

FPLHS Fall Webinars

December 7 and 8, 2021

Webinar Agenda

Food Program

- 1) Welcome and Introductions
- 2) Program Updates
- 3) Mobile Food Units and Temporary Restaurants
- 4) Scenario Questions

Pool and Tourist Program

- 1) Program Updates
- 2) Pre-licensing Inspection
- 3) Chemical Storage
- 4) VGBA Enforcement
- 5) Questions and Answers


Questions?




Program Update

- ▶ Reopening Update
 - ▶ Health Space Update
 - ▶ Triennial Reviews
 - ▶ Additives
 - ▶ Communication Protocol
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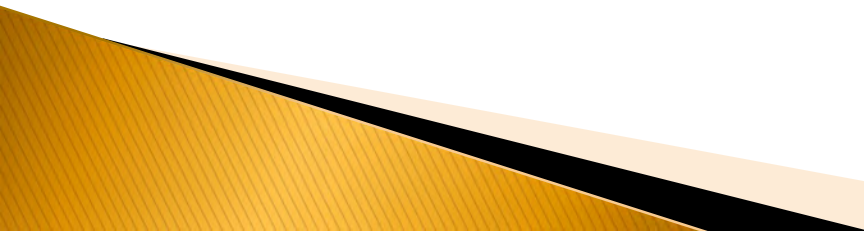
Training Survey

- ▶ Thank you for responding to the survey;
 - ▶ Want to provide training that is worthwhile and is respectful of your time;
 - ▶ Use the results to help craft agendas moving forward.
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Reopening Update

- ▶ PSOB is reopening January 1st. Been closed to the public since spring 2020.
 - ▶ Expectation is that licensing, inspection and enforcement will return to normal on January 1, 2022.
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HealthSpace Update

- ▶ 200-year flood event in SW Canada (mid-Nov)
 - ▶ Survey
 - ▶ Renewals
 - ▶ Starting up weekly meetings – Mon 3–4pm
 - ▶ Still aggressively pursuing outstanding development tickets
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Triennial Reviews

- Conducting modified reviews—we have 18 postponed reviews to make-up
- Only reviewing the administrative standards in the IGA. No field or file review. We are not looking at your inspection frequencies.
- Requesting that the EH Supervisor provide a brief summary of the LPHA's COVID-related duties over the past year and a half in lieu of inspections
- The usual review meeting and exit interview will not be scheduled unless requested by the LPHA.

Additives – Fact Sheet #29

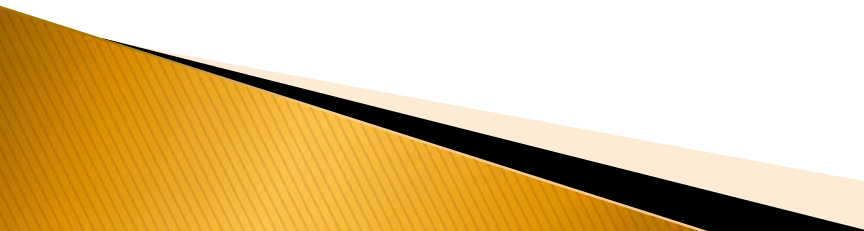
Here is what should be considered:

1. Any products that have been shown to have negative health risks by FDA or another agency will not be allowed. We have listed those we know of so far on the Fact Sheet for reference.
2. Many of these products are purchased online, so take time to review the labeling to make sure it is traceable. The product must be properly labeled in English.
3. The facility may not make any health claims about the product (“reduces anxiety”, “causes weight loss”, etc.).
4. If the product is Generally Recognized as Safe (GRAS) or an approved additive according to the Code of Federal Regulations (CFRs) it would be allowed. You can check products using links on the Regulator’s Page: www.healthoregon.org/regulators. Not all of these products have been added to the CFRs yet, but if they meet the three criteria above, they would be allowed at this time. You can let the operator know that this may change if new science and/or illnesses come to light.

If you need help researching a specific product, take clear pictures of the front/back/sides of the container and email those to us for review.

- ▶ Spirulina – Jamba Juice – Waiting for info from FDA and neighboring states

Communication Protocol

- ▶ <https://www.oregon.gov/oha/PH/HEALTHYENVIRONMENTS/FOODSAFETY/REGULATORS/Pages/new.aspx>
 - ▶ What's New; bottom of page
 - ▶ Our goal – return your call or email within 24 hours
 - ▶ If you have researched the question & asked coworkers
 - ▶ Designate one person to contact us with this Q
 - ▶ Prioritize Q: high, medium or low
 - ▶ Identify who at the state might be best to ask
 - ▶ Provide specific information re: the issue
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Mobile Food Units and Temporary Restaurants

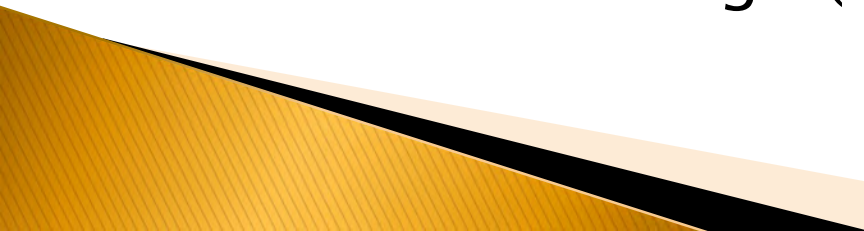
General Questions

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MU – Operating Location/Mobility

- ▶ One common question we get is what modifications can a mobile unit do at an operating location.
- ▶ Operators want to stabilize the unit, adjust the unit to make serving customers easier, or add adjacent amenities such as a deck and cover.
- ▶ Statute and rules do provide some guidance but are still general.
- ▶ 624.310(8) “Mobile unit” means any **vehicle** on which food is prepared, processed or converted or which is used in selling and dispensing food to the ultimate consumer.
- ▶ 333-162-0030 Mobile Unit Operation, General (1) Mobile food units must **remain mobile at all times during operation**. The wheels must be functional and appropriate for the type of unit not be removed from the unit at the operating location. A removable tongue may be allowed if the tongue can be removed with the use of only simple tools and the tools are available on the unit at all times.

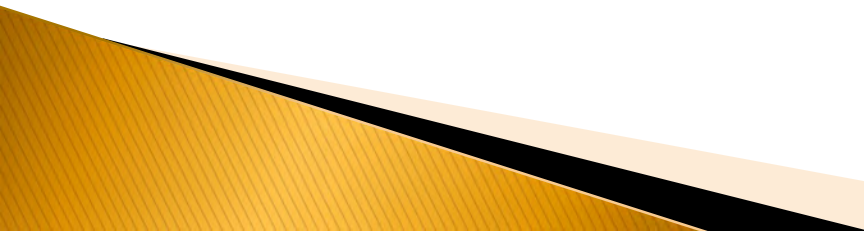
MU – Operating Location/Mobility

- ▶ But what does “remain mobile” mean and how is that applied in the field?
 - ▶ Generally, modifications to the unit at the operating location should not be permanent in nature (other than those allowed in rule, such as for utility connections).
 - ▶ Examples include reducing the tire pressure to make the service window easier to access or using stabilizing devices, whether they are of commercial design (RV) or improvised (bricks).
- 


MU – Operating Location/Mobility

- ▶ In addition, if a city or other jurisdiction allows adjacent structures that are not attached to the unit or impede mobility, our rules do not prohibit their use.
 - ▶ Examples include adjacent decks or covered permanent seating areas (food hall at a pod).
 - ▶ However, units are not able to unfold at the operating location to facilitate operation.
- 

MU – Operating Location/Mobility

- ▶ Units cannot remove the wheels or axles, disconnect the fresh or wastewater tanks and place them on the ground, or set the unit on a foundation.
 - ▶ Units also need to stop the use of any off-unit tanks as of January 1, 2023.
 - ▶ We are seeing the use of off-unit propane tanks as well and will be reaching out to fire officials to discuss this issue. However, the rules require that all equipment and operations be integral to the unit, so our current guidance is off-unit propane tanks are not allowed and should be eliminated as of January 1, 2023.
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MU – Conveying Sewage

- ▶ In Oregon, we do not require mobile units to move at any interval.
 - ▶ Mobile units may choose to remain at the same location at all times. However, that does not mean that they can shortcut the requirements for removing wastewater.
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MU – Conveying Sewage

▶ 5-402.14 Removing Mobile Food Establishment Wastes.

Sewage and other liquid wastes shall be removed from a mobile food establishment at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created.Pf

(A) Mobile food units that generate only gray water liquid wastes may hand-carry those wastes to a specific disposal location approved by the regulatory authority.

(B) The waste transport container must be designed and intended to hold and transport gray water without leaks or spills and have a capacity no greater than 20 gallons.Pf

MU – Conveying Sewage

- ▶ *Sewage and other liquid wastes shall be removed from a mobile food establishment at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created.*Pf
- ▶ If the unit is not going to change their operating location, they must either contract with a waste hauler or move as necessary.

MU – Conveying Sewage

(A) Mobile food units that generate only gray water liquid wastes may hand-carry those wastes to a specific disposal location approved by the regulatory authority.

(B) The waste transport container must be designed and intended to hold and transport gray water without leaks spills and have a capacity no greater than 20 gallons.Pf

- ▶ This requires units that choose to hand carry wastes to use an appropriate container that is not more than 20 gallons. Plastic buckets do not meet this standard...neither does this...



MU – Drainage Requirements



MU – Alternative Water Supply

▶ 5-104.12 Alternative Water Supply.

(A) Water meeting the requirements specified under Subparts 5-101, 5-102, and 5-103 shall be made available for a mobile facility, for a temporary food establishment without a permanent water supply, and for a food establishment with a temporary interruption of its water supply through:

- (1) A supply of containers of commercially bottled drinking water; Pf
- (2) One or more closed portable water containers; Pf
- (3) An enclosed vehicular water tank; Pf
- (4) An on-premises water storage tank; Pf or
- (5) Piping, tubing, or hoses connected to an adjacent approved source. Pf

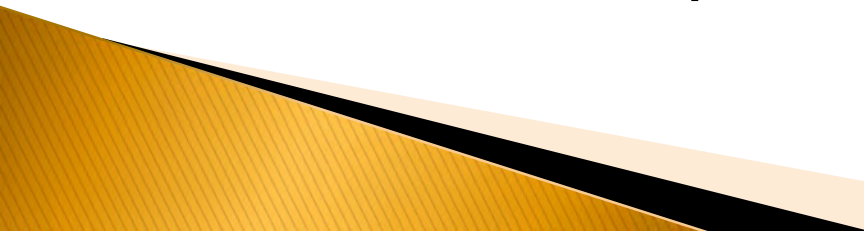
MU – Alternative Water Supply

- ▶ (B) If approved by the local public health authority, water for single-event temporary food establishments without a public water supply may be obtained from a well that has been tested for coliform bacteria within 60 days prior to the event. The local public health authority may require additional testing or an evaluation of the well and premises as part of the approval process. Sampling, reporting and correction of MCL violations shall be in accordance with the applicable provisions of 5– 102.11.Pf


MU– Alternative Water Supply

- ▶ (C) The regulatory authority may grant a temporary variance from requirements of subparts 5–101, 5–102, and 5–103 of the 2009 FDA Food Code by continuing or re-issuing previously issued permits where:
 - (1) Failure to comply with the code requirements is due to a failure of a community, municipal or public utility water supply system to meet the regulatory authority's requirements;
 - (2) The regulatory authority is satisfied that necessary remedial action is ongoing or reasonably imminent in connection with such water supply system; and
 - (3) Continuance or re-issuance of the permit is conditional upon the carrying out of such remedial action and the provision of such other measures by the certificate or license holder which will in the judgment of the regulatory authority afford reasonable interim protection to the public health including, but not limited to, adequate warnings to public and personnel as to the safety of the water delivered to the premises from the distribution system and notice of measures to avoid use or consumption of such water or to render it safe for consumption; adequate warnings as to the need for supervision of children and others needing supervision against use of such water; provision of alternative potable water and adequate notification as to its availability; and measures to avoid the use and the availability of water on the premises.Pf

MU – Alternative Water Supply

- ▶ This rule was put into place in the 1980's to accommodate facilities served by a small water system on the coast that had persistent compliance issues that were not the fault of the licensed establishments.
 - ▶ It is intended to be used only for short term or emergency situations.
 - ▶ It does not mean that this is an alternative means of compliance for routine operations.
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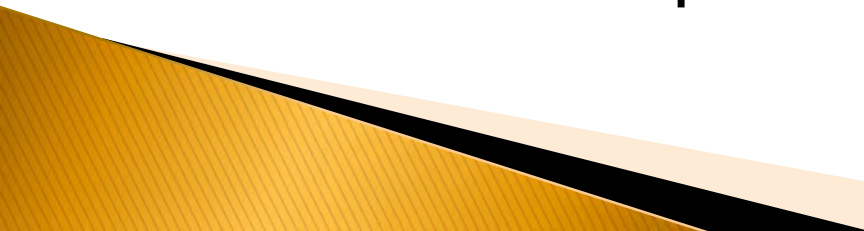
MU – Timelines

- ▶ Originally proposed 2021 but changed to 2023 based upon comments and concerns
 - ▶ If it is helpful, OHA can develop a reminder fact sheet that covers the items that must be addressed by January 1, 2023 that you can use to discuss potential issues with operators over the next year.
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Upgrading Facilities

- ▶ 8-304.11 Responsibilities of the Permit Holder.
- ▶ Upon acceptance of the permit issued by the regulatory authority, the permit holder in order to retain the permit shall:
- ▶ (G) Replace existing facilities and equipment specified in § 8-101.10 with facilities and equipment that comply with this Code if:
 - ▶ (1) The regulatory authority directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted,
 - ▶ (2) **The regulatory authority directs the replacement to meet current code requirements after the food establishment has been closed for a minimum of six consecutive months. This provision also applies to mobile food units that were licensed prior to February 1, 2020, or**
 - ▶ (3) The facilities and equipment are replaced in the normal course of operation;

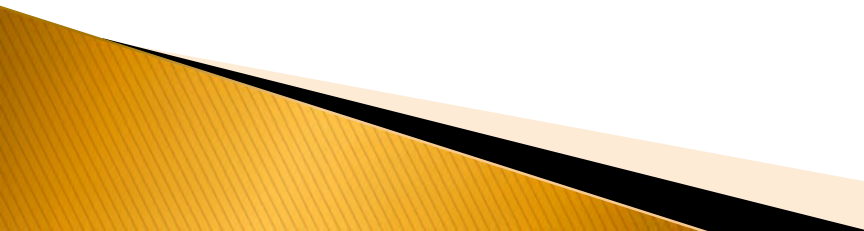
Upgrading Facilities

- ▶ The rule allows but does not require that facilities be upgraded if closed for more than six months.
 - ▶ LPHA's should use judgement and discretion when determining what should be upgraded or whether it is necessary at all.
 - ▶ Consider inspection history and importance of the issue...prioritize.
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Inconsistent Requirements

- ▶ With the new exempt rules, we have received questions from regulators and industry about why some operations must be licensed while others that do similar things may be exempt.
 - ▶ This is not a new question or complaint...this is something that we have addressed many times over the years relating to the different requirements for the three most common food service facilities...restaurants, mobile units and temporary restaurants.
 - ▶ It would certainly be ideal if the requirements for all food service establishments could be consistent. However, that is just not practical or realistic.
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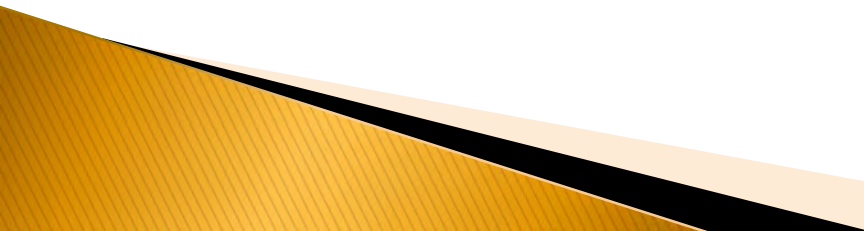
Inconsistent Requirements

- ▶ The major reason is that there have been statutory, rule and policy changes throughout the years that create inconsistencies and many of these have been based upon politics and not public health.
 - ▶ Another factor is that Oregon has adopted several modifications to the FDA Model Food Code and has more detailed standards for mobile units and temporary restaurants.
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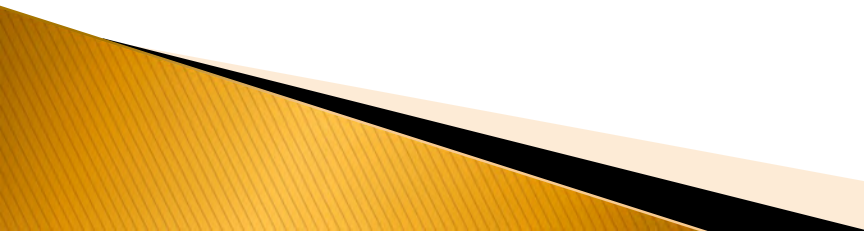
Inconsistent Requirements

- ▶ The statute and rules define food service operations and provide certain limitations on operations:
 - ▶ Temporary restaurants are primitive and have the least restrictive requirements. As a result, they are limited in the duration and require more frequent licensing and inspections.
 - ▶ Mobile units are year-round operations and have more stringent requirements than temporary restaurants, but generally have a limited menu and space. They can also operate outside of events without additional licensing.
 - ▶ Restaurants have the most stringent (and costly) requirements but can serve an unlimited and diverse menu.
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Inconsistent Requirements

- ▶ But the standards for one type of operation are not always practical for others just because they both serve food.
 - ▶ For example, a restaurant is required to provide screens for any windows that are open for ventilation (unless they have a pest management plan), but mobile units and temporary restaurant can be completely open air.
 - ▶ Another example is a restaurant can cool food without any restrictions, whereas a mobile unit needs to have commercial equipment, a cooling plan or a commissary.
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Inconsistent Requirements

- ▶ Prior to 2012, OHA rules specified the hot holding temperature as 140 F and ODA specified 130 F.
 - ▶ Bare hand contact with ready-to-eat food is prohibited in ODA licensed facilities and is only required to be minimized in OHA/LPHA regulated facilities.
 - ▶ We also have heard complaints from licensed mobile units that are selling the same items as an unlicensed temporary restaurant located at the same event.
- 

Inconsistent Requirements


One of the most confusing is non-potentially baked goods and confections:

1. If these items are prepared in a home and the annual sales limit is less than \$20,000, they are exempt from regulation.
2. If they exceed that amount they need a license from ODA.
3. If they sell those items in a mall setting, they need an ODA license if it is predominantly for wholesale purposes, or a restaurant license if mostly for immediate consumption.
4. If they fall under item #1 above, they can sell those items from mobile unit outside that same mall without needing a license.
5. If they sell those items at an event, they are exempt from our temporary restaurant licensing requirements.

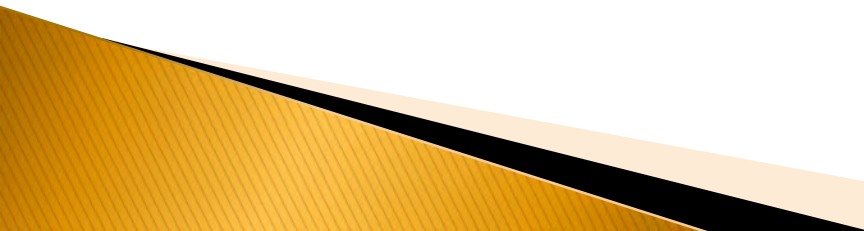
None of these licensing scenarios relates to the low public health risk of these products.



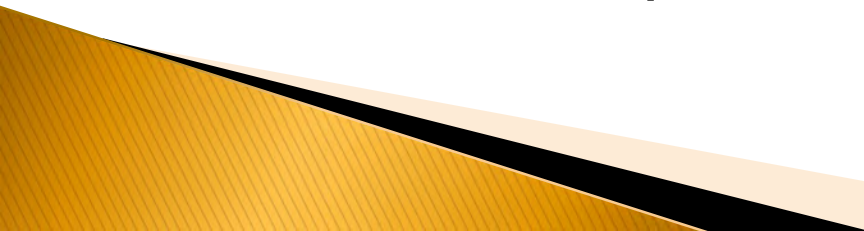
Inconsistent Requirements

- ▶ The FDA Food Code does not allow home-processed foods of any kind.
 - ▶ ODA is required by statute to allow some home-based processing, so it was added to OHA's version of the rules.
 - ▶ OHA amended the rules in the late 1980's to allow home baked food items served by benevolent groups at temporary restaurants.
 - ▶ The Oregon Legislature added SB 320 which allows baked goods to be sold without any regulation whatsoever if annual sales are less than \$20,000.
 - ▶ OHA is allowed by statute (ORS 624.036) to exempt certain low risk food from any regulation and these provisions have been in the rule for several decades.
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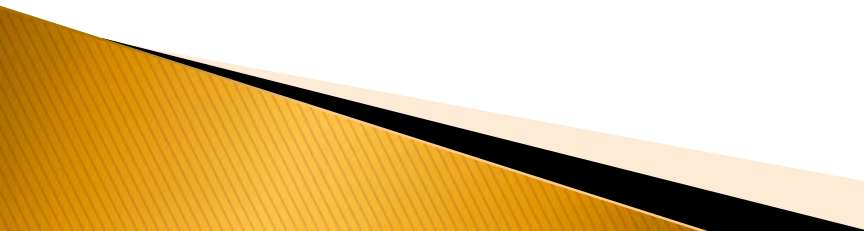
Inconsistent Requirements

- ▶ We understand that these inconsistencies can be difficult to explain to the industry or public and they often do not make sense from a purely public health perspective.
 - ▶ Ultimately, despite inconsistencies, the rules have been subjected to the public process and industry and regulatory officials have had input in their development.
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Inconsistent Requirements

- ▶ Industry will need to choose the best model for their specific operation and meet the appropriate requirements.
 - ▶ We will reevaluate the recent rule changes and can make modifications as necessary to improve them for all interested parties.
 - ▶ We are also committed to providing as much guidance and assistance to make implementation as smooth as possible.
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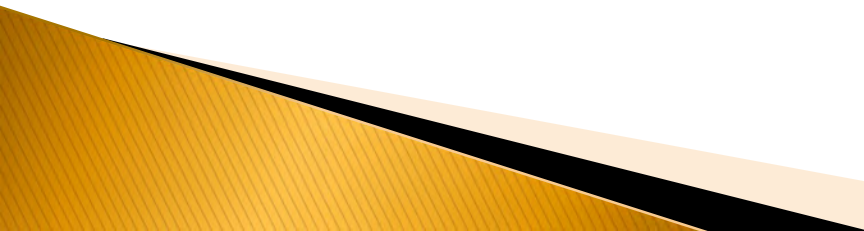
Exempt Temporary Restaurants

- ▶ General Questions about the Temporary Exempt Forms:
 - ▶ Q: “Are we on the local level expected to require a form be completed, submitted to our office, and approved prior to every event that may have food vendors?”
 - ▶ A: The form should be completed once and the operator maintain it at the operating location for each event.
- 


Exempt Temporary Restaurants

- ▶ Q: “Are we required to save and track these forms, just like licenses?”
 - ▶ A: LPHA’s can track these at the local level, but ultimately industry is responsible maintaining their form, and if they lose it they may need to request another approval.
- 

Exempt Temporary Restaurants

- ▶ Q: “Can we just plan to conduct spot checks at events to ensure the forms are completed, handwash stations are set up, and signs displayed, without requiring pre-submittal of forms?”
 - ▶ A: To be exempt, the vendor must fill out the form and have it reviewed and approved prior to initial operation. A county is not required to approve operations in the field and a temporary restaurant license can be required these for vendors.
- 

Exempt Temporary Restaurants

- ▶ Q: “Can we leave it to the event organizers to ensure forms and signs are provided, so we can focus on licensing the higher risk vendors?”
 - ▶ A: No, this is a requirement that the LPHA is to enforce.
 - ▶ This exemption is intended to reduce the workload of LPHA’s to allow them to focus on higher risk operations, but the review must be done prior to initial operation.
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Scenario Questions

Scenario Questions

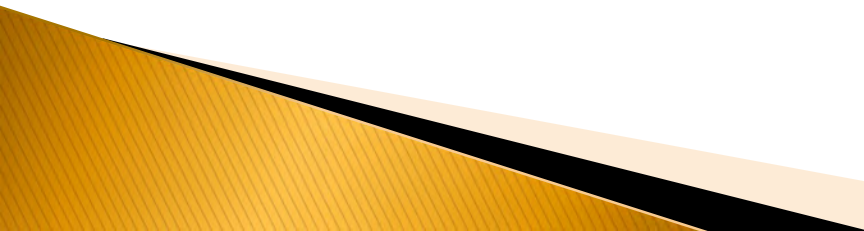
Q1: If an operator would like to cool food in their mobile unit, do they need a variance from OHA?

Scenario Questions

Q1: If an operator would like to cool food in their mobile unit, do they need a variance from OHA?


A1: No. The operator will need to develop written procedures that are approved by the local public health authority.

3-501.15(C)



Scenario Questions

Q2: What if the operators don't have their Exempt Foods Agreement form onsite at the temporary event? Do they need to fill out a new one?



Scenario Questions

Q2: What if the operators don't have their Exempt Foods Agreement form onsite? Do they need to fill out a new one?

A2: Be flexible, since this is a new requirement. Technically, if they don't have their form, they are no longer exempt and will have to get a temporary restaurant license to operate or close. We will want to work with operators as we implement these new requirements.

1-201.10 (B)(4)(f) Definitions "Food Establishment does not include:"



Scenario Questions

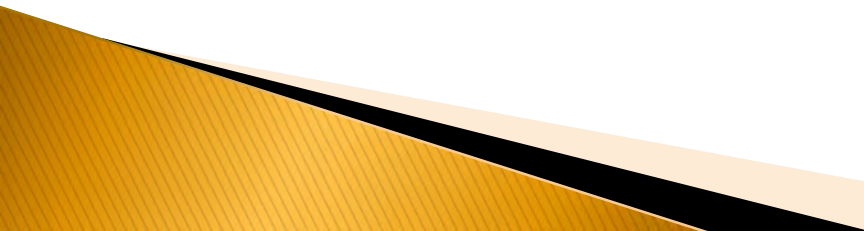
Q3: Do operators need to fill out a new Exempt Foods Agreement annually?

Scenario Questions

Q3: Do operators need to fill out a new Exempt Foods Agreement annually?

A3: No, they only need to fill it out once and keep it onsite. You may require a new one if their menu changes substantially (ex: different risk category).

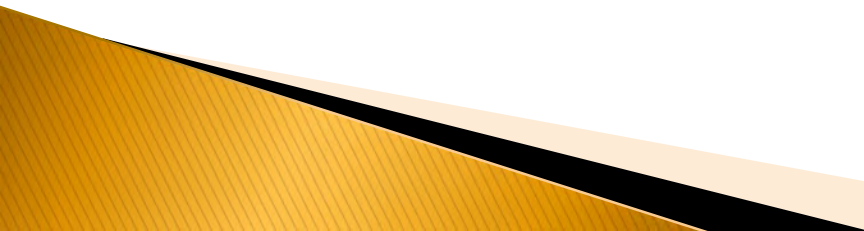
1-201.10 (B)(4)(f) Definitions “Food Establishment does not include:”



Scenario Questions

- ▶ Q4: A vending machine operator would like to offer packaged sushi in their machines. Can they do this?

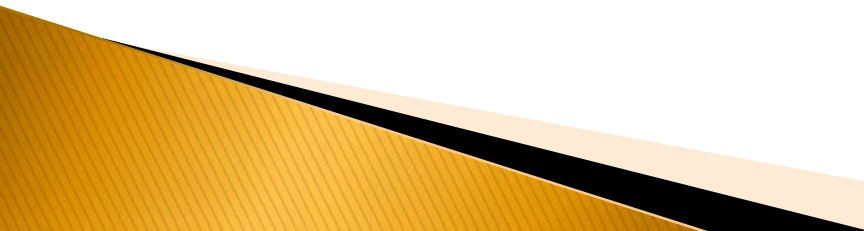
Scenario Questions

- ▶ Q4: A vending machine operator would like to offer packaged sushi in their machines. Can they do this?
 - ▶ A4: Yes, if they can demonstrate that the product has met the parasite destruction requirements and is properly datemarked. They would also need to provide a consumer advisory for the sushi products if they are undercooked. The operator will need to put something on the machine alerting to this (to meet the menu/point of order requirement) as well as having it on the packaging somewhere.
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Scenario Questions

- ▶ Q5: An operator has a raw bacon product stored above his beer kegs. He argues that it should not be treated as a raw meat product because the bacon has no moisture/juice. Does bacon still need to be stored in the same manner as other raw meat products?

Scenario Questions

- ▶ Q5: An operator has a raw bacon product stored above his beer kegs. He argues that it should not be treated as a raw meat product because the bacon has no moisture/juice. Does bacon still need to be stored in the same manner as other raw meat products?
 - ▶ A5: Yes. Even though the bacon packages may be dry, it is still a raw animal product and is required to be stored as any other raw animal product to prevent contamination.
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Scenario Questions

- ▶ Q6: An inspector has a facility kegging tea with nitrogen. They brew the tea, cool it, introduce nitrogen and keg it. Is this allowed? Would this be an ROP process like kegging of cold brew coffee?

Scenario Questions

- ▶ Q6: An inspector has a facility kegging tea with nitrogen. They cool brew the tea, introduce nitrogen and keg it. Is this allowed? Would this be an ROP process like kegging of cold brew coffee?
- ▶ A6: Yes, this is reduced oxygen packaging. They can label the kegs with the date/time and discard after 48 hours to avoid additional regulation. Food service operators wanting to keg coffee/tea:
 - 1. Can keg the coffee/tea and keep it for 48 hours or less. The kegs must be labeled with the day and time so inspectors can confirm that it is within 48 hours. This is the option that many coffee shops are using when they are selling the Nitro brews. Or they
 - 2. Can apply for a variance to keep it kegged for longer than 48 hours. This would probably involve the controls of acidifying the coffee and always holding it below 41F.

Scenario Questions

- ▶ Q7: During an inspection you test a sanitizing solution bucket in the kitchen and the test strip indicates 0 parts per million sanitizer residual. How should this be cited?

Scenario Questions

- ▶ Q7: During an inspection you test a sanitizing solution bucket in the kitchen and the test strip indicates 0 parts per million sanitizer residual. How should this be cited?
- ▶ A7: It depends on what the sanitizing solution is intended and being used for. When the solution is solely for the storage of wipe cloths to prevent microbial growth on the cloths, cite 3-304.14. If the solution is only prepared to sanitize a food contact surface as the final step of a “wash, rinse and sanitize” procedure, cite 4-501.114

Scenario Questions

- ▶ Q8: A restaurant cleans their knives between uses with a designated wipe cloth. The cloth is left in the sanitizer bucket when it is not in use. The food workers wash, rinse, and sanitize the knives every 4 hours. Is this an acceptable practice?

Scenario Questions

- ▶ Q8: A restaurant cleans their knives between uses with a designated wipe cloth. The cloth is left in the sanitizer bucket when it is not in use. The food workers wash, rinse, and sanitize the knives every 4 hours. Is this an acceptable practice?
- ▶ A8: Yes, provided that the knives are being continually used for ready to eat foods and being cleaned (wash, rinse, sanitized) every four hours. If the knives are not in continual use, then they need to be washed, rinsed, and sanitized before being used again.

Scenario Questions

- ▶ Q9: You receive a plan review application for a mobile unit that was operated in an adjacent county but has been closed for two years. The unit does not have an accessible and translucent water tank as required in 5-304.15. How should you approach this?

Scenario Questions

- ▶ Q9: You receive a plan review application for a mobile unit that was operated in an adjacent county but has been closed for two years. The unit does not have an accessible and translucent water tank as required in 5-304.15. How should you approach this?
- ▶ A9: The new rules adopted on February 1, 2020 require that mobile units have an accessible and translucent water tank. However, the rule has an exemption for units that were licensed before that date. Since this unit has been closed for more than six months, 8-304.11 does allow for counties to require a unit be upgraded to meet the current requirement. In this case, if modifying the unit to meet this requirement involves major construction, you can choose to allow the unit to be licensed without upgrading the tank.

Questions?