

2012 Update to Food Law/Food Code

Frequently Asked Questions

- 1. A food service establishment (FSE) owner has less than 3,000 hens and is not licensed. Can the eggs be used in the food service establishment (FSE)?**

Answer- No, eggs must come from an approved source, received clean and graded. Exception- A FSE may be approved to be a first receiver (who is approved to wash and grade eggs) by the regulatory agency if all requirements can be met as determined by a plan review.

- 2. Are eggs from an unlicensed producer exempt from dating, coding and temperature requirements?**

Answer- Yes they are exempt.

- 3. Can a person who has less than 3,000 hens and sells eggs directly to the end user reuse labeled egg containers (i.e. Kroger, Glens, etc)**

Answer- Yes, however the container must be labeled with the statement "PACKAGED IN A FACILITY THAT HAS NOT BEEN INSPECTED BY THE DEPARTMENT."

- 4. Does a licensed egg producer at a farmers market need to post their license and keep eggs at 41°F or below?**

Answer- A copy of the license must be posted and eggs held under refrigeration. Food Code 3-501.16(B) Eggs that have not been treated to destroy all viable Salmonella shall be stored in refrigerated equipment that maintains an ambient air temperature of 45°F or less.

- 5. Are duck eggs covered under the shell egg licensing exemption?**

Answer- Yes, most shell eggs are included.

- 6. Has the Food Law adopted the allergen requirements in the CFR's?**

Answer- No MDARD has not adopted the allergen requirements. The allergen requirements are found in the Food Allergen and Consumer Protection Act of 2004 (Public Law 108-242, Title II) MDARD has not adopted this act.

- 7. Is there a phase in period for manager certification for STFU and Mobile licenses?**

Answer- No, the law takes effect October 1, 2012. The manager certification requirements are written under the food law requirements. A memo was sent after the adoption of the 2005 Food Code, and guidance for documenting violations and subsequent enforcement actions are included in the memo.

- 8. Do all retail mobile trucks need a certified manager?**

Answer- Depending on the food being offered for sale a certified manager may be required for each truck. Example-Schwann's mobile trucks fall under the statewide variance for a certified manager. Schwann's handles frozen foods only and is exempt from needing a certified manager.

- 9. Who makes the determination for exemption of manager certification for STFU/Mobiles?**

Answer- It is based on the statewide variance memo which is menu driven.

- 10. Would multiple STFU and/or Mobile units at one venue, occasionally split between 2 venues need a certified manager for each unit?**

Answer- As stated in the Michigan Department of Agriculture (now known as the Michigan Department of Agriculture and Rural Development) Myths and Facts document, "When more than one food establishment operated by the same person is located on the same property or contiguous properties, only one manager is required to be certified if that manager has direct authority, or exercises control or supervision over the food employees." This would need to be documented in each of the units Standard Operating Procedures.

2012 Update to Food Law/Food Code Frequently Asked Questions

11. An STFU crossing into Michigan from another state; are they required to have a certified manager?

Answer- No, they have to apply for a TFE license to operate in Michigan a TFE does not need a certified manager.

12. Is the lack of manager certification cited in the Food Code or the Food Law?

Answer- See memo Manager Certification Rules take effect, Sept. 8th, 2011. You would cite this violation in the Food Law 289.2129, it is a core violation.

13. With the implementation of the Food Law last time, the compliance worksheet had a place for the signature of the operator. This time there isn't a place for their signature. Is this correct?

Answer- Yes, there isn't a place for their signature. This is just a tool for the inspector to use to document instructions given to the operator.

14. What is the maximum level for quaternary ammonia sanitizer?

Answer- The maximum level will be found in the label use instructions. Food Code 4-501.114 Criteria shall be used in accordance with the EPA-registered label use instructions to determine the effective sanitization level for all approved sanitizers. If the sanitizer is found to be higher than label requirements it should be cited as Food Code 7-204.11; if it's found to be lower than label requirements it should be cited under Food Code 4-501.114.

15. Is food placed in a zip lock bag considered to be Reduced Oxygen Packaging?

Answer- No it is not, if the air has not been removed from the bag it is not considered to be Reduced Oxygen Packaging and is not required by law to have a variance. Food Code 3-502.12

16. Are continuous recording thermometers still required under Food Code 3-502.12?

Answer- Yes they are required, under 3-502.12(D)(2)(f)

17. Where would you cite a non-working or leaking faucet or hand sink?

Answer- Plumbing maintenance, Food Code 5-205.15

18. Where would you cite a pest strip hung over a preparation table that has no bugs on it?

Answer- Proper use of pest control devices, Food Code 7-201.11

19. Can food that has been par-cooked be served "under cooked" under a consumer advisory?

Answer- No, the food must be fully cooked as required under Food Code 3-401.11(A).

20. Does the 60 minutes of par-cooking include the cooling process?

Answer- No, the 60 minutes only refers to the initial cook time.

21. Would par-cooked food fall under the "date marking" prior to the final cook step while in storage?

Answer- No, date marking is for ready to eat foods only. Par-cooked foods are not considered ready to eat.

22. If you find a par-cooked food that is not cooling properly, is it cited under par-cooking or cooling?

Answer- It should be cited under cooling, Food Code 3-501.14(A).

23. If a caterer has par-cooked food on the truck that is not marked or otherwise identified as foods that have not been fully cooked, is this a violation?

2012 Update to Food Law/Food Code Frequently Asked Questions

Answer- Yes this is a violation under Food Code 3-401.14(F)(2).

24. How should par-cooked foods, prior to final cooking be separated during storage?

Answer- These foods are to be stored separate from RTE foods and stored according to cooking temperature requirements for raw animal foods.

25. What about pasties that are par-cooked, then frozen and sold without further cooking, do they fall under non-continuous cooking?

Answer- No this is not considered non-continuous cooking. Non-continuous cooking states that prior to sale or service, it is cooked using a process that heats all parts of the Food to a time/temperature specified in Food Code 3-401.11(A).

26. A MDARD licensed retail meat market cooks meat for immediate service in their parking lot, who would license it?

Answer- A MDARD food license would cover this event.

27. If a Food Service Establishment (FSE) is selling a product to another FSE does the product need to be labeled?

Answer- The product is required to be labeled. Labeling may not be needed on each individual container but it is required on the master container.

28. Would a temporary food establishment have to correct P & Pf's before they can operate?

Answer- Yes, all P and Pf's must be corrected prior to licensing.

29. If enforcement is currently ongoing for a previous critical violation, how will it be addressed after Oct 1st since the term "critical" can no longer be used?

Answer- The enforcement policy needs to be updated to reflect the new citation terminology (P, Pf, and core). It is the food code section that is under enforcement; if the "critical" is now a Priority or Priority foundation you would continue with enforcement of that Food Code violation. If the previously cited "critical" is now a Core violation you would need to follow your enforcement policy for Core violations.

30. How are CFRs marked as violations?

Answer- All violations related to the CFRs remain the same except; previously marked critical violations are now cited as Priority and non-critical violations are cited as Core.

31. Are Infra-red thermometers OK to use to temp lettuce?

Answer- Food code Annex 5 states that "Use of an infrared thermometer for verifying holding temperatures is not consistent with Food Code requirements since verifying only the surface temperature of the food may not alert inspectors to problems that exist under the food's surface". Therefore while the infra-red may be used as an indicator to detect possible problems, a probe thermometer should be used to verify and cite the violation.

32. To check temperature of cut leafy greens, can clean utensils be used to rotate the lettuce?

Answer- Inspectors should not stir a food before taking its temperature since it is important to know the temperature of the food before it is agitated.

33. Is a pre-cut steak assumed to be mechanically tenderized?

Answer- Yes, unless properly labeled as stated under FC 3-201.11(E).

34. Is hamburger packaged in retail store such as Kroger considered commercially packaged?

Answer- No it is not, hamburger or any food packaged in a retail food establishment is not considered commercially packaged.

2012 Update to Food Law/Food Code Frequently Asked Questions

35. Does a commercially packaged food need to be received frozen in order to be stored frozen and mingled with commercially packaged frozen ready-to-eat (RTE) foods?

Answer- No, however the food must be frozen prior to placing over RTE foods.

36. Can a 5 year old order under-cooked comminuted meat from an adult menu?

Answer- Yes, children may order undercooked meat from the adult menu. Food Code section 3-401.11(D)(2) only requires the FOOD, if served or offered for service by consumer selection from a children's menu, does not contain comminuted meat.

37. What is the age for a children's menu?

Answer- The age for a children's menu isn't defined.

38. Does the children's menu have to have wording that an item cannot be served raw or undercooked?

Answer- No

39. Can mechanically tenderized beef and comminuted beef be stored together?

Answer- Yes, both have a final cook temperature of 155F. for 15 seconds.

40. Can mechanically tenderized include whole loins?

Answer- Yes

41. Are greens cut at harvest (lettuce, cabbage, etc.) considered to be cut leafy greens?

Answer- No, only if the (unless the) leaf has been cut, chopped, shredded, or torn.

42. What are the requirements for labeling cook/chilled or sous vide foods?

Answer- Food Code 3-502.12(D)(2)(h) states these foods are to be labeled with the product name and the date it was packaged on.

43. Do Food Code 4-204.110 & 3-502.11 covering life support systems include lobster tanks?

Answer- No, this is for molluscan shellfish tanks only. Molluscan shellfish means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists of the shucked adductor muscle.

44. Does the waxing of apples fall under processors of raw agricultural commodities?

Answer- Waxing of apples is NOT considered a process.

45. Are duck eggs covered under the shell eggs exemption pertaining to license exemptions?

Answer- Yes, all shell eggs are included.

46. Is raw milk sold at a Farmer's Market labeled as "not for human consumption" allowed?

Answer- No this is NOT allowed.

47. Do honey and maple syrup producers exempt from licensing need to label the products "Made in a facility that is not inspected by the Department"?

Answer- Yes this information must be included on honey and maple syrup packaging among other labeling requirements. These requirements can be found at http://www.michigan.gov/mdard/0,4610,7-125-50772_45851-240577--,00.html#MapleSyrup

48. Would smoking by employee be cited as a violation in the food code or food law or both?

Answer- There are two issues.

1. *An employee is smoking in a FSE, this would be a violation in the Food Code under 2-401.1.*

2012 Update to Food Law/Food Code Frequently Asked Questions

2. *P.A. 188 prohibits smoking in a FSE. Any violation would be marked on the inspection report under smoking; and written up as a smoking complaint and investigated as previously instructed.*

49. A Local Health Department is using a risk based evaluation schedule; can a Pf follow-up go as long as 18 month for verification of compliance?

Answer- Yes verification for compliance may be delayed for 18 months; however the Pf still needs to be corrected in 10 days. Section 289.6129 in the Food Law states: "All violations which are marked as priority items or priority foundation items on the evaluation report form shall be corrected immediately unless otherwise specified. The director shall confirm correction within 30 days after the report is issued. However, if not more than 2 priority foundation item violations are noted and the director determines that the violations are not a risk to food safety, the director may confirm correction of the priority foundation item violations at the next routine evaluation". How was it determined which Pf violation may be verified at the next routine inspection? The determinations were made based on risk to food safety for each Pf violation.

50. Can you tell me about the licensing exemption for prepackaged foods?

Answer- Under Food Law 289.4105(4) licensing exemption of prepackaged food when transported to a different location for sale (i.e. farmer's market); if food is transported by licensed establishment employee and sold by the employee it can be exempt from licensing, if the food is transported by an outsider (not an employee), a food license shall be required.

51. A processor wants to grill their special hot dogs at a fair or festival; they are licensed as a processor by MDARD. Would they need a food license? Who would license them?

Answer- Yes they would need a license from the local health department since they are doing off site preparation.

52. If we find shellfish that is not on the Interstate Certified Shellfish* Shippers List, what do we do?

Answer- The shellfish shall be placed under seizure, because the shellfish came from an unapproved source. For local health departments contact your food service consultant for further guidance. For MDARD staff, contact the MDARD shellfish specialist.

53. Are there prohibitions for establishments with Highly Susceptible Populations to grow and use their own food?

Answer- No