



Ohio Department of Agriculture
and
Ohio Department of Health



Governor Bob Taft
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DT: May 15, 2006

TO: Health Commissioners, Directors of Environmental Health and Interested Parties

FR: Ohio Department of Agriculture, Division of Food Safety
Ohio Department of Health, Bureau of Environmental Health

RE: Letter of Opinion 2006-01 "Date Marking"

The *Ohio Uniform Food Safety Code* in paragraph (G)(2) of rule 3717-1-03.4 addresses the date marking of ready-to-eat, potentially hazardous food that has been **prepared and packaged by a food processing plant**. The date marking provisions apply when the original container of food is opened and the food is to be held longer than 24 hours after opening prior to sale. These provisions in the code are based upon the 1999 FDA Model Food Code and the control of *Listeria monocytogenes*.

In the most recent version of the FDA Model Food Code (2005), several exemptions have been added as a result of the Quantitative Assessment of the Relative Risk to Public Health from Foodborne *Listeria monocytogenes* Among Selected Categories of Ready-to-Eat Foods initiative by FDA, in cooperation with USDA/FSIS and CDC. This initiative found that there are 5 factors that are important in measuring the public health impact to consumers from foodborne listeriosis. These factors are: (1) amounts and frequency of consumption of a ready-to-eat food; (2) frequency and levels of *L. monocytogenes* in a ready-to-eat food; (3) potential of the food to support growth of the bacterium during refrigeration; (4) refrigerated storage temperature; and (5) duration of refrigerated storage before consumption. Based on these 5 factors, different types of ready-to-eat foods were ranked according to their relative risk of contamination and growth of *L. monocytogenes*. The risk categories used were very high risk; high risk; moderate risk; low risk; and very low risk. Based on the results of the risk assessment and the recommendations from the 2004 Conference for Food Protection, the focus of the date marking provision was redirected toward very high and high risk foods while exempting those foods that present a very low or low risk of contamination and growth of *L. monocytogenes*.

Based on this evaluation, the date marking provisions of the 2005 FDA Model Food Code provides the following exemptions from date marking:

- (a) Deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad, manufactured in accordance with 21 CFR 110 Current good manufacturing practice in manufacturing, packing, or holding human food;
- (b) Hard cheeses containing not more than 39% moisture as defined in 21 CFR 133 Cheeses and related cheese products, such as cheddar, gruyere, parmesan and reggiano, and romano;

- (c) Semi-soft cheeses containing more than 39% moisture, but not more than 50% moisture, as defined in 21 CFR 133 Cheeses and related cheese products, such as blue, edam, gorgonzola, gouda, and monterey jack;
- (d) Cultured dairy products as defined in 21 CFR 131 Milk and cream, such as yogurt, sour cream, and buttermilk;
- (e) Preserved fish products, such as pickled herring and dried or salted cod, and other acidified fish products defined in 21 CFR 114 Acidified foods;
- (f) Shelf stable, dry fermented sausages, such as pepperoni and Genoa salami that are not labeled "Keep Refrigerated" as specified in 9 CFR 317 Labeling, marking devices, and containers, and which retain the original casing on the product; and
- (g) Shelf stable salt-cured products such as prosciutto and Parma (ham) that are not labeled "Keep Refrigerated" as specified in 9 CFR 317 Labeling, marking devices, and containers.

In view of this change in the 2005 FDA Model Food Code and in anticipation of a corresponding change in the *Ohio Uniform Food Safety Code*, it is our opinion that use of the provisions for exemption from date marking given above should be utilized in the enforcement of date marking in paragraph (G)(2) of rule 3717-1-03.4 of the Ohio Administrative Code.

This "Letter of Opinion" was reviewed and recommended by the Retail Food Safety Advisory Council at their May 9, 2006 meeting.