

## **2007 Michigan Food Law Changes Questions and Answers**

**The new food law adopts the 2005 Food Code. Highlights of differences between 1999 & 2005 FDA Food Codes include:**

1. Establishments that wish to use a bare hand contact plan must submit it to the regulatory authority for approval.
2. Hot holding temperature has been lowered from 140° to 135° F.
3. Time as a public health control has been increased from four to six hours for cold foods with the requirement that the food be monitored and not exceed 70°.
4. Temperature Control for Safety (TCS) is introduced. This term will eventually replace the term “potentially hazardous food” and provides a system for easily determining if foods need temperature control based on pH and water activity.
5. Managers must have knowledge about the eight major allergens, major allergens are defined and labeling of packaged food is included.
6. Further controls regarding the spread of Norovirus from ill workers have been added. Updated requirements include:
  - Employees must tell management if they are diagnosed with or have been exposed to Norovirus.
  - Provides clearer guidance on when to exclude or restrict an employee from work and when to allow an employee to return.
  - Provides better guidance on management’s rights to find out about employee illness.
7. Date marking has new list of exempt foods such as deli salads prepared and packaged in a processing plant, cultured dairy products and certain types of hard and semi-soft cheeses. Establishments can also chose their own method of marking items- actual dates not required.

### **When is the new law effective?**

The fee changes in the law are effective January 1, 2008. The other changes are effective April 1, 2008.

### **1105(C) Why has the definition of bed and breakfast been changed?**

This change allows a bed and breakfast with 10 or fewer sleeping rooms to serve meals other than breakfast. Some small B&B’s, especially in the Upper Peninsula are located in rural areas with no other food service establishments located nearby. This allows some flexibility for both the B&B and their guests. This provision was included in the Food Law prior to 2000 and is being reinstated.

### **1107(C) Why has the term “inspection” been changed to “evaluation”?**

Food establishment inspections have evolved in recent years to be far more complex than just a physical facility inspection. “Evaluation” more accurately describes today’s process which may include: interviewing manager and employees, reviewing records and procedures, assessing various food safety systems as well as conducting a physical facility inspection to determine if the manager is actively managing critical, high-risk food safety systems. In total, this is known as a risk-based evaluation.

### **1107(K,L) and 1109(B) Why have definitions for “Food Safety and Sanitation Assessment”, “Food Safety Audit” and “Inspection” been added?**

These definitions supplement the new term “evaluation” to help better define the various activities that may occur during a regulatory visit to a food establishment. For example, an inspector may perform an audit, inspection or assessment, as defined.

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### **2111(3) Why has language been included regarding the taking of photographs?**

While taking photos for evidentiary and other reasons has always been done, this language helps clarify this right and explains how trade secrets can be protected.

### **2129 Why has a manager certification requirement been added?**

A food establishment manager can't proactively manage food safety on a daily basis without a fundamental food safety education. This requirement assures that individuals with basic food safety knowledge are operating food establishments. Proper training is assured by an individual passing a nationally accredited examination. Over 1/3 of the food service establishments in Michigan already have certified managers, as a result of existing local ordinances and voluntary industry efforts.

The requirement is for the following food establishments to have one certified manager by June 30, 2009:

- All food service establishments except mobiles, STFU's, temporaries and vending machine locations.
- Extended retail food establishments.
- A food service establishment operated within a retail grocery.

MDA is directed to establish rules regarding this requirement by January 1, 2009. MDA may establish fees necessary to implement, maintain and track certified individuals.

Any one certified by passing an ANSI/CFP approved exam must be recognized throughout the state. MDA will no longer review and approve training programs. An individual may self-study and take a proctored exam. Taking a course is not required.

### **2125(e), 3119 (1-2) & 4111 Are the fee changes shown in these sections fee increases?**

**3119-** These food service fees shown increase annually with the Detroit CPI. The fees shown just reset the law at the current fee actually being charged.

**2125-** The STFU plan review fee is charged by both MDA and local health departments (LHDs). Since the LHD fee is locally set and the average LHD fee has increased since the fee was established in 2000, this \$197 MDA fee is proposed to be adjusted to keep both MDA and LHD fees equitable.

A new \$197 plan review fee for retail establishments has been established for all retail plan reviews that are currently considered mandatory.

**4111-** This \$135 STFU license fee is charged by both MDA and local health departments (LHDs). Since the LHD fees increase with the CPI, the MDA fee is proposed to be adjusted to keep both MDA and LHD fees equitable.

### **3119(4) Why has the school fee exemption been eliminated?**

With the resource challenges faced by local health departments (LHDs), MDA was requested to remove this exemption, which would allow each LHD and school district to locally set appropriate fees for school inspections. Michigan School Business Association officials were consulted regarding this change.

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With the elimination of the exemption, schools would automatically be charged the appropriate existing local food establishment fee, unless a separate fee is locally established. Associated state fees must be collected as with any other establishment license. Should a LHD decide to not charge a school a fee, then MDA will not ask that any other state fees be collected. Schools are not considered non-profit under the law.

### **3123 Why was a risk-based inspection schedule option added for local health?**

Using a risk-based inspection schedule, where high-risk establishments are inspected more often, is advocated by the 2005 Food Code, and is required for Michigan to meet national food safety standards. MDA has been using a risk-based schedule for many years and this brings consistency to MDA/LHD inspection scheduling systems. The new inspection schedule will be jointly developed by MDA and LHDs and seasonal establishment inspection frequencies may be included in the risk-based schedule.

Announced inspections are now also allowed.

### **3125 (3) Why has the 12 month maximum inspection frequency limitation been removed?**

The risk-based inspection schedule shall determine the appropriate frequency, which may be greater than 12 months for some establishments.

### **4101(2) Why is the language regarding “multiple establishments in one building under one management needing one license” being changed?**

Michigan has a number of large sports venues where over 80 establishments may be located in one building. The revised language clarifies that LHDs have authority to require separate licenses for establishments that are not actively under the same management.

### **4103(1) Why is this license application section being modified?**

The changes clarify that a renewal license applicant does not need to apply 30 days in advance. New licensees must still apply 30 days in advance. Clear authority for charging a doubled license fee for applicants that apply for a temporary license less than 4 days in advance has also been included.

### **4105(C&D) Why is a change to the licensing exemption for non-profit cooperatives being made?**

The change clarifies the definition of a non-profit cooperative, so that both industry and regulators have a clear understanding of the requirements needed to qualify for this exemption.

### **4105(H) Why are ice cream trucks being exempted from licensure?**

This change clarifies the law to match current department practice. Since packaged ice cream deserts melt if not kept at proper temperature, there is a very low food safety hazard with these products, and regulation is not considered a wise use of resources.

### **4105(I) Why are these non-profit trade shows being exempted?**

This section was added to clarify that these type of trade shows are not considered a significant source of food service to the public and therefore don't need licensure.

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### **4105(L) Why are emergency feeding operations being exempted from licensure?**

Emergency feeding operations often need to set up and operate quickly to respond to emergencies. Licensure requirements may place unnecessary roadblocks that would prevent a quick response. Exempting these establishments from licensure, does not exempt them from meeting food safety standards. These types of operations have a positive history of working well with food safety regulators, and this is expected to continue.

### **4111 What is the significance of these fee related changes?**

This section applies only to MDA inspected establishments. Changes include making initial application license fees nonrefundable, allowing MDA to charge a convenience fee for certain methods of fee payment and states that reinspection fees and fines must be paid prior to a license being issued.

### **4117 Why was the Dairy and Food Safety Fund Created?**

The fund creates a method for the department to carry funds forward, generate interest on those funds and restricts those funds to be used only for food and dairy programs.

### **4125(3) Why has this stronger license denial language been added?**

This new language gives the department a greater ability to prevent a person from having a licensed revoked (no license for up to 2 years), then immediately obtaining another license.

### **6129(1) What is the risk-based evaluation methodology referred to?**

The 2005 FDA Food Code, adopted by reference, advocates the use of a risk-based approach to conducting establishment evaluations. This approach focuses on identifying out of compliance food safety systems with the highest risk of causing illness (i.e., personal hygiene, temperature holding). Michigan has been increasing its use of this approach for several years. This change formalizes the risk-based evaluation as a state-wide standardized approach.

### **6129(3) Why has the follow-up inspection language been modified?**

The new language provides more flexibility to confirm that violations have been corrected, without having to make a physical inspection of an establishment. This section now provides flexibility to use photos, records, etc. to verify correction, as appropriate.

This section also requires that critical violation corrections be confirmed within 30 days, which codifies current practice. This additional flexibility is expected to create efficiencies and cost savings.

### **6137 (d) Why was this section on STFU inspections modified?**

Language was added to make it clear that the 2 required STFU inspections should be "spaced generally over the span of the operating season" to avoid back to back inspection requests.

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### **6140 Why has this section been added, requiring pasteurized ingredients be used when making milk products?**

This section assures that products such as yogurt and ice cream, made in a food establishment, meet the same food safety requirement as products manufactured in a plant licensed under Michigan's dairy laws. For example, only pasteurized eggs would be allowed for use when making ice cream in a restaurant and only items considered safe can be added to a milk product. A definition of "milk product" has also been added that matches the milk law definition.

### **6147 Why has this section on disaster reporting been modified?**

The requirement previously required an establishment to close and notify the regulatory authority when a disaster occurred. The blackout of 2003 demonstrated this isn't always feasible or desirable during large-scale disasters. The new language allows establishments to use department approved emergency management procedures in certain situations. The department currently has an emergency response manual in state-wide distribution (i.e. Emergency Action Plan for Retail Food Establishments) detailing emergency response procedures that are appropriate for a variety of disaster situations.

### **6149 How has this section on menu consumer advisories been improved?**

A simplified approach has been included to allow food establishments to more easily notify customers of the risk of eating certain raw or undercooked foods. An establishment can either follow the 2005 Food Code **or** simply place a standard warning statement on their menu, instead of asterisking each food that is undercooked. The previous requirement was causing both regulators and industry unnecessary time and expense in attempting to get menu advisories in compliance. The new standard warning statement reads:

**"Ask your server about menu items that are cooked to order or served raw. Consuming raw or undercooked meats, poultry, seafood, shellfish or eggs may increase your risk of foodborne illness".**

The statement may be modified to eliminate foods not served by the establishment. The requirements for same language as the menu item, contrasting text to background color and minimum 11 point font were retained.

### **6150 What does this section on trans fat mean?**

This section allows, but does not require, a food service establishment to place a statement on the menu regarding the presence of trans fat in menu items.

### **7105, 7106 What is the significance of these changes to seafood and cider processors?**

This change harmonizes state and federal standards by adopting federal Juice and Seafood HACCP regulations. These changes require seafood and cider processors to comply with existing federal processing rules (CFR's). The mandatory training for cider processors was added at the request of that industry's trade group.

### **7115 Why have these meat processing standards been modified?**

These change harmonize state and federal meat standards. This allows retail grocers to offer a wider variety of products that meet both state and federal standards.