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## **September 19, 2019 Food Safety Conference Call Notes**

### **ODH Topics:**

1. Jimmy John's:
  - a. Using time as a public health control for sandwiches:
    - i. ODH was informed by a local health district that they observed Jimmy John's displaying sandwiches on the counter at room temperature.
    - ii. Jimmy Johns must use time as a public health control for these sandwiches and must comply with the food code if they continue this practice.
    - iii. Using time as a public health control requires a risk level IV license.
  - b. Unpasteurized lemonade:
    - i. ODH has also been informed that Jimmy Johns may be selling jugs of unpasteurized lemonade.
    - ii. If this is the case, label must contain a warning statement as required in OAC 3717-1-08(A).
    - iii. Additionally, the containers must be properly labeled according to OAC 3717-1-03.5(C) if they are available for customer self-service.
    - iv. There may be other facilities that are selling jugs of unpasteurized lemonade, such as Penn Station or Chick fil A.
2. Taylor Heat Treatment Dispensing Freezer:
  - a. Kappus, a company that distributes Taylor heat treatment dispensing freezers, had requested that the machines be permitted to be cleaned every 28 days rather than 14 days as required by code. They were also requesting that ODH issue statewide approval for this cleaning frequency.
  - b. ODH informed Kappus that the agency is not authorized to issue statewide approval, and any facility that wants to use the extended cleaning frequency must apply for a variance. Additionally, ODH would require that pathogen testing of the food be completed, and results submitted with any variance request.
  - c. Kappus informed ODH in July 2019 that they were working on completing the testing.
  - d. If any local health districts observe a facility using this equipment and is not cleaning it at the frequency required by code, please inform them they must comply with the code or apply for a variance.
3. Subway Milk Shakes – Cleaning Procedures:
  - a. ODH was informed by Michigan Dept. of Agriculture that a Subway restaurant in Michigan began serving milk shakes, and the owner indicated they were planning to serve them in Ohio.
  - b. The instructions provided to ODH indicate that the procedures and frequency for cleaning the milk shake equipment would not comply with code.
4. Cost Methodology
  - a. In August 2019, ODH and ODA issued a memo regarding cost methodology.
    - i. The memo provided clarification of OAC requirements for anticipated costs and provided instructions for adding staff to the cost methodology that are hired during the year in which the cost methodology is being completed.
    - ii. Please contact ODH if you did not receive the memo or have any questions.

- b. Each local health district must submit their cost methodology to ODH and ODA by January 1, 2020.
  - i. Please remember to include the certification page signed by the health commissioner and please include your fee schedule.
  - ii. The cost methodology may be submitted any time during the year, but January 1 is the deadline.

#### ODA Topics:

##### 1. New winery exemption.

Effective 10-17-19, there will be a new exemption in 3717.22 ORC

(17)

(a) An establishment to which all of the following apply:

(i) The establishment serves commercially prepackaged food in a form that prevents direct human contact prior to and during service;

(ii) Sales of the prepackaged food do not exceed more than five per cent of the total gross receipts of the establishment;

(iii) The establishment has been issued an A-2 permit under section [4303.03](#) or an A-2f permit under section [4303.031](#) of the Revised Code and annually produces ten thousand gallons or less of wine;

(b) The owner or operator of the establishment shall notify the director that it is exempt from licensure because it qualifies under division (B)(17)(a) of this section. The owner or operator also shall disclose to customers that the establishment is exempt from licensure.

This exemption will not exempt many people because wine is considered food. Reminder: since wine is considered a food, someone needs to be inspecting the manufacturing/sanitation of the winery. If the winery wholesales, that will be taken care of by ODA Food Safety and if there is no wholesale activity, this will be done with a local health department license.

##### 2. CBD

- a. You will be seeing CBD in FSO's and RFE's, but as of right now no one is allowed to add CBD into a food or manufacture CBD in the state of Ohio. What you should be seeing is commercially packaged CBD items from a state that has an inspection program. If you happen to see a licensed facility adding CBD into a food they must stop immediately and this would be an example of unapproved food additive.
- b. CBD is going to be considered a dietary supplement and is not governed under the food code, but licensed facilities can only use approved food additives.
- c. If you have facilities that have questions about CBD please refer them to either [foodsafety@agri.ohio.gov](mailto:foodsafety@agri.ohio.gov) or [hemp@agri.ohio.gov](mailto:hemp@agri.ohio.gov)

##### 3. Pesticides

- a. What is allowed to be on site
  - i. Only those poisonous or toxic materials that are required for the operation and maintenance of a food service operation or retail food establishment, such as for cleaning and sanitizing equipment and utensils, licensed application for controlling insects and rodents, or for using as an incidental use pesticide as defined in paragraph (C)(3) of this rule, shall be allowed in a food service operation or retail food

establishment. This paragraph does not apply to packaged poisonous or toxic materials that are for retail sale.

b. What does "incidental use" mean.

i. "Incidental use" means the application of a general use pesticide on an occasional, isolated, site-specific basis in order to avoid immediate personal harm. "Incidental use" does not mean regular, routine, or maintenance application of a general use pesticide.

ii. What this means:

1. You should only see pesticides like: wasp, bee and hornet type sprays.

2. You should not see pesticides like: ant, roach, and fly sprays.

Additional comment to ODH topic (1)(b) because transporting to a mobile was discussed on the call.

If you have facilities that are bottling lemonade to transport to their temporary or mobile, they would need to contact ODA Food Safety because that activity would be considered bottling and they will need to obtain a bottling license for that activity.