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INTERPRETATIVE MEMORANDUM

TO: All Local Health Departments
Attn.: Health Officer/Director of Environmental Health/Chief Sanitarian
MDA Food Program Staff

FROM: Food Service Sanitation Section & Science and Technology Section
Food and Dairy Division

SUBJECT: **Uniform Citation Of Violations**

Background

All those involved in food inspections agree that uniformity of the inspection process is critical. Operators become frustrated when the requirements seem to change from county to county or inspector to inspector. Inspectors become embarrassed when they are caught in a situation where another inspector contradicts them or issues conflicting requirements.

One aspect of uniformity is a consistent method for citing violations. The following process delineates the specifics of what constitutes a violation. It limits the possible shades of gray, but does not totally eliminate them.

Steps in Determining And Citing Violations

Step 1 - Does a violation exist?

Items are marked as violations on the inspection report when they clearly exist in the food establishment. A violation represents a deviation from a Food Code (FC) or Food Law provisions. Slight violations, such as one dirty utensil among a thousand clean ones, does not indicate that the establishment is significantly deviating from the requirement to use clean utensils.

Step 2 - Is there one or more than one violation?

Each violation of a code provision is reported as a separate item on the inspection report. This does not mean, however, that each instance should be considered a distinctly separate reportable violation. Some discretion is warranted when preparing the inspection report, but this discretion should fall within the following guidelines:

A. Grouping by Common Cause

Numerous violative items resulting from a common cause should be categorized into a single violation.

Example 1: A cooler with mechanical problems may result in a dozen or more potentially hazardous food items being at a violative temperature. The cooler is considered a malfunctioning refrigeration device under FC § 4-501.11, Cooling, Heating, and Holding Capacities, because repairs are needed to bring the unit into compliance. These numerous items are categorized as one food temperature violation and cited only one time under FC § 3-501.16(B) or (C), Potentially Hazardous Food, Hot and Cold Holding. (Of course, if the time the food is out of temperature warrants, each of the violative foods should be discarded by the permit holder or person in charge and disposition noted on the report.)

B. Separation by Type

A single situation may contain multiple violations. Each type of violation should be separated out by category and cited.

Example 2: A cooling unit is properly functioning, but improper cooling practices were used, resulting in the high temperatures being found in the potentially hazardous food. This is a violation of FC § 3-501.15(A), Cooling Methods, *and* FC § 3-501.16(B) or (C), Potentially Hazardous Food, Hot and Cold Holding.

C. Separation of Multiple Causes

When similar violative items occur from separate causes, each item is cited individually.

Example 3: Two separate coolers have items out of temperature as the result of two separate instances of improper practices. Each instance should be individually cited as a violation. The details included in each citation should clearly delineate the conditions found in each instance.

Example 4: A large meat cutting room has numerous separate areas requiring cleaning. If there were a buildup of old food debris and other filth on the floor of the room in five separate areas, then one violation would exist. However, if the cleaning problem existed in the meat room, the produce area, bakery, and two restrooms, one violation of FC § 6-501.12(A) is cited for each of the incidences listed.

Step 3 - Record all violations found.

Record inspection findings on the report to detail the violations found during the inspection. This applies even to those items corrected during the inspection (note corrections on the inspection report). The U.S. Food and Drug Administration's studies of programs that have the most effective compliance found a correlation between the completeness of data recorded and the success of the compliance program. Alternative approaches decrease regulatory effectiveness.

Style Elements

The following style elements for narrative reports have been found to increase the effectiveness of the report:

- List the critical violations first for emphasis.
- Leave a blank line between individual violations cited.
- Note repeat violations. Repeat items are those that were in violation on the last inspection. Indicating when the original violation occurred may also be helpful. Notation may be made with an asterisk and footnote.

Reference: Annex 4 of the FDA Food Code

NDF:khg