms operating at state or county fairs. The firms may be licensed as an STFU, a temporary food establishment, or a retail food establishment. Mobile food establishments (trucks that return to a licensed, fixed commissary every 24 hours) may also be present at the state or county fairs. The food operations at the farmer’s market would use the same criteria as above.

Section 4111

How do we differentiate a limited wholesale food processor from a wholesale food processor? Do we have to prove the firm earns less than \$25,000 per year in annual gross wholesale sales? If so, how do we do this?

This licensing category was intended to address Michigan’s many seasonal or part time honey or maple syrup processors, but may be used for other small-volume processors. The licensee is responsible for providing the department with accurate information on the application. Unless we have reason to believe otherwise, the Department will assume that licensees are acting in good faith and that the information provided to us is accurate. There was no intention for inspectors to routinely ask to see records.

If an inspector feels that the licensing category is inaccurate, the Department can request the licensee to provide additional justification for the current status. The Department always has the option of initiating an investigation. (Section 5101 prohibits making a false statement on an application.)

For an extended retail food establishment (previously dual licensed), what equipment triggers the “extended” category? Would one table trigger the category?

The Food Law defines these establishments as doing both:

1. Serves unpackaged food for immediate consumption, and
2. Provides customer seating in the food service area.

This seating is tied to the food service activity, for example, deli sandwiches made to order with seating in that area of the store. Courtesy seating, where there is no food service, would not automatically result in the extended category. For example, three chairs in a convenience store for patrons to rest while they eat packaged food would not fall into this category.

Section 4113

Does Act 92 limit LHDs to charging only \$10.00/day up to a maximum of \$100.00 for food service licenses that are turned in past the deadline of April 30?

The late fees mentioned in § 4113 of the Food Law only applies to MDA's direct program late fees. LHDs retain their authority under the Public Health Code to set their own late fees.

Section 4117

How will the \$2.00 Industry Food Safety Fund Fee be used to train food service employees? Will the use of that money be left to each local health department to be determined?

An advisory committee consisting of at least nine people representing consumers, industry, government, and academia will advise MDA on the use of the funds. Local health department representatives will serve on the committee.

Are locals required to collect \$3 fee and \$2 fee? Will we need to raise the license fee to cover this cost to maintain the same funding?

Under Act 92 PA 2000, food service establishments are assessed the \$3.00 and \$2.00 fees to support the training of consumers and regulators, respectively. LHDs should plan to inform foodservice establishments of these fees, and consider whether amendment of locally authorized fees is appropriate.

Chapter V: Prohibited Acts and Penalties

Section 5105

How will MDA know when to administer fines for critical violations that have not been corrected?

An enforcement policy has been developed that will be used to guide supervisors when to apply the fines and to ensure uniform and fair application.

Section 5111

What is the difference between an injunction and a remedy?

“Remedy” in this context means any means of enforcing the law, such as a fine, imprisonment, or injunction. An injunction is a court order that requires the person to whom it is directed to do or refrain from doing a particular thing.

Chapter VI: Standards For Food Establishments

Section 6101(1)

Why didn't you just automatically adopt all future updates of the FDA Food Code?

Automatic adoption of future versions of the Food Code would be an unconstitutional delegation of the legislature's lawmaking power.

Section 6101(1)(a)

The temperature conversion (66>130) does not seem accurate.

This was an error. It should read 130°F (54°C). Future printings will include this correction.

Section 6103

Can a retail grocery store have their plans reviewed prior to construction if they so desire?

Yes. While not required by the Food Law, the MDA strongly encourages plan review for retail grocery establishments. This service will be available beginning November 8, 2000 and will be conducted at the regional level. MDA will assess the use of voluntary plan review and determine at a later date whether to continue voluntary review or push for mandatory plan review.

Section 6107

If plans are considered “adequate” if not reviewed within 30 days, does that mean that any deficiencies do not have to be corrected? The word “adequate” implies acceptable or approved.

The Food Law states “If a submission of complete plans and specifications is not reviewed within 30 business days of receipt, the plans and specifications will be considered complete and accurate”. The intent of this section is to ensure both timely completion of plan reviews, and timely feedback to the submitter. If a LHD receives an incomplete or inadequate set of plans and specifications, the LHD should promptly notify the submitter of the identified deficiencies. Failure to communicate these findings within 30 days of receipt will result in the submission being considered complete and accurate. The 30-day limit does not apply to correction of any

deficiencies identified by the plan review. "Complete and accurate" plans, however, does not mean the resulting building/operation are approved. Any deficiencies remain the responsibility of the licensee and would be noted during the pre-opening inspection.

Is the "Food Establishment Plan Review and Worksheet Guide" meant to be the "law" for Plan Review (rather than a voluntary "guideline")? If so, when will it be effective?

No, it is a guide based on the Food Code requirements.

What's going on with plan review for ventilation systems?

IM transmittal no. IV-01 addresses this. It lays out three options for LHDs:

1. The LHD retains the responsibility for reviewing plans & specifications and approves installation,
2. The LHD conducts plan and specification review and works in conjunction with Michigan Department of Consumer & Industry Services (CIS), Mechanical Division, to assure correct installation, or
3. CIS Mechanical Division performs the review and approves the installation.

It is the responsibility of each LHD to decide which option they prefer and to incorporate their choice into their written policy and procedure.

Section 6117

Does the new code mean all ventilation systems have to be designed by an engineer only as "engineers" do not design them presently?

An engineered system places the design engineer in the position of responsibility and professional liability. Other systems shall be designed according to prescriptive criteria; e.g. MDA/CIS/etc.

Section 6119

What is the issue with requiring ventilation systems to be balanced to within plus or minus .02-inch water gauge?

The requirement for a ventilation system and make-up air to balance or be no more than .02 inch negative is to prevent back drafting of carbon monoxide from the exhaust of gas fired equipment. This requirement existed in the previous law, and it was the consensus of the work group advising the Department on the development of the Food Law, that this specific requirement be retained to ensure a building vents noxious fumes and dangerous gases to the outside.

What is the use of a balance report if the LHD has no ventilation data to check it against?

A balance report provides the regulatory authority with some data that the ventilation system and the make-up air are balanced as required. Data on the ventilation system will still be provided in the plans and specifications, and inspectors retain authority to verify that the system works.

Section 6137**Can special transitory food units (STFU) be licensed by any county or region, or just the one they live in?**

Any health department or MDA region can review and license a Special Transitory Food Unit provided the unit and plans are compliant.

How will STFUs address the differences in availability of electrical, water, and sewage hook ups at different locations?

To receive an STFU license, interested parties must:

1. Submit information on menu, planned operation, plan and specifications
2. Receive approval of plans and specifications, and
3. Develop standard operating procedures (SOPs) outlining operations. The SOPs will need to include specifications for on-site support needed at each location where they plan to operate.

The regulatory authority at each event will have the ability to conduct on-site inspections to verify that the STFU is operating safely and in compliance with their SOPs given the on-site infrastructure, e.g. energy sources, water supplies, sewage disposal, solid waste storage, etc.

What if LHD A issues a license to a STFU with defined SOPs. This STFU then goes to county B and is inspected. The STFU is found to meet the SOPs, but LHD B deems these SOPs to be inadequate. What then? TFU licenses have been given out before when they shouldn't have. So what happens?

Written SOPs should ensure that the STFU operates in compliance with food safety principles outlined in the Food Code. If the regulatory authority with on-site jurisdiction identifies an unsafe practice, they have authority to require corrective action. Short-term actions should be taken to protect public health. Long-term actions should be coordinated with the agency that issued the license and include: 1) documenting the specific violations of law, 2) sending copies of the reports to the agency that issued the license, 3) requiring the SOPs to be amended, and/or 4) limiting scope of the operation.

How are the records of inspections for Special Transitory Food Units (STFU) going to be transferred from LHD to LHD, especially since a unit that is revoked one year will likely attempt to be licensed through a different LHD in subsequent years?

A central data system is planned (based on the licensing database) to aid MDA and LHDs in tracking operators.

The new law does not distinguish between a STFU license issued by the LHD or the MDA, even when the unit is purely food service. May a LHD refer a would-be STFU operator directly to the MDA for plan review and licensing, since the operator has that option by law?

Generally, the STFU would be licensed by the agency having jurisdiction over the first event where the STFU would operate. If this event is a county fair, MDA would be the appropriate

licensing agency. If this event is a festival, then the LHD should license the unit. An STFU applicant that approaches the LHD having jurisdiction at the first site of operation should be served by that LHD and not sent to another agency.

Section 6149

Regarding the consumer advisory provision, is a facility going to be liable if someone gets sick from eating their food and the customer claims that they didn't see the consumer advisory?

Potentially, yes. This is a good reason for facility managers to seriously consider how they can best meet the intent of this new requirement. Factual reasons to believe that a facility's advisory is inadequate may include consumer complaints to that effect or be based on interviews of people involved in an outbreak.

Section 6151

Who determines that the alternatives to bare-hand contact are impractical for the operation?

The facility management. But if they make this decision, the management is obligated to all of the following:

1. Meet the critical requirements of the food code,
2. Implement and document a training program for food employees having bare-hand contact with ready-to-eat foods, and
3. Develop and implement a written plan documenting how the facility manages employees having bare-hand contact with ready-to-eat foods.

These tough new requirements will motivate managers to carefully evaluate if alternatives to bare-hand contact really are impractical.