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STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

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DATE: September 8, 2011

TO: All Local Health Departments (LHDs)
Attn: Medical Director / Health Officer / Director of Environmental Health

Michigan Department of Agriculture and Rural Development (MDARD)
Attn: Food and Dairy Division Managers

FROM: Sandra Walker, Manager
Food Section
Food and Dairy Division

SUBJECT: Manager Certification Rules to Take Effect

This is just a reminder that as of October 2, 2011, the Manager Certification requirement is in effect for all food establishments that are not exempted by the Michigan Food Law (MFL) or a statewide variance.

Violation of MFL §2129 or Regulation 570 is neither a critical or noncritical violation. The recommended compliance approach is as follows:

The facility does not have a certified manager.

MFL §2129 requires that food establishments shall employ a minimum of one managerial employee who is currently certified under a personnel certification program accredited by the American National Standards Institute.

Within 90 days you must provide your inspector with verification that your facility now has a certified manager on staff.

If your computer system does not provide for a way to cite a violation without a criticality designation, it may be written as a noncritical violation but followed up on and enforced at the end of the 90-day window. It must be marked as a MFL §2129 or Regulation 570 violation.

Enforcement

The recommended compliance approach is as follows:

- Verifying compliance of a manager certification related violation will typically require an additional follow-up, which would fall between the traditional critical and noncritical follow-up evaluations. Newly licensed establishments (new and change of ownership) must have a certified manager by the first day of operation. Agencies may grant a 90-day extension at their discretion, based upon the situation and establishment history.

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- Require that a manager be provided 90 days from the date that the agency discovers that the establishment is not in compliance. Discovering that the establishment doesn't have a certified manager or that a certificate is expired will most often occur during a routine evaluation. Follow-up verification can be achieved through submission of written certificates and/or written or documented oral updates, in order to minimize on-site visits as described in the **follow-up evaluations guidance memo of February 19, 2010**. Requiring proof of enrollment in a course within a short period is a recommended method of determining that efforts toward compliance are being actively pursued.
- When compliance has not been achieved in 90 days, determine the reason.
 - o When the establishment is working diligently to comply, but the designated individual is having trouble passing the exam or another reasonable situation exists, providing an extended compliance date would be an option.
 - o When the establishment has not made a reasonable effort to comply, hold an office conference and determine what your compliance strategy will be, as outlined in your enforcement policy. Establish a compliance schedule (i.e. 30 days).
- Upon noncompliance with a time extension, your individual (LHD) enforcement policy's progressive steps will need to be followed. This will assure that the firm has received due process. Possible next steps, as outlined in the model enforcement policy, could include scheduling an informal hearing to discuss the firm's lack of compliance, prior to formal license revocation and/or other legal processes.
- An expired certificate should be treated the same as a loss of a certified manager. Upon discovery of the expired certificate, require compliance within 90 days. Please remember that only one individual per establishment must have a valid certificate. Should additional certified managers be found to have expired certificates, please provide consultative recommendations to the establishment. Most establishments will likely appreciate the reminder as maintaining multiple certified managers will help them maintain compliance and achieve active managerial control.
- There have been reports that some older certificates exist with no expiration date. Certificates without an expiration date should only be recognized for 5 years from date of issuance.

Full-Time Requirement Enforcement

The rules require that certain establishments employ at least one certified manager that is a full-time employee of the establishment. Full-time is defined as "an employee that works an average of 30 hours per week; or 75 percent of the operating hours if the establishment operates less than 40 hours per week."

Rule 2(4) states: a certified manager is defined as one who has direct authority, or exercises control or supervision over the food employees. The certified manager shall be involved in the daily operations of the establishment and carry out the person-in-charge duties.

The intent of the requirement is to set the expectation that a certified manager be present during the majority of the operating hours of at least one shift of the establishment's operations.

This language also allows an agency to enforce a minimum amount of certified manager oversight, particularly in the event that an establishment presents a certificate for an individual that doesn't routinely work at the establishment or only works a minimal amount of time (i.e. a district manager that visits for an hour a week or a fraudulent certificate for a nonemployee).

Since the operating hours and employee scheduling structure of each establishment is unique, agencies should determine if the intent of the full-time requirement is being met and use discretion in enforcement. Since many establishments employ more than one certified manager, looking at the total hours of coverage by all certified managers employed is also an appropriate method of determining adequate coverage. There is no need for agencies to determine the exact amount of time each manager works and compare that to the definition. It is recommended that agencies cite rule 2(1) when a clear lack of certified manager oversight is found. Citing an establishment when the certified manager is on vacation or off from work ill for a reasonable period is also not appropriate.

Variances

State-Wide Variances

Rule 5(1) provides authority for the MDARD to issue state-wide variances. The workgroup has recommended that the department issue the following two variances. The variances will exempt the following from needing to provide a certified manager:

1. Low risk (X) establishments as defined in the current "MDA Risk-Based Evaluation Schedule." Low risk establishments as defined in the current "MDA Risk-Based Evaluation Schedule" and meet the following description:

Serve or sell only raw or prepackaged, nonpotentially hazardous foods (non-time/temperature control for safety (TCS) foods).

Do not prepare potentially hazardous foods (TCS foods).

Heat only commercially processed potentially hazardous foods (TCS foods) for hot holding.

No cooling of potentially hazardous foods (TCS foods).

Preparation/processing and/or packaging limited to nonpotentially hazardous food only.

Warehousing/storage limited to nonpotentially hazardous food and/or prepackaged potentially hazardous foods.

Examples: Most convenience store operations, convenience stores serving precooked hot dogs or sausages, popcorn, nachos, pretzels or frozen pizza, hot dog carts, and coffee shops; cocktail lounges; theaters; nut kiosks; honey and maple syrup processors; most bakery operations; candy, snack, pasta, spice, or other nonpotentially hazardous manufacturer, bottled water manufacturer; food warehouses.

2. Michigan Office of Services to the Aging, senior congregate nutrition satellite sites operating in compliance with Michigan Office of Services to the Aging standards, where food is not prepared but only served on-site and prepared in a licensed kitchen that

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employs a full time certified manager. Food served at these sites would not be held over or reserved at a later date.

Note: The referenced standards contain food safety standard operating procedures and minimum staff training requirements for feeding sites. Standards can be viewed at:

http://www.michigan.gov/miseniors/0,1607,7-234-43230_43233_43341---,00.html

Individual Variances

Rule 5(2) provides authority for the granting of individual variances by MDARD or LHDs. An individual variance may be granted to §2129(1) of the MFL or any portion of the rules. Agencies must utilize existing Food Code variance procedures. Please see rule 5.

The workgroup's discussion was that individual variances should be kept to a minimum. While it is often difficult to predict what type of variance requests may be made, statewide coordination in our variance approach is needed to maintain consistency. Some suggestions regarding variances include:

Appropriate variance examples

- Time limited variances for specific hardship situations.
- A variance for an establishment that was once issued temporary licenses, but now receives a limited fixed license.
- A variance for an establishment that maintains a license but doesn't have any actual food preparation occurring, such as a rental hall where food is catered.

Operating history, menu complexity, standard operating procedures, and employee training are all appropriate items to consider in reviewing whether a variance application should be approved.

Inappropriate variance examples

- Issuing variances to certain types of establishments that the agency feels should have been exempted from the MFL requirement to have a certified manager (i.e. nonprofits, school satellites, etc.).
- Issuing blanket variances to a group of establishments. Variances must be issued individually based on an individual Food Code compliant application.

Agencies are encouraged to discuss variance requests and enforcement issues with their food service consultants and share information on the MI-Food listserv.

Agencies with pre-existing manager certification regulations prior to April 1, 2008, that are more restrictive than those provided under MFL §289-2129(1)(a) may continue enforcing their current regulations.

For current information you may go to the MDARD website at:

http://www.michigan.gov/mdard/0,4610,7-125-50772_45851_45855-182605--,00.html

or contact your MDARD consultant.

Attachment: Regulation No. 570, Food Establishment Manager Certification
Manager Certification- Myths and Facts

Distribution List: MIFood Listserv, MDARD Food Section Staff, MDARD Licensing Unit,