

Ohio Department of Health's Food Safety Program Conference Call Minutes for March 7, 2011

Topics discussed during the call:

1. **The survey methodology process was updated with input from both state agencies and approved by the Retail Food Safety Advisory Council.**

- The forms Status of Compliance, Performance Standards, and Sanitarian Evaluation were updated and are being used now by both agencies.
- The sanitarian evaluation inspections have been reduced from four to two per food sanitarian. The evaluations will be done in a risk level III and risk level IV facility.
- Review of transmittals and the cost methodologies are being done in central office prior to the survey to reduce the time spent in the department by the surveyor.
- The Baseline inspections conducted during the survey have been dropped reducing the overall survey time from start to exit.

In response to a request during the call, we will copy the Environmental Health Director on the local health districts survey findings.

2. **Cost analysis evaluations**

This year the cost analyses are being reviewed jointly by the state agencies. A checklist was created to provide the survey officer information regarding the analysis. The checklist addresses: proper forms used, do cost appear appropriate, costs incurred and paid for by one component not duplicated in other components, cost analysis complete, support cost does not exceed 30%, sanitarian hours do not exceed 9 hours for risk, is the percentage of time the same in table B and B-A, total components do not exceed total hours worked, approved fees do not exceed maximum fees from table H, signed/submitted by health commissioner, and vending fees do not exceed CPI. Health districts will be notified if any major discrepancy is found.

The updated methodology will be available soon. The changes were to consolidate the 4 workbooks into one workbook for each method. Training will be provided on the updates in the near future.

3. **Issuing multiple licenses at one location**

A number of local health departments have asked for guidance regarding the issuing of multiple food service operation licenses at a venue, especially when the entire venue is controlled by a single owner or operator. The inspection of the food facilities in a single sports stadium may take several hundred hours of personnel time in a license year and it may not seem reasonable for the operator of the concession stands in a sports stadium to pay the same amount in food service operation license fees as the operator of a restaurant which may require only a few hours of inspection time each year. The number of food service operation licenses to be issued has been a concern at sports stadiums, arenas, malls, race tracks, golf courses, hospitals, food courts, and amusement parks.

License fees in most local health districts are used to recover all or significant portions of the costs of local food inspection programs. Statewide inspection time factors of the various risk level / square footage categories of food service operations and retail food establishments are used in the uniform cost methodology when calculating maximum

allowable license fees. Inspection time factors for risk level operations based on data collected statewide were established in the administrative code to help allocate inspection program costs in a fair manner.

Rule 3701-21-01(I) of the Ohio Administrative Code includes the sentence, "Two or more serving areas, each supplied by separate kitchens, are considered two or more separate food service operations and must be licensed individually even though located in the same building or structure." This rule has been in effect for many years and has been used in making decisions regarding the multiple licensing of food service operations at the same venue.

The issuing of multiple food service operation licenses may be appropriate if a number of the following questions can be answered with a "Yes":

Can the food operations be operated independently of one other?

Does each food operation have the equipment and facilities to operate independently?

Are there times or days during the operating hours of the venue when some food operations are open and others closed?

Are there distances between the food operations?

Will the hours of time required for inspection each year be totally out of proportion to the license fee(s) charged?

Will other licensees in the local health district be picking up most of the inspection costs?

Is payment for the food received at the time of serving?

The issuing of multiple food service operation licenses may not be appropriate in situations where there is one common area of cash registers for paying for the food served or if payment for food served is provided in a single bill such as at a hospital or day care.

In a facility, such as a nursing home that serves highly susceptible population, if a satellite kitchen is only serving food prepared in the main kitchen, they may license the satellite as a level II, or license the entire operation as a large level IV. ODH has not cited any local health department on the survey if they choose to license these facilities in either manner.

It is not possible to cover every possible scenario, but diligence should be used since in the past the legislature has acted when constituents have complained about problems with food licensing.

4. Wendy's tempered cheese

Wendy's is requesting to hold their cheese longer than the 6 hours permitted in the food code. This would require a variance regarding the use of Schreiber Foods Sliced Pasteurized American Cheese formulated for Wendy's International Inc. food service operations located in Ohio

The United States Food and Drug Administration's (FDA) Center for Applied Food and Nutrition (CFSAN) issued a letter to Schreiber Food's Inc. regarding the use of Schreiber Foods Sliced Pasteurized American Cheese.

In the letter, CFSAN supported the use of time as a public health control being used by Ohio as part of rule 3717-1-03.4 (I) in Administrative Code.

It is FDA's opinion that the results of the report completed by Silliker, Inc on behalf of Schreiber Foods suggest there is an appropriate scientific basis should a regulated food service operation wish to pursue a variance from regulatory authority to extend the standard time limits for the use of time as a public health control.

Ohio Administrative Code (OAC) 3717-1-03.4 (J) states in part "the license holder shall obtain a variance from the Ohio Department of Health if an operation is a food service operation...before (9) preparing food by another method that is determined by the Ohio Department of Health...to require a variance."

In response to the request the Ohio Department of Health is considering the issuance of a statewide variance. Prior to issuing the variance, the Wendy's Inc. operating procedure will be further reviewed regarding the overnight storage of the cheese.

Until the variance is granted, all Wendy's Inc. food service operations in Ohio must comply with the Ohio Uniform Food Safety Code.

5. Changes to FDA Food Code

The following changes are being proposed to the RFSAC at their next meeting on April 12, 2011:

3717-1-01 (B)(28) Added definition of "cut leafy greens"

3717-1-01 (B) (58) Modified the definition of "injected"

3717-1-01 (B) (68) Added the term mechanically tenderized

3717-1-01 (B) (73) Added term "non-continuous cooking"

3717-1-01 (B) (91) Added term "psychrotrophic" to identify type of pathogen

3717-1-01 (B) (122) Added "cut leafy greens" to definition of TCS food

3717-1-02.4 (C)(12) Added allergy awareness to duties of PIC

3717-1-03.2 (C)(1) Changed rule to allow for intermingling certain frozen commercially packaged raw meat items with ready to eat foods in a freezer.

3717-1-03.3 (A)(1)(b) Added mechanically tenderized to cooking temperature requirements.

3717-1-03.3 (A)(3) (b) Added restriction of undercooked comminuted meat to children.

3717-1-03.3 (A)(3)(d) Added a section to address non-continuous cooking requirements.

3717-1-03.3 (A)(3)(e)(ii) Added fish eggs under parasite destruction requirements.

3717-1-03.4 (J) (4) Added *Listeria monocytogenes* as pathogen of concern in ROP.

3717-1-03.4 (K) Added without a variance to this section removed the requirement for two barriers and added raw vegetables in regard to items with competing organisms.

3717-1-04.1 (W) Added store or in section regarding molluscan shellfish tanks.

3717-1-04.4 (N) Made changes from exposure time to contact time. Minor changes to the temperature requirements, label requirements, concentration chart.

3717-1-04.6 (C) (3) Changed "exposure" to "contact".

3717-1-04.8 (I) Clarified requirements for preset utensils.

3717-1-04.8 (J) Added a section regarding rinsing after sanitizing food equipment, utensils etc.

3717-1-05 (E) (2) added "and" in the section of non drinking water.

3717-1-05.1 (I) Added to service sink requirements section.

3717-1-06.2 (C) Added specific type of air hand drying to code.

6. Midwest Workshop and Future Trainings

The following topics will be covered at the Annual Midwest Workshop on Tuesday March 22, 2011. Overview Meat Inspection Program: Dr Michael Hockman, Jodi Taylor and Mike Link - ODA Meat Inspection; US Food and Drug Administration (FDA) – Food Safety Updates: Kris Moore- FDA Retail Food Specialist; Food Safety Protection and Defense: Gale Prince, National Center for Food Protection and Defense - University of Minnesota; Approval Water Systems: Susan Baughman - Division of Drinking and Ground Water; Food Safety HACCP: Don Barrett, Food Safety Specialist - Giant Eagle Inc.; Ohio Update Foodborne Outbreak Response: Marika Mohr, MS, Epidemiologist, Outbreak Response and Bioterrorism Investigation Program, Bureau of Infectious Disease Control, ODH; Ohio Administrative Code (OAC) 370-21-27 and 9101:3-4-15 Embargo of Food: Representative Ohio Department of Agriculture; Update Federal Meat Inspection Program: Mark Brown, Regina Salter, Robert Allshouse –Compliance Investigators, United States Department of Agriculture Food Safety Inspection Service

In addition to Midwest we will be working with ODA in the near future on updated Cost Analysis training as well as CCP and Process Review.

7. Dealing with late FSO application submittals

The following opinion was given by our legal office regarding late renewal applications.

When a previously licensed FSO fails to submit a renewal application for a long period of time (after reminders, late fees, etc.), they become a non-licensed FSO and licensors should begin enforcement proceedings against the FSO. Ideally, the goal would be to get the FSO inspected and licensed.

While there is no valid license to suspend or revoke, R.C. 3717.50 provides that a criminal prosecution may be commenced against an unlicensed FSO. This could result in a 3rd degree misdemeanor on the first offense.

While the statute and rules do not speak to this, it has been the department's position that a FSO that has not been continually licensed or has not been in operation for twelve consecutive months shall be considered a new operation and cannot proceed under renewal.

Before making any decision always consult with your prosecutor.

We will not be applying for CEU's for these calls because of verification of attendees.