STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH

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Environmental Health Section

EHS Circular Letter #2017-16

DATE: June 23, 2017

TO: Directors of Health
Certified Food Inspectors
Interested Parties

FROM: Tracey Weeks, MS, RS
Food Protection Program Coordinator

RE: Public Act 17-93, Department of Public Health's Adoption of FDA Model Food Code

The purpose of this notice is to provide an overview of Public Act 17-93, *An Act Concerning the Department of Public Health's Recommendation Regarding Adoption of a Model Food Code* that became effective on June 21, 2017. Although the major change in the statute was new language to adopt the FDA Food Code, other statutory changes were also included. In general, this language:

1. Adopts the FDA Food Code as Connecticut's food code beginning July 1, 2018

2. Makes some changes to food related definitions

3. Requires all food establishments to have a valid permit or license

4. Allows for variances to be granted by the Commissioner of the Department of Public Health (DPH)

5. Requires that all food establishments register with the Department of Public Health before a permit or license is issued by a local health department (LHD)

6. Revises the risk classifications for food establishments; which establishments are required to have a certified food manager; and the approval process for food manager certification programs

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7. States the local director of health's authority to investigate and take action when notified of a possible foodborne illness or outbreak

8. Gives the Commissioner sole discretion in releasing the name of a food establishment found to be the source of a foodborne outbreak

9. Allows the Commissioner to grant a variance to food establishments that wish to utilize the sous vide process or acidify sushi rice

10. Makes minor changes to CGS 22-6r and 22-6s to update the reference to 'food service establishments' to 'food establishments' with regard to farmers' markets

11. Revises the current language regarding the prohibition of natural latex rubber gloves by deleting the language for fines

12. Adds 'political subdivisions' and 'senior centers' to the list of those not liable for civil damages or criminal penalties resulting from donated food unless the food was known to be adulterated or not fit for human consumption

Purpose of FDA Food Code Adoption

The Connecticut Department of Public Health Food Protection Program (FPP) has worked closely over the past several years with the Food Safety Advisory Group (FSAG) to adopt the FDA Food Code. FSAG members from local health departments, the Connecticut Association of Directors of Health, the Connecticut Environmental Health Association, the Connecticut Department of Consumer Protection, the U.S. Department of Agriculture, the U.S. Food and Drug Administration, the Connecticut tribal health departments, academia, healthcare, the food industry, FoodNet, and the DPH Epidemiology Program, provided assistance in reviewing this year's legislative proposal that included statutory language to adopt the FDA Food Code by reference that will replace the current regulations for food service establishments, food stores, itinerant vendors, and catering establishments - Regulations of Connecticut State Agencies (RCSA) sections 19-13-B42, 19-13-B40, 19-13-B48, and 19-13-B49, respectively. The reasons for this were to promote uniformity by utilizing a code that is:

- Science based with a focus on prevention of foodborne disease
- Regularly revised every four years based on recommendations resulting from the Conference for Food Protection and through supplements published in between new editions of the Food Code
- Supported with standardized training that is available both online and in a classroom setting
- Supported with guidance in the form of an Annex as a companion to the FDA Food Code and through communications from FDA

Adoption of the FDA Food Code will also enhance Connecticut's conformance with FDA's Retail Food Program Standards.

Legislative Changes and Effective Dates in Public Act 17-93

The following provides information on each section of PA 17-93. Note that there are various effective dates and implementation dates.

Section 1. Effective July 1, 2018
Language concerning the requirement to include questions testing the qualified food operator's knowledge of food allergies in section 19a-36a of the Connecticut General statutes was deleted as this is already required on the nationally approved exams.

Section 2. Effective October 1, 2017
Defines terms and includes new definitions for:

- Certified food protection manager (formerly known as qualified food operator)
- Class 1, 2, 3, and 4 retail food establishments to better align with FDA's risk classification found in Annex 5
    - Class 1 - offers time/temperature controlled for safety (TCS) food that is prepackaged or commercially processed TCS food that is heated and hot held, but not cooled; or food prepared that is not TCS
    - Class 2 - offers a limited menu of TCS food that is prepared and served immediately or hot or cold held, but not cooled
    - Class 3 - has an extensive menu of TCS foods with cooking, hot and cold holding, and cooling
    - Class 4 – establishments that serve a highly susceptible population (such as hospitals, nursing homes, pre-schools, etc.) or any food establishment that conducts special processes
- Cold and hot holding temperatures (41 degrees F. or less and 135 degrees F. or higher, respectively)
- Food establishment- now includes retail food operations that were previously regulated separately under sections of the RCSA 19-13-B40, 19-13-B42, 19-13-B48, and 19-13-B49, e.g. grocery stores, delivery services, itinerant vendors, caterers, etc.
- Food inspection training officer (a certified food inspector who has been authorized and approved by the Commissioner to train candidates for food inspector certification – also known as a FITO)
- Itinerant food vending establishment (more specifically describes it as a vehicle mounted, self-contained, mobile food establishment)
- Variance - document issued by Commissioner for a waiver of one or more food code requirements

LHD Role (Beginning October 1, 2017):

- Food establishments will need to be reclassified according to the revised class definitions. Additional guidance will follow shortly.
- Inspectors will debit potentially hazardous foods - now known as time/temperature controlled for safety (TCS) food – that are not hot or cold held at the new temperatures of 135 degrees F. or higher or 41 degrees F. or less.

- Although the definition of food establishment has been revised to include food stores, since the FDA Food Code will not be enforceable until July 1, 2018, 19-13-B40 must continue to be used for inspecting food stores until then.
- A pilot program is currently underway to train FITOs in 10 full-time LHDs that volunteered to participate. Once the pilot is completed and the training program finalized, the FPP will begin training one certified food inspector from each of the remaining 41 full-time LHDs. FITOs will be responsible for conducting training and assessments for other certified food inspectors on staff and candidates for food inspector certification. Directors of Health should consider who they will recommend to be trained as a FITO.

DPH Role:

- The FPP will provide details regarding FITO training in a separate communication once the pilot program is completed.

Section 3. Effective October 1, 2017

Directs the Commissioner to adopt by reference the FDA Food Code as amended from time to time, including any Food Code Supplements published in between the publication of new editions. Authorizes the Commissioner to adopt regulations to implement the FDA Food Code.

DPH Role:

- The FPP is preparing for the FDA Food Code by developing a new inspection form and organizing training for current certified food inspectors that is expected to take place in the fall in place of the annual recertification training. Details about the training will be sent separately.

Section 4. Effective October 1, 2017

Requires that **on and after July 1, 2018**:

- A permit or license must be issued by the director of health before a food establishment can operate.
- Local health departments cannot issue a permit to operate a food establishment unless the applicant has registered with DPH. Temporary food establishments and farmers' markets are exempt from registration.
- A variance may be granted by the Commissioner after consultation with the Commissioner of the Department of Consumer Protection if no health hazard will result.
- All Class 2, 3, and 4 food establishments must employ a certified food manager who has passed a test recognized by the Conference for Food Protection. The certification must be verified at the time of inspection (the certificate must be valid and not expired).

LHD Role **on and after July 1, 2018**:

- LHDs that do not currently license/permit food establishments will need to start beginning July 1, 2018.
- LHDs will issue a license to a food establishment only after the establishment has registered with DPH.

- Class 2, 3, and 4 food establishments will need to employ a certified food manager (formerly known in CT as a qualified food operator). They must possess a valid certificate from an approved testing organization. Currently there are 5 testing organizations approved by the Conference for Food Protection. (DPH will no longer be approving testing organizations.)

DPH Role:

- The FPP is in the process of developing a means by which all food establishments will register with DPH prior to the issuance of a license by a LHD.
- The FPP will institute a variance request process for those processes requiring approval. Variances will be done at the state level to promote uniformity. LHDs will be informed of all decisions regarding such requests.

Section 5. Effective October 1, 2017

Requires that **on and after July 1, 2018:**

- Food inspectors must complete a training and verification program to become certified by the Commissioner to inspect food establishments.
- The training and verification program shall be developed by the Commissioner and administered by the FITO at the LHD.
- Initial field standardization for certification of new inspectors will still be conducted by the Commissioner.
- Certifications may be renewed every three years if the inspector has completed 20 hours of training approved by the Commissioner and a reassessment by the FITO.
- Inspections of food establishments shall be conducted at intervals specified according to class. Although the intervals are the same as currently required, the number required will actually be reduced based on the revised definition of each class.

LHD Role:

- The certification process for food inspectors will be changing.
- Current certified food inspectors will be required to attend a DPH Food Code training course, complete the FDA online course curriculum, and be field trained by a FITO to be certified to inspect to the FDA Food Code.
- Candidates for food inspector certification will have to complete a training curriculum that includes FDA online courses, receive training by a FITO, and be field standardized by a FPP standardization officer.
- Certified food inspectors will need to complete 20 hours of training (that has been approved by the FPP) every three years.
- Food establishments will be inspected at the new intervals.

DPH Role:

- The FPP will develop the inspection form and procedures for conducting an inspection.
- Training programs for food inspector certification are being developed by the FPP.
- Once the FITO pilot program is completed, the FPP will train and standardize FITOs for the remaining 41 full-time LHDs.

- The FPP will continue to field standardize new inspectors but the process will take less time as all training will be done prior to standardization by the FITO.

Section 6: Effective October 1, 2017

If a foodborne illness or outbreak is suspected the director of health shall investigate and take action necessary to control the illness or outbreak. Anyone who violates any provision of sections 3 to 8 of this act or who provides false information during an investigation, impedes an investigation or refuses to cooperate with an investigation shall be guilty of a class C misdemeanor.

LHD Role:

- This section provides the same authority for directors of health that was previously stated in section 19-13-B42(r) – any action necessary to stop the spread of disease can be taken.

Section 7. Effective October 1, 2017

An owner or operator who disagrees with violations noted on an inspection report or an order to hold or destroy food may appeal to the director of health within 48 hours from when the inspection report was issued. After reviewing the appeal, the director of health may vacate, modify, or affirm the order. The owner or operator if still aggrieved, may appeal to the Commissioner.

LHD Role:

- This section retains the right (in section 19-13-B42(u)(6) of the RCSA) of an establishment owner to appeal inspection report findings to the director of health and orders of the director of health to the Commissioner if desired.

Section 8. Effective October 1, 2017

Existing language that provided certain exemptions to the qualified food operator requirement is retained here with reference to the new term 'certified food manager' as are the exemptions for bed and breakfast operations and noncommercial functions.

Section 9. Effective October 1, 2017

This new language gives the Commissioner sole discretionary authority in determining whether to announce the name of the food establishment that was the source of a foodborne outbreak for the purpose of reducing illness. Information released will be limited to only the minimal amount necessary to accomplish such purpose.

DPH Role:

- As is currently allowed under 19a-25-3 of the RCSA, the Commissioner *may* release the name of an establishment confirmed as the source of a foodborne outbreak for the purposes of reducing the risk of illness.

Section 10. Effective Upon Passage Until June 30, 2018

This section provides for variances to be granted by the Commissioner solely for the purpose of acidifying sushi rice and utilizing the sous vide process.

- Food service establishments wishing to do either or both processes, must apply for a waiver on a form that can be found at: Variance
- After June 30, 2018, food establishments can request a waiver from the Commissioner for any FDA Food Code requirement.

LHD Role:

- Beginning June 21, 2017 and until June 30, 2018 local food inspectors who observe food service establishments engaging in the practice of acidifying sushi rice or using the sous vide cooking process or who receive inquiries from food service establishments who wish to engage in either process, must refer the operator to the FPP's webpage for a variance application.
- Beginning July 1, 2018, certified food inspectors at LHDs will be responsible for reviewing requests for reduced oxygen packaging done without a variance to ensure they comply with the requirements of the FDA Food Code.
- Prior to reviewing such requests certified food inspectors will be required to receive training on these processes.

DPH Role:

- Beginning June 21, 2017 and until June 30, 2018, the FPP will review variance requests from food service establishments to use the sous vide cooking process and to acidify sushi rice. This language was inserted to provide food service establishments with the ability to use such processes until the FDA Food Code is enforceable since regulations for both processes that were to have been developed by October 1, 2016, had not yet been approved. (See CGS §19a-36d and §19a-36e.)
- On and after July 1, 2018, the FPP will no longer review requests for sous vide and other types of reduced oxygen packaging done without a variance as this will be accomplished without a variance according to 3-502.12 of the FDA Food Code.

Sections 11. and 12. Effective October 1, 2017

These two sections update language in Sections 22-6r and 22-6s to revise the term 'food service establishment' to 'food establishment' with regard to farm products sold at a farmers' market and the portable licenses afforded farmers participating in farmers' markets.

Section 13. Effective October 1, 2017

The section prohibiting the requiring or use of natural latex rubber gloves was modified by deleting the language concerning fines.

LHD Role:

- LHDs can no longer fine persons in food establishments for requiring or using natural latex rubber gloves.

Section 14. Effective October 1, 2017

No substantive changes were made. The only change was in referencing Class III or IV to Class 3 or 4.

Section 15. Effective October 1, 2017

Section 52-557l is amended to add 'political subdivision of the state or senior center' to the list of entities that are not liable for civil damages or criminal penalties resulting from donated food unless the food was known to be adulterated or unfit for human consumption.

Section 16. Effective October 1, 2017

Sections 19a-36c (requirement to display choking signs in food service establishments), 19a-36d, and 19a-36e (language that required DPH to develop regulations to allow food service establishments to utilize the sous vide process and to acidify sushi rice, respectively), were deleted.

LHD Role:

- Certified food inspectors no longer have to note whether or not a choking poster was displayed in a food service establishment.

Summary

The changes noted above will occur at varying times. The major change for LHDs will be on July 1, 2018 when the FDA Food Code becomes enforceable. As previously stated, more information on the certification process to inspect under the FDA Food Code will be forthcoming, the new classification system for food establishments and other special topics. In the meantime, inspectors should begin taking the FDA online prerequisite courses as they will be required for certification to inspect food establishments using the FDA Food Code.

The FPP recognizes the importance of sharing information on the transition to the FDA Food Code with our industry partners. While major chains may already be familiar with the code, it is likely that independent establishments will need more detailed guidance. To this end the FPP plans to work with the Connecticut Restaurant and Connecticut Food Associations to determine how best to provide such information. If LHDs are developing or plan to develop any educational or informational materials the FPP would appreciate the opportunity to review them to ensure consistency and accuracy. It would also be helpful to track questions received (from both industry and food inspectors) so that a Frequently Asked Section can be added to the FPP web page. Please send any questions or materials for FPP review to rhonda.wisnewski@ct.gov.