

**VOLUNTARY NATIONAL RETAIL
FOOD REGULATORY PROGRAM
STANDARDS**

**CLEARINGHOUSE WORK GROUP
Questions and Answers on the Implementation of
the Retail Program Standards**

Issued: April 2023

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Contents

INTRODUCTION	5
ADMINISTRATIVE PROCEDURES.....	6
1. Standard Self-Assessment process for decentralized jurisdictions	7
2. Must an audit cover all Standards at the sametime?.....	9
3. Audits conducted using multiple auditors.....	10
STANDARD 1 - Regulatory Foundation.....	11
1. State Interpretation of When Otherwise Approved vs. intent of <i>FoodCode</i>	13
2. Section 8-813.10 Petitions, Penalties, and Continuing Violations.....	15
3. Local/county Jurisdictions Operating Under State Regulations	16
4. Want Alternative Criteria for Demonstrating Control of Risk Factors	17
5. Compliance and Enforcement Code Sections	19
6. Altering a code’s or regulation’s language through policy.	21
7. Does omitting one provision of the Food Code count against a jurisdiction in more than one risk factor or intervention section in Standard 1?	22
8. Adequacy of Consumer Advisory.....	24
9. A 7-day versus a 15-day response for request of an administrative hearing.	25
10. Details required in a hearing request.....	26
11. Residential Kitchens used for Processing of Goods Sold at Retail.	28
12. Regulatory Jurisdiction over Highly Susceptible Populations	30
13. Clarity on the word “edition” on current published edition of the Food Code.....	32
14. Compliance with Standard 1 based upon the Food Code edition the jurisdiction uses as their Regulatory Foundation.....	33
STANDARD 2 - Trained Regulatory Staff.....	35
1. Number of Joint Training Inspections Required in Standard 2.....	37
2. Recognized Credentials and Their Relationship to Standard 2 Curriculum.....	39
3. Determining Training Component Equivalency	40
4. Documents that Serve in Lieu of Training Certificates.....	41
5. Who Must Meet Standard 2?.....	42
6. Code Criteria for Standardization	43
7. Criteria for the Education and Training Requirements	45
8. Proof of Training for Long-tenured employees	46
9. Age of Training Records.....	48
10. New employee vs. New to the food program.....	49
11. Kinds of continuing education that qualifies	50
12. Standardization of ‘old’ employees.....	52
13. Dilution of field standardization	53
14. Is there a requirement for a ‘roster’ of employees including hire date?	55
15. Mutual standardization by two parties in different jurisdictions.....	56
16. Field Training for a Food Safety Inspection Officer (FSIO).....	57
17. Standardization of a Training Standard	59
STANDARD 3 - Inspection Program Based on HACCP Principles.....	60
1. Guidance for short-term and long-term compliance policy	61

2. Better guidance for establishment risk categories.....	62
3. Variance Policy.....	63
4. Multiple Inspection Forms.....	64
5. Design and use of State inspection forms to conform with Program Standards.....	65
6. State Enforcement Policy.....	66
STANDARD 4 - Uniform Inspection Program.....	68
1. Citing Code provisions during inspections.....	69
2. Completion of Assessment Protocols.....	72
3. Use of standardization inspections for Field Evaluation Inspections under Standard 4.....	74
4. Consultant Inspectional Agencies.....	75
5. State Field Evaluations and Inspection Report Reviews.....	77
6. Auditor Verifying Training Associated with Standard 2.....	78
STANDARD 5 - Foodborne Illness and Food Defense Preparedness and Response.....	79
1. Final Outbreak Reports.....	80
2. Complaints received by a jurisdiction other than foodborne illness complaints.....	81
3. County independent of State on recall policy.....	82
4. Must the trend analysis required in Standard 5 include all the data from a complaint log or database or will an analysis of all data from the epidemiology data be sufficient to meet the intent of the Standard.....	83
5. What triggers the need for a mock foodborne illness investigation?.....	85
6. Alternative Laboratory Contacts.....	86
7. MOU or LOU with Laboratory.....	87
STANDARD 6 - Compliance and Enforcement.....	88
1. Determining conformance with the Standard.....	89
2. Files with no Risk Factor or Intervention violation on the start-point-inspection.....	90
3. Standardization Inspection/exercise used as a Start Point Inspection or any inspection as part of the file review.....	91
4. Determining conformance with a Standard.....	94
5. Consultant Inspectional Agencies.....	95
6. Auditing as a district while maintaining individual jurisdiction work.....	96
7. Length of Policy Implementation.....	98
8. State Enforcement Policy and Corrective Action.....	100
STANDARD 7 - Industry and Community Relations.....	102
1. Could CFP participation be used to meet this Standard?.....	103
2. District Health Department participation in State-level food advisory committees for compliance with the first part of Standard 7.....	104
3. Holding separate regulatory, industry and public stakeholder meetings.....	105
4. Use of web-based or social media for fostering stakeholder communication and feedback.....	106
STANDARD 8 - Program Support and Resources.....	108
1. Is inspection write-up and data entry part of the direct inspection time?.....	109
2. Why is the FTE ratio not tied to number of establishments?.....	110
3. Administrative Time.....	112
STANDARD 9 - Program Assessment.....	113
1. Facility types to be included in Risk Factor Study.....	114
2. Risk Factor Study sample size.....	115

3. Risk Factor Study – Use of lower confidence levels than recommended in the FDA Data Collection Manual.....	116
4. Cooperation within a State on Risk Factor Surveys.....	118
5. Appropriate auditor for the Risk Factor Survey.....	120
Clearinghouse Contact.....	121
Retail Food Policy Team	121

INTRODUCTION

The Clearinghouse Work Group was developed to interpret questions about the implementation of the Voluntary National Retail Food Regulatory Program Standards (Retail Program Standards). The members consist of:

- Two Retail Food Specialists from the FDA Office of State Cooperative Programs(OSCP);
- One member from the Retail Food Policy Team in the FDA's Center for Food Safety and Applied Nutrition (CFSAN);
- Six state, local, tribal or territorial members (two from each of the three FDA branches);and
- The current CFP Program Standards Committee Chair.

The Clearinghouse Work Group does not make changes to the Retail Program Standards. Proposed changes are considered by the Conference for Food Protection (CFP). It is recommended that questions about enrollment and implementation of the Retail Program Standards be directed to the jurisdiction's assigned FDA Regional Retail Food Specialist. If an interpretation is necessary, then the Specialist will forward the question to the Clearinghouse Work Group.

ADMINISTRATIVE PROCEDURES

1. Standard Self-Assessment process for decentralized jurisdictions

Keywords: Administrative Procedures Program Assessment, delegation, state, local, MOU, written agreement

2. Must an audit cover all Standards at the same time?

Keywords: Administrative Procedures audits, auditing of standards, timing of audits

3. Audits conducted using multiple auditors

Keywords: Program Standards, Auditor, Verification Audit, Missing Elements

1. Standard Self-Assessment process for decentralized jurisdictions

Keywords: Administrative Procedures, Program Assessment, delegation, state, local, MOU, written agreement

Issue Description

Background

I work for a State regulatory food program. The responsibility for regulatory oversight of retail food and foodservice operations has been passed on to local county agencies through a formal delegation agreement. The State agency, itself, has very little direct regulatory inspection responsibilities within the retail food sector.

My agency has enrolled in the Program Standards. Our staff is able to initiate a self- assessment of our State Program against some of the Standards, including:

- Standard #1 – Regulatory Foundation
- Standard #2 – Trained Regulatory Staff
- Standard #5 – Foodborne Illness Surveillance
- Standard #7 – Industry and Community Relations

Some of the other Standards, however, present significant challenges to our successful completion of a self-assessment because they rely heavily on the structure and process related to direct inspection work. These Standards include:

- Standard #3 – Incorporating the Principles of HACCP into Regulatory Inspections
- Standard #4 – Inspection Uniformity
- Standard #6 – Compliance and Enforcement
- Standard #8 – Program Resources
- Standard #9 – Program Assessment

Question/Problem

How should State Programs who have delegation agreements with local agencies for direct regulatory inspections of the retail segment of the industry conduct a self-assessment of their own program? What parameters should be used to assess compliance with those Standards listed above that rely substantially on an assessment of the structure and/or process pertaining to on-site inspection work and related files?

Rationale

None provided.

Response from Clearinghouse Work Group (03-20-02)

In the circumstance that you describe, the application/implementation of the Standards falls into two areas, those areas that are a direct part of your program and those areas that you manage. Legal delegations can be accomplished using several different written instruments such as delegation

agreements, contracts for service, or memoranda of understanding. For those pieces of the program that you manage through delegation, you should establish written criteria to be followed by the delegate in the performance of those delegated duties. You can meet the Standards in those areas that you have delegated by demonstrating the following elements:

- That criteria exist in your formal delegation document that meets the Standards criteria for those areas,
- That you regularly perform a monitoring, oversight, or audit function of retail food programs that have entered into a delegation agreement or contract with your agency to ensure that the criteria is being met (We suggest that you require by delegation document that the delegate perform self-assessment and develop plans to bridge gaps in order to make oversight/auditing less resource intensive), and
- That you require the delegate to develop and implement action plans for correction if it does not meet the criteria in the delegation agreement or contract.

For your self-assessment of delegated program areas, you will determine the presence or absence of these three elements (a. through c. above) for delegated functions. Of course, you also will perform a self-assessment against the other Standards' requirements for pieces of the program that you perform directly.

2. Must an audit cover all Standards at the same time?

Keywords: Administrative Procedures, audits, auditing of standards, timing of audits

Issue Description

Background

None provided.

Question/Problem

Since all the Standards may not be met at one time, what is the correct procedure regarding the timing of the Verification Audit? Must all the Standards be audited at the same time? If after our initial self-assessment, we meet additional standards and submit a new Appendix I, does that restart the clock on self-assessment and audit timing?

Rationale

None provided.

Response from Clearinghouse Work Group (01-17-07) Updated 2013

No, all Standards are not required to be audited at the same time. The self-assessment represents the status of the program against all the Standards at a specific moment in time. It must occur at least once every sixty (60) months. Following a self-assessment, a jurisdiction may complete one or more action plans which will allow them to 'update' the self-assessment to show that they then meet one or more additional standards. At any time after a jurisdiction claims to have met a standard, either during the self-assessment or in an update to the self-assessment, a jurisdiction is encouraged to immediately obtain a verification audit of those results. This will allow for timely feedback of the self-reported results and timely correction for any misinterpretations that may have occurred. Multiple verification audit dates may exist and be reflected on the web listing. However, the only requirement for continued participation in the Standards and listing on the National Registry is a self-assessment every sixty months followed by a verification audit within 6 months of the self-assessment. Since verification auditors' time must be respected and a time suitable for both parties must be negotiated, it would not be unusual for Standards to be audited on different dates.

For example, a jurisdiction completes its self-assessment in January 2006 and self-reports meeting one Standard. For timely feedback on the self-reported results, the jurisdiction could obtain an audit of this Standard immediately and is encouraged to do so. Subsequently, in July 2007, the jurisdiction completes action plans resulting in two additional Standards self-reported as being met. As before, the jurisdiction could obtain an audit of these standards immediately. However, the jurisdiction could wait and have an audit completed on all three Standards by the end of January 2008, which is within 6 months from the self-assessment completion date.

3. Audits conducted using multiple auditors

Keywords: Program Standards, Auditor, Verification Audit, Missing Elements

Issue Description

Background

A jurisdiction submitted their respective program standard to an auditor for verification audit purposes. The auditor performed a preliminary audit and she identified a few missing elements in the standard, and then alerted the jurisdiction of those missing elements. The jurisdiction that submitted the standard worked on compiling the missing information for the auditor; however, when the jurisdiction attempted to submit the information to the auditor, the auditor had terminated her employment; therefore, the audit process had to cease and that left the jurisdiction that submitted the program standard to be audited in a quandary.

Rationale

None Provided

Question/Problem

Could a completely different auditor from another jurisdiction review/confirm the missing information the original auditor identified and if everything is fine, then sign off (approve) the verification audit—based on the original auditor’s review? Or, would the jurisdiction need to find another auditor from another jurisdiction to initiate another completely independent audit of the program standard that was submitted for audit?

Response from the Clearinghouse Workgroup (1-1-21)

The Clearinghouse recommends that a new auditor conduct a brand-new audit. Several concerns may arise from allowing a new auditor to “signoff” on work from the former auditor. A new auditor may not be able to verify or confirm what was previously found, nor would he/she be able to sign off on findings that they did not personally review. In addition, the timeframe to complete a process involving multiple auditors may exceed the required timeframe for a verification audit to be completed. An auditor would have to review the required documentation whether it be part of a re-review or initial review; therefore, it is recommended that a new audit be undertaken and completed using another auditor.

STANDARD 1 - Regulatory Foundation

This standard applies to the regulatory foundation used by a retail food program. Regulatory foundation includes any statute, regulation, rule, ordinance, or other prevailing set of regulatory requirements that governs the operation of a retail food establishment.

1. State Interpretation of When Otherwise Approved vs. intent of Food Code

Keywords: STD-01, regulatory foundation, when otherwise approved, interpretations, at least as stringent

2. Section 8-813.10 Petitions, Penalties, and Continuing Violations

Keywords: STD-01, Regulatory foundation, compliance, enforcement, civil penalties, criminal penalties

3. Local/county Jurisdictions Operating Under State Regulations

Keywords: STD-01, Regulatory foundation, Food Code intervention, local rule, consumer advisory

4. Want Alternative Criteria for Demonstrating Control of Risk Factors

Keywords: STD-01, Regulatory foundation, alternative control of risk factors, equivalent risk factors control

5. Compliance and Enforcement Code Sections

Keywords: STD-01, Regulatory foundation, compliance, enforcement, critical items, follow-up

6. Altering a code's or regulation's language through policy

Keywords: STD-01, regulatory foundation, altering language, changing the code by policy, policy, bare-hand contact, minimize bare-hand contact

7. Does omitting one provision of the Food Code count against a jurisdiction in more than one risk factor or intervention section in Standard 1?

Keywords: STD-01, regulatory foundation, food code provision, risk factor, food code intervention, agreement with the code

8. Adequacy of Consumer Advisory

Keywords: STD-01, consumer advisory, shellfish advisory, partial consumer advisory

9. A 7-day versus a 15-day response for request of an administrative hearing

Keywords: STD-01, regulatory foundation, response, administrative hearing, hearing, time frame

10. Details required in a hearing request

Keywords: STD-01, regulatory foundation, response, administrative hearing, hearing, time frame, details

11. Residential Kitchens used for Processing of Goods Sold at Retail

Keywords: STD-01, residential kitchens, home cooking, home processing, home kitchens

12. Regulatory Jurisdiction over Highly Susceptible Populations

Keywords: STD-01, Highly Susceptible Population Establishments

13. Clarity on the word “edition” on current published edition of the Food Code

Keywords: STD-01, Regulatory Foundation, Food Code edition, Food Code supplement

14. Compliance with Standard 1 based upon the Food Code edition the jurisdiction uses as their Regulatory Foundation

Keywords: STD-01, Regulatory Foundation, Food Code edition, release date

1. State Interpretation of When Otherwise Approved vs. intent of *FoodCode*

Keywords: STD-01, regulatory foundation, when otherwise approved, interpretations, at least as stringent

Issue Description

Background

The county that I represent has a delegation agreement with the State. Under the delegation agreement the county is required to use the Food Code adopted by the State. The county may develop Food Code provisions that are stricter than the State. In 2001, the State adopted the 1999 FDA Food Code.

Recently the State has issued interpretations on several key provisions within the Food Code. Most notably, Section 3-301.11 Preventing Contamination from Hands. The State adopted the FDA Food Code language verbatim for this Section. Since that time, however, the State has issued an interpretation on what is meant by “when otherwise approved”. This interpretation is less stringent than what FDA has provided as guidance in ANNEX 3 of the FDA Food Code.

The States interpretation of “when otherwise approved” in essence states that if a facility is in compliance with the hand wash provisions within the Food Code and has a system, such as SOPs, to support this practice, then they meet the intent of “when otherwise approved”.

Question/Problem

My questions is this, if the Food Code adopted in the State specifically meets the language in the *FDA Food Code*, does that meet the intent of complying with this risk based provision in Standard #1, or will the State’s interpretation of the provision (and any other similar types of interpretations) also have to be taken into account when conducting the self-assessment?

Rationale

We believe that if the Food Code language in the State (thus County) Code is verbatim to the *FDA Food Code* language then our County meets the intent of Standard #1 which is based on a provision by provision comparison of Food Code requirements. If not, how will an auditor be able to assess a jurisdictions compliance with Standard #1 without knowing all the individual Food Code interpretations that may have been issued by the State.

Response from Clearinghouse Work Group (02-20-02)

The jurisdiction has adopted the language in Section 3-301.11 verbatim. For this specific provision, the jurisdiction is in compliance with the assessment criteria contained in Standard No. 1.

The language of Standard No. 1, in both the ‘Requirement Summary’ and the ‘Description of Requirement’ states that a jurisdiction’s regulation, rule, or ordinance must have a provision as least as stringent as the specified provisions of the Food Code. According to the information provided, the jurisdiction has adopted 3-301.11 of the 1999 version verbatim.

That meets the stated requirement of Standard No. 1 for the item in question.

The language of 3-301.11 includes a phrase ‘Except . . . as otherwise approved.’ FDA originally anticipated that jurisdictions approving alternatives to the ‘no bare hands contact with ready-to-eat foods’ provision would approve those alternatives that could convincingly address the hazards of fecal/oral contamination and would provide effective management controls to ensure protection of the food. This phrase was intended to allow some flexibility for innovative ideas or advancing technology that might not be foreseen. It was not anticipated that the phrase would be used as a blanket approval for ‘business as usual.’

Later, FDA provided guidance in Annex 3 regarding the kinds of criteria to be used when approving alternative controls to ‘no bare hand contact.’ Standard No. 1 language does not include adherence to guidance or Annex 3 as a condition of meeting the Standard. While the Work Group agrees that the jurisdiction is not meeting the spirit of that provision of the Food Code, it has adopted the regulatory language necessary to protect the public health, which was the goal of Standard 1. It is in the implementation of the regulatory language where the failure occurs. This failure to meet the spirit of the Code cannot be addressed through Standard No. 1. This appears to be a gap in the Standards that was not foreseen and may well need to be addressed. The Standards will doubtless evolve over time with changes and/or additions as stakeholders gain experience and knowledge through their use.

2 Section 8-813.10 Petitions, Penalties, and Continuing Violations

Keywords: STD-01, Regulatory foundation, compliance, enforcement, civil penalties, criminal penalties

Issue Description

Background

The Statutes in our State do not provide the State and local health jurisdictions the authority to enact or administer civil penalties. The State and local jurisdictions do, however, have provisions for criminal penalties that are equivalent to the *FDA Food Code*.

Question/Problem

Since criminal penalties are, in most instances, more punitive and stringent than civil penalties, would jurisdictions operating under the limitations of the State statute prohibiting the application of civil penalties by health authorities meet the intent of the *FDA Food Code*?

Rationale

Since criminal penalties are more stringent than civil penalties, we believe that jurisdictions that do not have authority to enact civil penalties but incorporate criminal penalties at least equivalent to the *FDA Food Code* meet the intent of Standard #1.

Response from Clearinghouse Work Group (Updated 2011)

The CFP modified Standard 1 at the 2003 Biennial meeting and the change became effective in January 2005. Standard 1 Compliance and Enforcement section now requires that only one of the three possible civil, criminal or administrative remedies is necessary to meet the intent of Standard 1.

3 Local/county Jurisdictions Operating Under State Regulations

Keywords: STD-01, Regulatory foundation, Food Code intervention, local rule, consumer advisory

Issue Description

Background

The State of West Virginia has adopted the *1999 Food Code*, but deleted the Consumer Advisory. The State Code is used throughout the State. We are two local jurisdictions in the State. Currently, it is possible that we might be able to promulgate a local rule that adds the consumer advisory to our county rules; however, that option may be taken away soon.

Question/Problem

Will we be able to meet Standard #1?

Rationale

Unless we are able to enact separate provisions, we believe that we will not be able to ever meet Standard #1.

Response from Clearinghouse Work Group (02-20-02)

For the initial listing, a jurisdiction's regulation must contain at least 9 of the 11 risk factor controls and interventions. For the initial self- assessment, it is possible to meet the criteria in Standard No. 1 without the consumer advisory provision. By the third verification audit, however, the regulatory foundation must meet all 11 of the 11 risk factor controls and interventions.

As a local jurisdiction, you must promulgate a local rule to include the Consumer Advisory in order to get credit for that item or work toward getting the State's regulation changed to include it.

Update (12-31-2012)

The 2004 CFP changed the requirement to 11 of 11 after the third assessments cycle. Further, the CFP changed the frequency of the assessment cycle effective January 2011 from every 36 months to every 60 months. This changes the requirement to attain all eleven of the risk factors and interventions to fifteen (15) years.

4 Want Alternative Criteria for Demonstrating Control of Risk Factors

Keywords: STD-01, Regulatory foundation, alternative control of risk factors, equivalent risk factors control

Issue Description

Background

None provided.

Question/Problem

Some local codes have adopted standards which control the risk factors but still differ from the FDA *Food Code*. A jurisdiction that has adopted 130F for hot holding may be adequately addressing the risk factor and controlling the public health concern, but would not meet the 135F requirement in the FDA *Food Code*. Another example is with hand washing - suppose the requirement has a hand washing provision but does not identify a time, such as 20 seconds. Does this meet the intent of the risk factor? We recommend a list of questions be developed for each major intervention/risk factor so a jurisdiction that has different language than the *Food Code* has guidance to determine if the intent of the *Code* section is met without compromising it.

Rationale

None provided.

Response from Clearinghouse Work Group (11-20-02)

Standard 1 is very specific in using the model *Food Code* as the criteria for this Standard. Any attempt to try to interpret “adequate” control of risk factors using something other than the *Code* would be to invite debate on any number of issues without having a viable means of arriving at an authoritative final answer. The forum for debate and for establishing what is acceptable in the ‘community of practice’ is the Conference for Food Protection, which represents the entire food safety community. In the example given for hot holding of 130°F versus 135°F, the answer is very clear. The *Food Code* in the future will require 135°F for hot holding, so that anything less than that does not meet the intent of the *Code*; and, therefore, does not meet Standard 1.

The example of the omission of the 20-second time frame in the handwash requirement can be overcome in some cases. Given the amount of debate and attention that the handwash issue received in the CFP during its last two sessions, the *Food Code* and those interpreting it clearly intend that a 20-second minimum time be included as a part of the acceptable procedure. If the 20-second requirement is omitted from a jurisdiction’s adopted regulation language, but the jurisdiction establishes supplemental policies or standard operating procedures that enable it to carry out the intent of the *Code* language, then the Standard can be met.

The recommendation to develop a list of questions for each major intervention and risk factor and to provide alternative language for determining *Code* intent is not practical. Even to provide a list of potential questions would be a daunting task. Additionally, trying to provide

alternative language that would meet the intent of the *Code* would only further confuse matters and would compromise the criteria for determining achievement of the Standard.

While developing a list of anticipated questions might not be practical, the Clearinghouse will continue to respond to questions as they are submitted by jurisdictions. It is hoped that this process for answering questions is beneficial in providing guidance to those of you who are conducting your self-assessments.

5 Compliance and Enforcement Code Sections

Keywords: STD-01, Regulatory foundation, compliance, enforcement, critical items, follow-up

Issue Description

Background

Our jurisdiction has adopted the *Food Code*, and we are working diligently on our self- assessment process. We also have a very aggressive inspection and follow-up inspection schedule that requires a follow-up whenever a critical item is marked. Our problem is this, there are many items in the *Food Code* that are designated as ‘critical,’ and yet failure to comply is not likely to cause illness. An example is 2-401-11(B) – where an employee is drinking from an open cup. In our jurisdiction, an inspector’s marking this item requires a follow-up inspection. This is causing far too many follow-up inspections and consuming resources unnecessarily. We would like to change the designation in our regulation from a hard and fast ‘critical’ to ‘swing’ for about 28 items so that we can continue to accurately record all violations without triggering follow-up inspections for items that we judge to be non-critical and so that we can maintain a consistent re-inspection policy.

Question/Problem

If we change the critical item designations in our regulation, do we still meet Standard #1?

Rationale

We believe that we will still meet Standard #1. Our regulatory language is the same as the model *Food Code*, and we cannot find anything in the Standard that requires identical designations or conventions as the *Food Code*. The Standards, in general, focus on risk factors and interventions, which are not identical to ‘critical’ items.

Response from Clearinghouse Work Group (02-20-03 & Update 2011)

You make some valid points. The *Food Code* definition of a ‘critical item’ is “a provision of this Code that, if in noncompliance, is more likely than other violations to contribute to FOOD contamination, illness, or environmental health HAZARD.” The Standards definition of a ‘risk factor’ is “improper practices or procedures stated below which are most frequently identified by epidemiological investigation as a cause of foodborne illness or injury:

- improper holding temperature;
- inadequate cooking;
- contaminated equipment
- unsafe source; and
- poor personal hygiene”

Food Code ‘interventions,’ although they add somewhat to the above list, also overlap with risk factors. “Interventions are:

- management’s demonstration of knowledge;
- employee health controls;

- controlling hands as a vehicle of contamination;
- time/temperature parameters for controlling pathogens; and
- consumer advisory.”

So there exist two concepts that are not entirely in sync with one another. Critical items are not risk factors or interventions per se since their definition also includes food and environmental contamination.

You are correct in stating that there is nothing in Standard 1 which directly links to ‘critical items.’ One inference might be drawn in the Compliance and Enforcement chapter of the *Food Code*, in section 8-405.11, which is a requirement for part C of Standard 1. That section requires correction at the time of the inspection for critical violations of the *Code*. It might be argued that if you change items from ‘fixed critical’ to ‘swing critical’ then your regulation is no longer as stringent the *Code* since you would no longer be required to obtain immediate corrective action all *Food Code* critical items. It could be argued on the other side that this is an implementation issue and not a regulatory foundation issue. Section 8-405.11 is broader than the Standard 6 for Compliance and Enforcement which requires immediate corrective action of out of control risk factors and interventions.

The Clearinghouse Workgroup would hate to see you make changes in your critical item designations until the Conference for Food Protection reaches agreement on the changes that are necessary in the *Food Code* designations. There is wide disagreement on the critical items issue, with opinion ranging from ‘make no changes’ to ‘eliminate the concept entirely.’ The CFP Inspection Forms committee will in 2004 again tackle the issue of critical items in an attempt to reach consensus while incorporating either critical items or risk factors into their model form. If CFP makes a recommendation accepted by FDA, you could then accordingly make changes to your regulation and maintain uniformity with the national model.

A more immediate solution to your dilemma would be to make minor changes to your compliance and enforcement policy. To maintain your high standards in this area, you could continue to require on-site corrective action with documentation on the inspection form for all critical item violations; this would maintain conformance with 8-405-11. You could then impose the requirement for follow-up inspections only for out of control risk factors and interventions that that contribute to foodborne illness. You would still meet Standard 6 for Compliance and Enforcement, provided the other criteria in that Standard are met, and you would eliminate the unnecessary follow-up to violations you feel do not warrant the resource expenditure.

This response is still a valid interpretation and suggested solution since the change in the ranking of provisions to Priority, Priority Foundation and Core.

6 Altering a code's or regulation's language through policy

Keywords: STD-01, regulatory foundation, altering language, changing the code by policy, policy, bare-hand contact, minimize bare-hand contact

Issue Description

Background

None provided.

Question/Problem

If a jurisdiction adopts into their code, “minimize bare hand contact with ready-to-eat foods” and later issues an inter-agency policy requiring a change in the enforcement strategy to be identical with the Food Code (1999) prohibiting BHC with RTE foods unless otherwise approved, does the jurisdiction meet 3-301.11(b)?

Rationale

None provided.

Response from Clearinghouse Work Group (9-15-04)

This is similar to a question answered by the Clearinghouse in 02-20-02 (State Interpretation of When Otherwise Approved vs. intent of *Food Code*). Generally speaking, the judgment should be based on the language in the written code or regulation. Having said that, there are several things that should be considered by an auditor in making this judgment of stringency. An inter-agency policy may or may not be enforceable. If the policy is in writing and documentation from legal counsel in the jurisdiction is provided stating that the policy carries the same weight as regulation so that it carries the same enforceability by means of civil or criminal penalties, then it may be an acceptable means of meeting Standard 1. Some jurisdiction's issue interpretations of their codes that are considered by their legal counsel have the same weight as their code. In the instance where an interpretation or policy has been issued that is as stringent as the *1999 Food Code* and the jurisdiction's legal counsel supports the interpretation in writing as enforceable, then it would meet the Standard.

Whether it is in the form of a policy or interpretation, the key resides in the jurisdiction's ability to ensure compliance equal to its ability to ensure compliance with code or regulation. The status of an 'inter-agency policy' would need to be assessed by the legal counsel serving each of the various agencies involved if they are not one and the same.

It should also be noted that a change to Standard 1 was approved at the 2004 Conference for Food Protection allowing the Standard to be met with 9 of the 11 risk factors and interventions until the third audit.

7. Does omitting one provision of the Food Code count against a jurisdiction in more than one risk factor or intervention section in Standard 1?

Keywords: STD-01, regulatory foundation, food code provision, risk factor, food code intervention, agreement with the code

Issue Description

Background

None provided.

Question/Problem

What percentage of food code sections have to agree verbatim? Can a double debit exist? (For example, “demonstration of knowledge” also includes the issue of no bare hand contact which is in a separate risk factor/intervention section in the Code as organized in Appendix A of Standard 1.)

(Similar to question above) In the case of a jurisdiction in which you look only at 11 criteria for Person In Charge instead of 12, is there a chance for double debit? (For example, if there is no ‘no bare hand contact’ provision, would you also debit Demonstration of Knowledge?) If you do not double debit, can this be explained better in the Standard/Audit Manual?

Rationale

None provided.

Response from Clearinghouse Work Group (2-16-05)

There is no requirement for regulatory foundation language to agree verbatim with the *Food Code*. The Standard requires “provisions that are at least as stringent as the public health interventions and the provisions that control risk factors known to contribute to foodborne illness contained in the Food Code.

It was never the intention of any of the Standards to create a situation for a ‘double debit.’ A ‘double debit’ is defined as a penalty being assessed in more than one location for the same circumstance (usually on an inspection form, although the concept is applicable particularly in Standard 1).

In Standard 1, there are four Code sections listed as being requirements for the intervention titled, “Demonstration of Knowledge.” The section in question is 2-103.11(K), which requires the person in charge to ensure that employees are preventing cross-contamination of ready-to-eat food with bare hands by properly using suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment. If a jurisdiction has not included section 3-301.11(B), which is the primary requirement for no bare hands contact, then obviously 2-103.11(K) would not be included either. In order to avoid the situation of a ‘double debit,’ the Clearinghouse agrees that the ‘debit’ should be marked in the location that represents the source of the omission or the root cause of the situation. In this case the risk factor/intervention that is missing is the element of ‘protection from contamination’ that is

represented by the bare hands contact issue, or section 3-301.11(B). If all other required aspects of 'demonstration of knowledge' are present so that a person in charge is held accountable to know the rules/regulations under which they operate, then the demonstration of knowledge element is met.

8 Adequacy of Consumer Advisory

Keywords: STD-01, consumer advisory, shellfish advisory, partial consumer advisory

Issue Description

Background

None provided.

Question/Problem

If a jurisdiction has a Consumer Advisory, but only for shellfish, could they report compliance with 3-603.11? If not, they won't meet the standard only because they don't have Consumer Advisory?

Rationale

None provided.

Response from Clearinghouse Work Group (2-16-05 - Updated 2011)

Under 3-603.11, it is clear that the language includes such foods as beef, eggs, fish, lamb, milk, pork, poultry or shellfish that is raw, undercooked, or not otherwise processed to eliminate pathogens when offered in a ready-to-eat form. These foods have all been associated with foodborne illness in a raw or undercooked state. Standard 1 requires provisions at least as stringent as the 1999 Food Code (or later – see 2011 version of Standard 1), so a provision that requires an advisory for shellfish only, does not meet the foodborne illness intervention for Consumer Advisory in that it would not provide the same protection for consumers.

9. A 7-day versus a 15-day response for request of an administrative hearing

Keywords: STD-01, regulatory foundation, response, administrative hearing, hearing, time frame

Issue Description

Background

None provided.

Question/Problem

In section 8-905.10 of the FDA *Food Code*, it requires that a person requesting a hearing in response to an administrative remedy to file that request within 7 calendar days after service. Our state statute that contains what we consider to be the equivalent administrative remedy requires the person requesting the hearing to file that request within 15 days of service. We believe this requirement is equivalent, and the issue of stringency is not at issue.

Rationale

Our state and local laws address administrative and judicial remedies and provide for due process for a wide range of food establishment compliance and enforcement issues and activities. While our 15-day time period for response is not strictly the same as the 7 days contained in the corresponding FDA *Food Code* citation, we believe this meets the intent of the Food Code language. The exact length of the period for response is not a material difference.

Response from Clearinghouse Work Group (11-15-06)

The Clearinghouse agrees that a 15-day time period to request a hearing in response to an administrative remedy meets the intent of Standard 1, Food Code, 8-905.10. The purpose of the Standard 1 criterion is to ensure that there is due process, that the establishment is advised of the right of appeal and the time frames for appeal.

10. Details required in a hearing request

Keywords: STD-01, regulatory foundation, response, administrative hearing, hearing, time frame, details

Issue Description

Background

None provided.

Question/Problem

During a recent audit of Standard 1, an issue arose concerning the comparison between our code and the *FDA Food Code*. Section 8-905.20 requires that the individual responding to a notice of hearing or requesting a hearing make a request in writing and that the request includes the content specified 8-905.20. Standard 1 requires compliance and enforcement ‘at least as stringent as’ the selected provision of the FDA Food Code and Annex 1 of the Food Code. It is not completely clear as to what is meant by ‘at least as stringent’ with respect to the compliance and enforcement.

Under our State law, whenever a party is subject to or impacted by a local public health or environmental services department action, such as through the issuance of a Notice of Violation & Demand for Compliance, Cease & Desist Order, Compliance Order, permit or license denial or other similar compliance and enforcement action, the agency is required by law and as a matter of due process to notify the impacted party of the right to a hearing on the matter. At that point the impacted party can request a hearing or not. Should the impacted party request a hearing, State laws dictate that the request for hearing be made in writing within a specified time period. Other than making the request in writing within the timeframe allowed, there are no other requirements that correspond to those found in 8- 905.20.

It seems somewhat incongruous that while there is nothing in the *Food Code* that mandates an individual respond to a notice of hearing, should one elect to do so, then the requirements contained in 8-905.20 kick in. Under the *Food Code* provisions, should a respondent not include all the required particulars in a request, what would be the result? Would a hearing be denied?

Rationale

We maintain that just because we don’t require an individual in a request for hearing to provide a statement of defense, mitigation, denial, or explanation concerning each allegation of fact contained in an original compliance and enforcement action, that doesn’t make our hearing process any less effective or efficient. All of the items addressed in 8-805.20 will ultimately come to light as part of the hearing process. It is the sequence and manner in which they come to light that differs from the *Food Code*. We are pretty much bound to following the process as it is laid out in our statute. The roadmap provided by State statute to jurisdictions in our State specifies a slightly different route from the route the FDA Food Code takes in the area of hearings administration. In the end, however, we arrive at the same destination, and that is our ability to achieve compliance where compliance cannot be achieved by other means. The important thing in our view is 1) the local jurisdiction has a compliance and enforcement remedy that achieves the objective of the corresponding *FDA Food*

Code provision with respect to obtaining compliance and 2) the remedy provides the respondent with an avenue of redress that recognizes due process under the law. To the extent that our statutes and codes meet this criteria with respect to 8-805.20, we believe that we are ‘at least as stringent as’ the *FDA Food Code* in the area of hearings administration.

Response from Clearinghouse Work Group (1-17-07)

Your question caused quite a robust discussion among the Clearinghouse Work Group members. The group members have difficulty understanding how your agency as well as the respondent can adequately prepare for the hearing without the kinds of information outlined in the provisions of 8-905.20. However, the group concluded that as long as you can demonstrate that you are producing cases, have hearing outcomes, and achieving the end compliance result, you are meeting your legal requirements and meet the intent of the Food Code language.

The provisions in the *Food Code Annex 1* are intended for a regulatory authority’s use in reviewing its statutory authority to be sure it covers the necessary constitutional protections. As a general recommendation, you may want to consider the development of an ‘election of rights’ packet to be mailed to persons receiving an adverse administrative determination.

The packet could include instructions regarding the kinds of information to be provided along with the request for hearing. This could be done as an internal operating procedure without impacting the State statute and would provide help both you and the respondent better prepare for the hearing.

11. Residential Kitchens used for Processing of Goods Sold at Retail

Keywords: STD-01, residential kitchens, home cooking, home processing, home kitchens

Issue Description

Background

A jurisdiction currently licenses and inspects residential kitchens that prepare and sell foods at retail. They are currently in the process of updating their regulations and would like to explore various options to find an appropriate means of allowing preparation in residential kitchens that would allow them to meet Standard 1.

Question/Problem

The Food Code currently prohibits ‘home-cooked’ foods under paragraph 3-201.11(B). See also the definition of a ‘food establishment.’ Is there a situation where a jurisdiction can regulate processing of food for sale at retail in residential kitchens that would allow the jurisdiction to meet Standard 1?

Rationale

None provided.

Response from Clearinghouse Work Group (01-20-10)

The wording in paragraph 3-201.11 (B) states “FOOD prepared in a private home may not be used or offered for human consumption in a FOOD ESTABLISHMENT.” Next, we must look at the exemptions to the definition of a FOOD ESTABLISHMENT.

Specifically, in Section 1-201.10 FOOD ESTABLISHMENT (3), the definition of a FOOD ESTABLISHMENT does not include:

- (a) *An establishment that offers only pre PACKAGED FOODS that are not TIME/TEMPERATURE CONTROL FOR SAFETY FOODS;*
- (b) *A produce stand that only offers whole, uncut fresh fruits and vegetables;*
- (c) *A FOOD PROCESSING PLANT, including those that are located on the PREMISES of a FOOD ESTABLISHMENT*
- (d) *A kitchen in a private home if only FOOD that is not TIME/TEMPERATURE CONTROL FOR SAFETY FOOD is prepared for sale or service at a function such as a religious or charitable organization’s bake sale if allowed by LAW and if the CONSUMER is informed by a clearly visible placard at the sales or service location that the FOOD is prepared in a kitchen that is not subject to regulation and inspection by the REGULATORY AUTHORITY;*
- (e) *An area where FOOD that is prepared as specified in Subparagraph (3)(d) of this definition is sold or offered for human consumption;*
- (f) *A kitchen in a private home, such as a small family day-care provider; or a bed-and-breakfast operation that prepares and offers FOOD to guests if the home is owner occupied, the number of available guest bedrooms does not exceed 6, breakfast is the only meal offered, the number of guests served does not exceed*

18, and THE CONSUMER is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the FOOD is prepared in a kitchen that is not regulated and inspected by the REGULATORY AUTHORITY; OR

(g) A private home that receives catered or home-delivered FOOD.

Each of these paragraphs provides an exemption to the definition of a FOOD ESTABLISHMENT and, therefore, would exempt these situations from the regulations that apply to FOOD ESTABLISHMENTS.

Next, we must look at the relevant language of what is included in the definition of a FOOD ESTABLISHMENT. Specifically, any “operation that stores, prepares, packages, serves, vends, or otherwise provides FOOD for human consumption . . ., and relinquishes possession of FOOD to a CONSUMER directly, or indirectly through a delivery service.

. . .” is included in the definition of a FOOD ESTABLISHMENT. This means that any operation that prepares food for direct sale to consumers such as at a farmer’s market or over the internet is to be regulated as a FOOD ESTABLISHMENT.

In summary, only jurisdictions which allow the sale of foods from residential kitchens that meet one of the specific exemptions allowed under the *Food Code* in the definition of “FOOD ESTABLISHMENT” in Section 1-201.10, FOOD ESTABLISHMENT (3) can meet Standard 1.

12 Regulatory Jurisdiction over Highly Susceptible Populations

Keywords: STD-01, Highly Susceptible Population Establishments

Issue Description

Background

The Oregon Department of Agriculture (ODA) is responsible for inspections at retail food stores and has their own code. The Oregon Department of Health and the local health departments conduct inspections in all other food service operations such as restaurants, bed and breakfast operations and highly susceptible population facilities using the related Food Code provisions. Because ODA has no regulatory authority in highly susceptible population facilities, the corresponding FDA Food Code Sections were not included in their code because they cannot enforce them, and it could be confusing to their retail food store operations. However, the Standard 1 Self-Assessment requires that to fully meet Standard 1 a jurisdiction must have a corresponding requirement to all the Food Code Interventions and Risk Factor Control Measures, which includes Highly Susceptible Populations. In this case, the responsibility and regulatory authority for HSP is held by another state agency yet there is no option for a "not applicable" designation. Does the jurisdiction need to include unenforceable code language to fully meet the Standard or can they indicate 'Not Applicable' with an explanation of the responsibility of their sister agency in the state?

Question/Problem

Standard 1 Question: If a jurisdiction does not have regulatory authority over highly susceptible population facilities and therefore does not include the corresponding FDA Food Code sections in their own code, can they indicate "not applicable" on the self-assessment for Standard 1 for these sections?

Rationale

None provided.

Response from Clearinghouse Work Group (10-18-12)

The Food Code recognizes that more stringent preventative controls are necessary to prevent foodborne illness in facilities that serve a Highly Susceptible Population (HSP). Therefore, certain parts of the Food Code specify more stringent controls that are only applicable to food establishments that serve an HSP such as various subparagraphs in Section 2-201.11 and the entirety of Section 3-801.11. In the case where a state's legislative body provides regulatory authority to adopt and enforce regulations pertaining to HSP establishments to a different food regulatory agency, the agency without regulatory authority for HSP establishments does not need to adopt Food Code provisions that pertain only to facilities for which it lacks regulatory authority.

The intent of Standard 1 is to ensure a sound regulatory foundation which includes stricter requirements for establishments that serve an HSP. In this situation, the regulations that apply to HSP establishments exist, but another State Agency has responsibility. The Program Standards Clearinghouse (Clearinghouse) does not think the agency without regulatory authority for HSP establishments should be prevented from meeting Standard 1 because they have no authority over

HSP establishments. To address this situation in the self-assessment process, a self-assessor will need to note the situation in the Self-Assessment Worksheet Part I. The worksheet, Section 11, requires the assessor answer either, Yes – Full Intent is Met, Partial Compliance, and No – Is Not Met. The Clearinghouse recommends the self-assessor check the box indicating “YES - Full Intent Is Met” in the section and note in the “Jurisdiction’s Corresponding Code Section, Rule, Etc.” column, the name of the Agency that has HSP establishment responsibility plus the corresponding Agency provisions. During the verification audit, the auditor should select another randomly selected number if line 91 of the worksheet is randomly selected.

13. Clarity on the word “edition” on current published edition of the Food Code

Keywords: STD-01, Regulatory Foundation, Food Code edition, Food Code supplement

Issue Description

Background

None provided.

Question/Problem

What is meant by the word “edition” in the phrase, “current published edition of the Food Code” as written in the Standard 1 Regulatory Foundation document, page 2, paragraph 3? Does “edition” mean the fully published version of the model Food Code and published supplemental version of the model Food Code? Or, does “edition” mean the fully published version of the model Food Code only.

Rationale

It may be common to interpret “edition” to mean the fully published version of the model Food Code only, but it is not explicitly clear to ensure no disagreements between the assessor and the auditor. If the supplement to the Food Code is considered an “edition” then the time frame for progress for updating the regulations is shortened from 4 years to 2 years. This would put greater pressure on the jurisdictions to update their regulation every 2 years as opposed to every 4 year.

Response from Clearinghouse Work Group (9-25-18)

The term “edition” in the Standard 1 Regulatory Foundation means the full published editions of the Food Code. While FDA includes the Supplements to the Food Code in the list of previous editions in the Food Code Preface, the intent for Standard #1 is that the “current published edition of the Food Code” is the Full edition published every 4 years. This includes the released editions for the following years (1993, 1995, 1997, 1999, 2001, 2005, 2009, 2013, 2017).

14 Compliance with Standard 1 based upon the Food Code edition the jurisdiction uses as their Regulatory Foundation

Keywords: STD-01, Regulatory Foundation, Food Code edition, release date

Issue Description

Background

This jurisdiction conducted their first self-assessment on June 5, 2013.

Question/Problem

We are working on completing our self-assessment and in reviewing Standard 1- Regulatory Foundation, I just want to make sure that we are interpreting this correctly. We are currently using FDA Food Code -2009. In reading the guidance on Standard 1, we have 2 years after the printing of the 2017 code to be still considered in compliance. Is this correct?

Rationale

None provided.

Response from Clearinghouse Work Group (9-25-18)

In the description of the requirement for Standard 1 Regulatory Foundation it states that "...the regulatory foundation contains provisions that are at least as stringent as the public health interventions and the provisions that control risk factors known to contribute to foodborne illness contained in the current published edition of the Food Code or one of the two most recent previous editions of the Food Code. Jurisdictions that meet Standard 1 but who may become noncompliant due to the release of a new edition of the Food Code are considered to continue meeting the Standard for a period of two years from the release date of the new Food Code edition...."

It is important to understand that the release date of the Food Code and the year of the Food Code may be different. For example, the 2017 edition of the Food Code was released in February 2018.

Example 1 - Jurisdiction 1 uses the 2005 Food Code Edition in its entirety including equivalent annex 1-Compliance and Enforcement provisions described in part 3 of the Standard as their regulatory foundation. The jurisdiction submits Standard 1 for verification audit in December 2013. The 2013 Food Code edition is the current published edition of the Food Code and the two most recent previous editions of the Food Code are 2009 and 2005. The jurisdiction is in compliance as they are using one of the two most recent previous editions of the Food Code including the aforementioned annex material.

Example 1 Part 2 - Jurisdiction 1 is still using 2005 Food Code edition as described above when they submit Standard 1 for verification again five years later in December 2018. The current published edition of the Food Code is 2017 and the two most recent previous editions of the Food Code are 2013 and 2009. It appears as if Jurisdiction 1 no longer meets Standard 1, however as the release of the 2017 Food Code edition resulted in Jurisdiction 1 no longer being in compliance with Standard 1, they are allowed to be in compliance with Standard 1 "...for a period of two years from

the release date of the new Food Code edition in order to complete the process of updating its regulations. “The 2017 Food Code edition was released in February 2018, so Jurisdiction 1 remains in compliance with Standard 1 until February 2020.

STANDARD 2 - Trained Regulatory Staff

This Standard applies to the essential elements of a training program for regulatory staff.

1. Number of Joint Training Inspections Required in Standard #2

Keywords: STD-02, Trained regulatory staff, joint training inspection, number of training inspections

2. Recognized Credentials and Their Relationship to Standard 2 Curriculum

Keywords: STD-02, Trained regulatory staff, equivalent credentials, Registered Environmental Health Specialist certificate

3. Determining Training Component Equivalency

Keywords: STD-02, Trained Regulatory Staff, training plan, equivalent time, equivalent training, qualifying training, qualifying course

4. Documents that Serve in Lieu of Training Certificates

Keywords: STD-02, Trained regulatory staff, documentation, training certificates, training documentation, training logs, alternatives to certificates

5. Who Must Meet Standard 2

Keywords: STD-02, Trained regulatory staff, plan review personnel, inspection staff, who must be trained, training

6. Code Criteria for Standardization

Keywords: STD-02, Trained regulatory staff, code for standardization, prevailing statutes, regulations, or ordinances, standardization process

7. Criteria for the Education/Training Requirements

Keywords: STD-02, trained regulatory staff, curriculum design, course equivalency, curriculum, course content

8. Proof of Training for Long-tenured Employees

Keywords: STD-02, trained regulatory staff, proof of training, long-term employees, documentation of training

9. Age of training records

Keywords: STD-02, trained regulatory staff, documentation of training, age of training records, records, documentation, valid training

10. New employee vs. new to the food program

Keywords: STD-02, trained regulatory staff, new employees, new to food program

11. Kinds of continuing education that qualifies

Keywords: STD-02, trained regulatory staff, continuing education

12. Standardization of 'old' employees

Keywords: STD-02, trained regulatory staff, old employees, standardization, existing staff, current

staff

13. Dilution of field standardization

Keywords: STD-02, trained regulatory staff, standardization, dilution, cascade

14. Is there a requirement for a 'roster' of employees including hire date?

Keywords: STD-02, trained regulatory staff, roster, documentation, list, Appendix B

15. Mutual standardization by two parties in different jurisdictions

Keywords: STD-02, number of inspections, cross standardization, mutual standardization

16. Field Training for a Food Safety Inspection Officer (FSIO)

Keywords: STD-02, FSIO, Risk Category 1 Food Establishments

17. Standardization of a Training Standard

Keywords: STD-02, Training Standard, Standardization

1. Number of Joint Training Inspections Required in Standard 2

Keywords: STD-02, Trained regulatory staff, joint training inspection, number of training inspections

Issue Description

Background

The criteria in Standard #2 require 25 joint training inspections with a trainer who has successfully completed Steps 1-3. After the joint training inspections, the trainee must complete 25 independent inspections before beginning the standardization process.

Question/Problem

Can the requirement for 25 joint training inspections be waived for candidates who have prior experience in the field conducting field inspections? Similarly, can the requirement for 25 independent inspections be waived for candidates who have prior experience?

Rationale

We believe that Standard #2, as written, was intended to serve as a template for new employees entering the food program. Many of our field personnel have conducted hundreds of inspections independently. We believe that joint field training inspections of these candidates are an inefficient use of time. For experienced candidates, we believe the 25 joint training inspections and 25 independent inspections can be waived and an assessment of their inspection competency be made through the standardization component. If candidates with experience do not successfully complete their standardization, then a corrective action plan, that may include joint field training exercises, could be developed and implemented.

Response from Clearinghouse Work Group (02-20-02 - Updated 2011)

The 25 joint training inspections and the 25 independent inspections were intended for new employees or employees new to the food safety program. The joint inspections and independent inspections are an important component of a comprehensive training program that prepares Food Safety Inspection Officers (FSIO's) for their work in the field. The inspections provide an opportunity to learn and apply the jurisdictions regulations, policies, and procedures while conducting field work, as well as an opportunity to gain experience working with, and communicating with, regulated establishments. Additionally, the joint inspections and independent inspections help prepare the FSIO for successful completion of standardization.

In situations where an incoming employee is an experienced Food Safety Inspection Officer, the retail food regulatory program may decide that the joint inspections are not necessary.

In order to accommodate an experienced FSIO, the supervisor can include a simple statement or affidavit in the employee's training file explaining their background or experience that justifies a waiver from conducting 25 joint inspections.

In situations where the joint inspection requirement has been waived due to prior experience, waiving the requirement for 25 independent inspections may also be appropriate. In order to accommodate this, the supervisor can include a simple statement or affidavit in the employee's training file explaining their background or experience that justifies a waiver from conducting 25 independent inspections.

When considering whether to waive the requirement for joint inspections and independent inspections, consideration should be given to the following:

1. Quality and quantity of the prior experience;
2. Did the prior experience occur with a regulatory authority that:
 - a. Uses different regulations?
 - b. Has different policies and procedures?
 - c. Has oversight for different types of facilities?
3. The jurisdiction's ability to implement a follow-up action plan if the Standardization process reveals deficiencies or if the Standard terminates the exercise because the level of agreement will not be reached.

In situations where the joint inspection number is reduced from the required 25, a lower number of joint field training inspections can be acceptable for that particular FSIO provided there is written documentation, such as the completion of the CFP Field Training Plan to support the exception.

2. Recognized Credentials and Their Relationship to Standard 2 Curriculum

Keywords: STD-02, Trained regulatory staff, equivalent credentials, Registered Environmental Health Specialist certificate

Issue Description

Background

The criteria in Standard #2 require a candidate to satisfactorily complete training that includes the following curriculum components:

- prevailing statutes, regulations, ordinances;
- public health principles;
- communication skills;
- Food microbiology;
- epidemiology; and
- HACCP
- Allergen Management
- Emergency Management

Question/Problem

Does a candidate, who has obtained certification as a Registered Environmental Health Specialist, through a recognized national organization (such as NEHA) meet the intent of this Standard?

Rationale

We believe that having a credential as a Registered Environmental Health Specialist, does not, in and of itself, meet the intent of the Standard. We believe that the intent of the Standard is to ensure that the candidate has specific training in each of the describe disciplines. Credentials as a Registered Environmental Health Specialist, though encouraged, may not include curriculum specific to the disciplines described above.

Response from Clearinghouse Work Group (02-20-02 – Updated 2021)

The Work Group agrees that a credential cannot be taken as prima fascia evidence that the training requirements are met. Successfully passing the REHS exam is one component of Option 2 for demonstrating successful completion of the pre-inspection curriculum. Specific curriculum components must be examined in order to make a determination of whether the Standard or elements of the Standard have been met.

Criteria for determining course equivalency with the ORA-U courses were added to later versions of the Standards.

A course is deemed equivalent if it can be demonstrated that it covers at least 80% of the learning objectives of the comparable ORAU course AND verification of successful completion is provided. The learning objectives for each of the listed ORAU courses are available from the web site link at: <http://www.fda.gov/Training/ForStateLocalTribalRegulators/ucm121831.htm>

3. Determining Training Component Equivalency

Keywords: STD-02, Trained Regulatory Staff, training plan, equivalent time, equivalent training, qualifying training, qualifying course

Issue Description

Background

The criteria in Standard #2 require a candidate to satisfactorily complete training that includes the following components:

- prevailing statutes, regulations, ordinances;
- public health principles;
- communication skills;
- Food microbiology
- epidemiology; and
- HACCP
- Allergen Management
- Emergency Management

The Standard, however, does not specifically prescribe the amount of contact time a candidate needs to fulfill the training requirements in any of the disciplines.

Question/Problem

Is attending a one-hour presentation on food microbiology at a national conference sufficient to meet this requirement? How is one to equate the quality and length of training for equivalency? Besides documentation in the form of certificates and documentation of attendance, what criteria are to be used to demonstrate a candidate's knowledge of the disciplines? Are there specific contact hours that need to be associated with each of the disciplines?

Rationale

None provided.

Response from Clearinghouse Work Group (Updated 2011)

The 2009 and later versions of the Standards provide criteria for determining equivalency with the FDA ORA-U required courses. A course is deemed equivalent if it can be demonstrated that it covers at least 80% of the learning objectives of the comparable ORAU course AND verification of successful completion is provided. The learning objectives for each of the listed ORAU courses are available from the web site link at:

<http://www.fda.gov/Training/ForStateLocalTribalRegulators/ucm121831.htm>.

4. Documents that Serve in Lieu of Training Certificates

Keywords: STD-02, Trained regulatory staff, documentation, training certificates, training documentation, training logs, alternatives to certificates

Issue Description

Background

I serve as the staff development and training officer for a large county health district. I am responsible for keeping records of staff attendance at training workshops and courses.

Several of my staff are having difficulty locating their certificates related to their attendance at FDA State Training Branch courses. Some of these courses were satellite broadcasts, other were classroom sessions. As their training officer, I have kept an internal log of their attendance at these and other courses.

Question/Problem

Since my position responsibilities include maintenance and verification of attendance at training workshops and courses, can my Department records be used to verify staff's attendance at these training workshops and courses or must they be able to produce the actual FDA certificate from the course?

Rationale

None provided.

Response from Clearinghouse Work Group (3-20-02)

Department records can be used to verify training attendance under certain circumstances. While certificates issued by course sponsors are the ideal proof of attendance, other official documentation can serve as satisfactory verification of attendance. The key to a document's acceptability is that someone with responsibility keeps the records according to an established protocol. Someone such as yourself who is the training officer, or a supervisor who has first-hand knowledge of the employees' attendance at the sessions, can serve as the recordkeeper. By established protocol, we mean logs/records that are completed based on on-site sign-in sheets have information validated from a certificate at the time of issuance, or other accurate verification of actual attendance. The National Environmental Health Association is keeping automated attendance records for their courses; and in the future, FDA will offer an individual transcript of courses taken through ORA U. These kinds of official automated records kept by course sponsors are acceptable also. Keep in mind when

establishing a records system that a Standards Auditor must be able to verify that the various elements of Standard 2 have been accomplished for each applicable employee and within timeframes for new or reassigned employees. Now that documentation of training efforts is so important to regulators, it is more important than ever for employees to retain course certificates as their personal proof of attendance should questions arise, and they should be encouraged to do so regardless of other available records systems.

5. Who Must Meet Standard 2?

Keywords: STD-02, Trained regulatory staff, plan review personnel, inspection staff, who must be trained, training

Issue Description

Background

In our department, some of the Environmental Health Specialists have been assigned to the plan review program. Their responsibilities include review of plans for both new construction and remodeling of existing facilities. In the course of their duties they conduct plumbing inspections, rough-in equipment inspections, pre-opening inspections and other construction related verifications. Their responsibilities do NOT include operational inspections to assess a facilities adherence to Food Code critical limits pertaining to food storage, preparation and processes.

Question/Problem

Are the Environmental Health Specialists (EHS) assigned specifically to the plan review program, who do not conduct regular inspections, required to meet the standardization criteria in Standard #2?

Rationale

None provided.

Response from Clearinghouse Work Group (3-20-02)

The Work Group gives a cautious, qualified "no" when answering whether EHS personnel assigned to plan review only are required to meet the standardization criteria in Standard 2. If a person's duties are strictly limited to construction inspections only, then standardization is not wholly job-related and is not required. In this situation, these positions have a similar relationship to the program as do administrators and other support personnel and take on a function similar to that of a building inspector. There is some concern expressed, though, that without the on-going (maintenance) responsibilities in operations required by the standardization procedures that these inspectors may lose familiarity with developing trends in food operations and, therefore, lose effectiveness in design and equipment evaluation critical to new and remodeled construction.

If the plan review personnel in question conduct inspections of operating facilities even on a limited basis, as back up to other field personnel, in crisis situations, for compliance or other reasons, or if they rotate assignments with inspectional personnel, then they must meet the standardization criteria in Standard 2.

6. Code Criteria for Standardization

Keywords: STD-02, Trained regulatory staff, code for standardization, prevailing statutes, regulations, or ordinances, standardization process

Issue Description

Background

None provided.

Question/Problem

Is there flexibility for a Jurisdiction to use its own Food Code where the Standard and the Candidate are from the same Jurisdiction?

Recommendation

Recommend that the Clearinghouse provide the option for standardization to a jurisdiction's own food code, provided that the jurisdiction's food code meets the criteria in Standard #1 - Regulatory Foundation.

Response from Clearinghouse Work Group (5-20-02; Updated 2011)

This question points out a possible misunderstanding of this portion of Standard 2. It is the intention of Standard 2 that standardization exercises within a jurisdiction can be based upon the jurisdiction's own regulation or ordinance.

The specific goal of Standard 2 is to ensure that personnel are trained and prepared to competently conduct inspections within their jurisdiction. This is demonstrated by the curriculum component in Step 1 of Standard 2 that includes “prevailing statutes, regulations, ordinances; . . .” meaning those prevailing in the jurisdiction.

It should be noted that it is possible and highly beneficial to use the *FDA Food Code*, standardization forms and procedures even when a jurisdiction has adopted modifications to the *Food Code*. Differences between a local/state Code and the *FDA Food Code* can be noted and discussed during the exercises, and thereby enhance the knowledge and understanding of the candidate. For example, it is valuable for a candidate to assess the foods offered for sale in a facility and to make a determination of whether or not the facility would be required under the *FDA Food Code* to post a ‘Consumer Advisory’ whether or not the jurisdiction has adopted that requirement. The value derived is an increased awareness of the foods that may pose a particular risk to some individuals. Additionally, use of the FDA standardization form ensures a broad knowledge of the regulations that might not be tested using a condensed inspection form format.

One further advantage exists in using the “FDA Procedures for Standardization and Certification of Retail Food Inspection/Training Officers” and its accompanying forms verbatim. The scoring and assessment tools presented in the ‘FDA Procedures’ can be used without modification. The scoring and assessment tools are specifically tied to the standardization inspection form and other assessment forms that are a part of the FDA procedures involving 8 joint inspections.

Jurisdictions that modify the limits of the standardization process by reducing the minimum number of inspections from 8 to 4 are cautioned that a redesign of the scoring assessment of the candidates' performance on the field inspections is required. This sometimes proves to be a very difficult task. A jurisdiction must consider both the food safety expertise of its staff, as well as the availability of personnel skilled in statistical analysis before it decides to modify the minimum number of standardization inspections. The jurisdiction's standardization procedures need to reflect a credible process and the scoring assessment should facilitate consistent evaluation of all candidates.

7. Criteria for the Education and Training Requirements

Keywords: STD-02, trained regulatory staff, curriculum design, course equivalency, curriculum, course content

Issue Description

Background

None provided.

Question/Problem

Standard 2 states that food safety inspection officers must complete pre- and post- coursework before Standardization. Are there different methods to satisfy this criterion?

Recommendation

None provided.

Response from Clearinghouse Work Group (Updated 2021)

Standard 2 provides two options for meeting the training curriculum:

1. Successful completion of FDA ORAU courses specified in the Standard and provided in documents that accompany the Standard. The course objectives are provided on ORAU's web site; or
2. Completion of courses deemed by the jurisdiction's supervisor or training officer to be equivalent by:
 - a. Demonstration that it meets at least 80% of the learning objectives of the comparable ORAU course; and
 - b. Training on the jurisdiction's prevailing statutes, regulations, and/or ordinances; and
 - c. Passing one of the four written examination options (described in Standard 2) for determining if a FSIO has a basic level of food safety knowledge.

8. Proof of Training for Long-tenured employees

Keywords: STD-02, trained regulatory staff, proof of training, long-term employees, documentation of training

Issue Description

Background

None provided.

Question/Problem

The Clearinghouse stated in a previous response that the time frames for training and fieldwork were designed with new employees in mind. We have many employees who have been performing the job in a competent manner for many years. Since we made no prior attempt to keep department records of all their training, we have a lot of missing documentation for these experienced employees. Can we have each of these long-time employees sign an affidavit for their training file stating the training courses taken in the past? We believe this affidavit, along with successful standardization, and continuing education from this point forward should be sufficient to meet the intent of the Standard for experienced employees.

Rationale

We believe that the intent of Standard 2 is to ensure that employees receive timely and appropriate training in order to conduct inspections in a knowledgeable and competent manner. It would be a waste of resources to send experienced employees to basic training courses that they have already attended simply because they cannot produce documents, which at the time of their original attendance were not required to be kept. Standardization, the quality assurance program, and continuing education requirements should detect any work performance problems that can then be addresses through performance improvement plans. An affidavit of attendance from the employee should suffice. As an alternative, the Standard might need to ‘grandfather’ employees hired before 2002.

Response from Clearinghouse Work Group (08-21-02 – Updated 4/2021)

The Work Group agrees that the intent of Standard 2 is to ensure that employees receive timely and appropriate training in order to conduct inspections in a knowledgeable and competent manner. The requirements for standardization in Standard 2 and the Quality Assurance element in Standard 4 are designed to detect performance problems and allow for correction. Given these things and the fact that jurisdictions were not required to retain evidence of training for individual employees in the past, some accommodation for employees who have previously taken the training but can no longer produce the documents should be made. We agree that a sworn affidavit from the employee, placed in the file, regarding training that has already been completed will suffice.

The proposal for exempting certain legacy employees from the requirement would need to be submitted as a proposed change to the Standard through the CFP. Providing this exception to these legacy employees, however, suggests an exemption from the requirement of the Standard, and the Work Group expressed strong opposition to exempting any employee from the requirements. All

employees, no matter how much field experience they have, must be held to the basic training and education requirements.

More experienced employees who fail to meet the Standardization and quality assurance elements of Standard 2 should receive an assessment of their performance using the guidance provided in the CFP Field Training Manual which was added in 2009. This assessment would give guidance regarding additional training needed by these employees.

9. Age of Training Records

Keywords: STD-02, trained regulatory staff, documentation of training, age of training records, records, documentation, valid training

Issue Description

Background

None provided.

Question/Problem

How old can training records be? If the past training occurred 25 years ago, is that training still valid?

Rationale

None provided.

Response from Clearinghouse Work Group (02-16-05)

The Standard does not place an age limit to qualified training, so training in the curricula areas obtained 25 years ago is still valid for purposes of meeting the Standard. The purpose of the continuing education requirement is to aid food regulatory personnel in staying current with newer developments related to job performance in food areas. Original training plus continuing education units help ensure that staff has the knowledge and skills to perform their inspection functions.

10. New employee vs. New to the food program

Keywords: STD-02, trained regulatory staff, new employees, new to food program

Issue Description

Background

None provided.

Question/Problem

Can you clarify New Employee versus New To Food Program?

Rationale

None provided.

Response from Clearinghouse Work Group (02-16-05)

New employee vs. new to food program: The phrase is intended to include any employee who has not previously worked in the retail food inspection area for your jurisdiction. A new employee would include any employee newly hired from outside the jurisdiction. If the employee comes from another jurisdiction where he or she worked in the food program area and brings his/her proof-of-training records or is able to obtain and provide those, then those records can be used to meet the requirement if the training applies. Training on certain topics such as 'prevailing statutes, regulations and ordinances may meet the requirements if the employee is coming from a jurisdiction operating under the same statutes, regulations, etc.

The new employee may require new training or additional training if the employee is coming from a jurisdiction with very different statutes, regulations, etc. 'Employees newly assigned to the food program' is intended to cover employees who may already work within the jurisdiction, but in a program area other than food. No matter the longevity of the employee within the jurisdiction, training in the required topic areas must be provided if the employee is newly assigned to the food area and has no documentation of having previously received the required training.

11. Kinds of continuing education that qualifies

Keywords: STD-02, trained regulatory staff, continuing education

Issue Description

Background

None provided.

Question/Problem

The Standard doesn't stipulate all the subject areas that qualify as continuing education. Can qualifying training include workplace violence, Spanish language, sewage control, wastewater training, etc. that may relate to job performance but not specifically food related? Why not include the RS training as acceptable?

Rationale

None provided.

Response from Clearinghouse Work Group (02-16-05)

The Standard gives examples of four types of qualifying continuing education: 1) regional seminars/technical conferences, 2) Professional symposiums/college courses, 3) workshops, 4) food-related training provided by government agencies. Although the language could be clearer, the types listed imply food-related topics. The Standard does not address other kinds of training. The purpose of the Standard is not to make well-rounded employees but rather to ensure that staff has the skills and knowledge to conduct quality food inspections. All the Standards relate to the food program specifically; therefore, the Clearinghouse agrees that other types of training, while beneficial, do not qualify toward meeting the Standard.

The question of Register Sanitarian credentials and other certificate conferring programs such as the Registered Environmental Health Specialist was addressed in an earlier Clearinghouse response (02-20-03). Credentials cannot be taken as prima facie evidence that the training requirements have been met. Individual curriculum components must be examined, just as they would be for a college degree program, in order to make a determination as to which, if any, of the training elements of the Standard have been met.

The candidate qualifies for one contact hour of continuing education for each clock hour of participation in any of the following nine activities that are related specifically to food safety or food inspectional work:

1. Attendance at FDA Regional seminars / technical conferences;
2. Professional symposiums / college courses;
3. Food-related training provided by government agencies (e.g., USDA, State, local);
4. Food safety related conferences and workshops; and
5. Distance learning opportunities that pertain to food safety, such as:
 - a. Web-based or online training courses (e.g., additional food safety courses offered

- through ORAU, industry associations, universities); and
b. Satellite Broadcasts.

A maximum of ten (10) contact hours may be accrued from the following activities:

6. Delivering presentations at professional conferences;
7. Providing classroom and/or field training to newly hired FSIOs, or being a course instructor in food safety; or
8. Publishing an original article in a peer-reviewed professional or trade association journal/periodical.

Contact hours for a specified presentation, course, or training activity will be recognized only one time within a 3-year continuing education period.

NOTE: Time needed to prepare an original presentation, course, or article may be included as part of the continuing education hours. If the FSIO delivers a presentation or course that has been previously prepared, only the actual time of the presentation may be considered for continuing education credit.

A maximum of four (4) contact hours may be accrued for:

9. Reading technical publications related to food safety.

Documentation must accompany each activity submitted for continuing education credit. Examples of acceptable documentation include:

- certificates of completion indicating the course date(s) and number of hours attended or CE credits granted;
- transcripts from a college or university;
- a letter from the administrator of the continuing education program attended;
- a copy of the peer-reviewed article or presentation made at a professional conference; or
- documentation to verify technical publications related to food safety have been read including completion of self-assessment quizzes that accompany journal articles, written summaries of key points/findings presented in technical publications, and/or written book reports.

12. Standardization of ‘old’ employees

Keywords: STD-02, trained regulatory staff, old employees, standardization, existing staff, current staff

Issue Description

Background

None provided.

Question/Problem

The Standard requires completion of standardization procedure within 18 months – is this only for new hires? If standardization took three years, including some “old” employees, would the jurisdiction not meet the standard?

Rationale

None provided.

Response from Clearinghouse Work Group (02-16-05, updated 07-31-13)

For new hires and employees assigned to the food program on or after the date of program enrollment: Standardization must be completed within 18 months of hire or assignment.

After initial standardization, Standard 2 states that employees must maintain their standardization by performing six joint inspections with the “training standard” every three years.

For FSIO’s assigned to the food program before the date of program enrollment: Staff assigned to the food program prior to the date of enrollment may or may not have been standardized using the methods and/or 18-month timeline outlined in Standard 2. In order to meet Standard 2, staff that were assigned to the food program prior to the date of program enrollment must successfully complete the standardization process outlined in Standard 2 within 18 months from the date of enrollment. This must be completed prior to the self- assessment being conducted. If these employees have not been standardized by the initial self-assessment (12 months after enrollment), then the jurisdiction does not meet Standard 2. In order to meet Standard 2 for the 2nd self-assessment (60 months after the initial self- assessment), the self- assessor should verify that:

1. These employees have been standardized (at some point between the initial self- assessment and the 2nd self-assessment) and are maintaining their standardized status (as described in Standard 2) and,
2. New hires and employees assigned to the food program on or after the date of program enrollment have completed the standardization process within 18 months and continue to maintain their standardized status (as described in Standard 2).

13. Dilution of field standardization

Keywords: STD-02, trained regulatory staff, standardization, dilution, cascade

Issue Description

Background

None provided.

Question/Problem

In field standardization (particularly when done by a local health department), is the “field standard” allowed to complete their required standardizations by going out with their own local staff? If so, is this too much dilution? If not, where do the resources come from to get these standardizations done? Can this be clarified better?

Rationale

None provided.

Response from Clearinghouse Work Group (02-16-05)

The Standard 2 criteria for standardization states that the standardization inspections must be completed with a ‘training standard’ using a process similar to the *FDA Procedures for Standardization and Certification of Retail Food Inspection/Training Officers*. The term ‘training standard’ is defined in the Standards to be “a person who has successfully completed the training elements outlined in Standard No 2; has received further training by an FDA Standardized Inspection or Training Officer; and represents the regulatory agency position on all issues.” This implies that the standardization process is limited by the number of FDA-standardized Inspection or Training Officers available. It has recently been verbalized by some parties that the FDA standardization process is limited to three levels of cascade: level 1 – FDA standardizes State Training Officers; level 2 – The State Training Officers standardize other state officers or city or county training officers; and level 3 –these State-Standardized Officers can standardize one more levels of inspectors. However, this has not been a consistent interpretation or practice across the country. In addition, there is no written policy or procedure that limits the process to three levels of cascade.

The FDA Procedures for Standardization and Certification of Retail Food Inspection/Training Officers originally targeted state officials who were the primary clients of the FDA Food Specialists. However, the FDA Procedures for Standardization and Certification of Retail Food Inspection/Training Officers, in the Introduction, **Section 1-104 Scope**, states that the procedures are intended as a model process for states, tribes, territorial governments, local municipalities, and other governing bodies that directly regulate food establishments and have food safety regulatory responsibilities at retail. So, the source document for standardization implies that the standardization process is intended to cascade down to field personnel at the lowest levels of government wherever retail food inspections are performed. In addition, the FDA has broadened the mission of the FDA Food Specialists to include some services to city, county, and local jurisdictions in response to the Standards initiatives. And indeed, if the Standards are to be applied to all jurisdictions, then a process must be established to make standardization available to all field inspectors at all levels of

government.

The CFP clarified Standard 2 by distinguishing between the Standardization process for a person who will be standardizing other employees and those employees who will be conducting inspections only. The process for those who will use the skills for conducting inspections require only 4 standardization inspections versus 8 for those who will be training other employees. See the 2011 version of Standard 2.

[NOTE: The phrase “a process similar to the FDA Procedures. . .” was clarified in a previous Clearinghouse response. See ‘Code Criteria for Standardization’ 03-20-02]

14. Is there a requirement for a ‘roster’ of employees including hire date?

Keywords: STD-02, trained regulatory staff, roster, documentation, list, Appendix B

Issue Description

Background

None provided.

Question/Problem

What type of documentation may be used to show conformance with Standard 2? For instance, in Standard 2, must a jurisdiction use the training record worksheet provided in the self-assessment instructions?

Rationale

None provided.

Response from Clearinghouse Work Group (02-16-05 – Updated 2011)

The Retail Program Standards are published with sample forms and worksheets. However, jurisdictions may use alternative forms and worksheets so long as they capture the same information identified on the sample forms and worksheets.

15. Mutual standardization by two parties in different jurisdictions

Keywords: STD-02, number of inspections, cross standardization, mutual standardization

Issue Description

Background

As an FDA Specialist, I have an enrolled county with a staff of two people. They have been standardized by a state standardizing officer, but the state procedure uses only six inspections in the process. A clearinghouse response issued 05-20-02 stated that the standardization must include eight joint inspections in order to be similar to the FDA procedures. So, they each need two more standardization inspections in order to meet the requirements of Standard 2. They have asked if they can standardize each other since they are both state- standardized and would be, in theory, able to standardize their own staff if they had a bigger group. The plan would mean that each person would serve as the 'standard' on 2 inspections of the other candidate, and then they would switch and do 2 more.

Question/Problem

If these described joint inspections are acceptable for standardization under Standard 2, would they also meet the requirements for joint field inspections under Standard 4?

Rationale

This proposal has merit and should be acceptable. It would facilitate uniformity because they would be going out together and able to make sure they are both focusing and making judgments in a consistent manner.

Response from Clearinghouse Work Group (8-16-06)

The Clearinghouse agrees that the proposal to complete two additional standardization inspections to meet the required eight inspections by alternately serving as the 'standard' meets the intent of the Standardization process. This process will foster uniformity between the two inspectors who find themselves in a unique position because of the size of their staff. Small jurisdictions have special challenges in meeting the Standards requirements, and leeway must be given for creative solutions such as this one.

As to whether standardization inspections can also be used as a part of the field inspection evaluation measure for Standard 4, see the Clearinghouse response under Standard 4, question 4, answered on 2-16-5.

16. Field Training for a Food Safety Inspection Officer(FSIO)

Keywords: STD-02, FISO, Risk Category 1 Food Establishment.

Issue Description

Background

In our department we have several Environmental Health Specialists who are assigned to inspect only Risk Category 1 retail food establishments. Examples of these types of establishments are: convenience stores, drug stores, and retail food stores with no deli or food prep. Training for this staff includes all the requirements of Standard 2, except joint field training. The joint training includes joint inspections of category 1 establishments only.

The Appendix B-2 CFP Field Training Plan and Log for our staff conducting inspections of Risk Category 1 establishments has been designed to include competencies for category 1 inspections types only. It makes sense then to train them in this category of inspections.

Should they advance to conducting inspections in the other categories, additional training and joint inspections would be added to their training plan and training conducted to meet those requirements?

We feel it is the best use of our resources to train staff specifically to the types of inspections assigned to the inspection staff.

Question/Problem

Is it acceptable for staff that only conducts Category 1 inspections to only complete joint field training in category 1 establishments? It is our understanding that the joint inspection part of training can only be in Risk Category 2, 3, or 4 establishments.

Response from Clearinghouse Work Group (10-10-2014)

The purpose of Standard 2 is to ensure Food Safety Inspection Officers (FSIOs) have the knowledge, skills and abilities to adequately perform their duties. The Standard requires a training program with five components:

1. Pre-Inspection (Step 1)
2. Initial Field Training and Experience (Step 2)
3. Independent Inspections and Completion of All Curriculum Elements (Step 3)
4. Field Standardization (Step 4); and
5. Continuing Education and Training (Step 5).

Standard 2 prescribes specific guidance that a training program must implement in order for an enrolled jurisdiction to achieve conformance. In order to achieve conformance, ninety percent (90 %) of the retail food regulatory program inspection staff (Food Safety Inspection Officers - FSIO) must successfully complete the required elements of the 5-step training and standardization process within 18 months of assignment to the retail food regulatory program.

With respect to facility type, Standard 2 prescribes the following:

1. For the Initial Field Training: The 25 joint field inspections are to be comprised of both “demonstration” (trainer-led) and “training” (trainee-led) inspections and include a variety of retail food establishment types available within the jurisdiction. FSIOs must successfully complete a joint field training process, similar to that presented in the *CFP Field Training Manual*, prior to conducting independent inspections and re- inspections of retail food establishments in risk categories 2, 3, and 4 as presented in Appendix B-3.
2. For the Independent Inspections: If the jurisdiction’s establishment inventory contains a sufficient number of facilities, the FSIO must complete 25 independent inspections of food establishments in risk categories 3 and 4 as described in Appendix B-3. For those jurisdictions that have a limited number of establishments which would meet the risk category 3 and/or 4 criteria, the FSIO must complete 25 independent inspections in food establishments that are representative of the highest risk categories within their assigned geographic region or training area.
3. For Field Standardization: Within 18 months of employment or assignment to the retail food program, staff conducting inspections of retail food establishments must satisfactorily complete four joint inspections with a “training standard” using a process similar to the “FDA Standardization Procedures.” Successful completion of field standardization, and re-standardization, requires selection of establishments in risk category 2, 3, or 4.

Standard 2 requires that the independent inspections and field standardization be conducted in risk category establishments higher than category 1. If staff members were only trained in risk category 1 establishments, they may be ill equipped to deal with menu changes, process changes, and equipment changes that result in a more complex operation. FSIOs need exposure to a variety of different food establishments to be able to determine if the food establishment is properly categorized, determine the compliance status of Risk Factors and Good Retail Practices (GRPs), determine appropriate immediate corrective action if needed, and promote active managerial control over the risk factors using various strategies. These actions require highly trained, competent professionals.

17. Standardization of a Training Standard

Keywords: STD-02, Training Standard, Standardization

Issue Description

Background

None provided.

Question/Problem

A FSIO is standardized to meet Standard 2 (four standardization inspections were conducted). Subsequently, that FSIO has a need to standardize other FSIOs. Prior to standardizing other FSIO's, does that FSIO (standardized with four inspections) need to be re-standardized with an additional eight inspections by a training standard?

Response from Clearinghouse Work Group (10-10-2014)

In order to achieve conformance with Standard 2, staff conducting inspections of retail food establishments must satisfactorily complete four joint inspections with a "training standard" using a process similar to the *FDA Procedures for Standardization of Retail Food Safety Inspection Officers*. The jurisdiction's "training standard" must meet all the requirements for conducting field standardizations as presented in the definition section of the Standards.

A "Training Standard" is defined as an individual who has successfully completed the following training elements AND standardization elements in Standard 2 and is recognized by the program manager as having the field experience and communication skills necessary to train new employees. The training and standardization elements include:

1. Satisfactory completion of the prerequisite curriculum;
2. Completion of a field training process similar to that contained in Appendix B-2 CFP Field Training Manual;
3. Completion of a minimum of 25 independent inspections and satisfactory completion of the remaining course curriculum; and
4. Successful completion of a standardization process based on a minimum of eight inspections that includes development of HACCP flow charts, completion of a risk control plan, and verification of a HACCP plan, similar to the FDA standardization procedures.

As the Standard is currently written, the primary difference between a standardized FSIO and a training standard is the number of standardization inspections required. A standardized FSIO must complete 4 standardization inspections, while a training standard must complete 8 standardization inspections. In both cases, the *FDA Procedures for Standardization of Retail Food Safety Inspectors* allows up to 12 months to complete the standardization process. Thus, an individual who has successfully completed 4 standardization inspections could complete an additional four standardization inspections with a Training Standard within the same 12-month period in order to be recognized as a training standard.

STANDARD 3 - Inspection Program Based on HACCP Principles

This Standard applies to the utilization of HACCP principles to control risk factors in a retail food inspection program.

1. Guidance for Short- and Long-term Compliance Policy

Keywords: STD-03, HACCP-Based Inspection Program, good compliance policies on-site corrective actions, long-term control, policies, policy examples, on-site correction, long-term correction, short-term compliance, long-term compliance

2. Better Guidance for Establishment Risk Categories

Keywords: STD-03, HACCP-Based Inspection Program, risk categories, Annex 4, determining risk categories, priority categories, inspection priorities, inspection categories

3. Variance policy

Keywords: STD-03, HACCP-Based Inspection Program, variance policy, requirement for variance, variance

4. Multiple Inspection Forms

Keywords: STD-03, HACCP-Based Inspection Program, multiple inspection forms, IN, OUT, NA, NO, low-risk firms, priority, multiple forms

5. Design and Use of a State Inspection form to Conform with the Program Standards

Keywords: STD-03, Inspection Program Based on HACCP Principles; STD-04, Uniform Inspection Program; and STD-06, Compliance and Enforcement, inspection forms, inspection uniformity, risk-based inspection; IN, OUT, NA, NO, low-risk firms, priority

6. Statement Enforcement Policy

Keywords: STD-03, FDA

1. Guidance for short-term and long-term compliance policy

Keywords: STD-03, HACCP-Based Inspection Program, good compliance policies on-site corrective actions, long-term control, policies, policy examples, on-site correction, long-term correction, short-term compliance, long-term compliance

Issue Description

Background

None provided.

Question/Problem

There is a lack of guidance in the area of policy development concerning short- and long- term compliance issues. Are resources available to assist a jurisdiction that is attempting to develop compliance and enforcement policies?

Recommendation

None provided.

Response from Clearinghouse Work Group (11-20-02 Updated 2013)

FDA has partnered with FOODSHIELD to enable jurisdictions to post and share templates, policies and other helpful information to assist one another in working on and achieving conformance with Standards. If a regulator wishes to join this network, they should contact their assigned FDA Regional Retail Food Specialist. Their assigned FDA Regional Retail Food Specialist can be found by going to www.fda.gov/RetailProgramStandards and clicking on “Directory of FDA Regional Retail Food Specialists”.

2. Better guidance for establishment risk categories

Keywords: STD-03, HACCP-Based Inspection Program, risk categories, Annex 4, determining risk categories, priority categories, inspection priorities, inspection categories

Issue Description

Background

None provided.

Question/Problem

Standard 3 states that jurisdictions must develop and use a process that groups food establishments into at least three categories based on potential and inherent food safety risks. Are there resources or guidance available to help a jurisdiction develop establishment risk categories?

Recommendation

None provided.

Response from Clearinghouse Work Group (11-20-02)

There is guidance for determining risk categories provided in Annex 4 of the *Food Code*. In addition, this may be another area where the jurisdictions, themselves, may be able to provide good examples for others to use. (please see response to Question 1 for Standard 3).

3. Variance Policy

Keywords: STD-03, HACCP-Based Inspection Program, variance policy, requirement for variance, variance

Issue Description

Background

None provided.

Question/Problem

Does the variance policy referenced in step 5 of Standard 3 have to address the jurisdiction's specific code requirements and sections for a variance?

Recommendation

None provided.

Response from Clearinghouse Work Group (2-16-05 Updated 2020)

If a jurisdiction has a variance requirement written into its code, it is a good idea to reference the appropriate sections in the policy; however, there is no requirement to do so. The policy should provide any details or procedures not specified in the code language. For jurisdictions that did not include a variance process in its code language, details such as those included in FDA Food Code in sections 8-103.10, 8-103.11, and 8-103.12 and through to 8-201.14 should be spelled out in the policy.

4. Multiple Inspection Forms

Keywords: STD-03, HACCP-Based Inspection Program, multiple inspection forms, IN, OUT, NA, NO, low-risk firms, priority, multiple forms

Issue Description

Background

None provided.

Question/Problem

Suppose a jurisdiction has an electronic inspection system with different forms that can be selected for different types of establishments. The forms do not have default answers, but all the questions regarding risk factors and interventions do not appear on the forms for low-risk firms. The forms for medium- and high-risk firms have IN, OUT, NA and NO since these are the firms where risk factors and interventions apply. The low-risk forms do not have the IN, OUT, NA and NO since the jurisdiction does not want to dedicate time going through questions for those firms where the activities don't occur, and the risk factors don't apply.

The system does allow for 'upgrading' a firm to a new form when the nature of its business changes. Would this meet the Standard? Can the Standard 3 requirement for a form showing the IN, OUT, NA, and NO for the risk factors and interventions be met by using a different form for high- and medium-risk firms from the form used for low-risk firms?

Recommendation

None provided.

Response from Clearinghouse Work Group (2-16-05)

Assuming that the jurisdiction's method of priority categorization restricts the low-priority firms to those in which no potential risk factors occur and no interventions are necessary, then the system would be acceptable. The key to acceptability of this system, however, is not the fact that an establishment is in a low-risk category, but that none of the potential risk factors and interventions apply to its operation. Standard 3 does not require that IN compliance, OUT of compliance, Not Applicable, and Not Observed be marked for every inspection item, only for the risk factors and Food Code interventions. So, having a secondary form for use when no risk factors or interventions apply to that particular establishment would not violate the intent of the Standard. Also, a policy, procedure or system should be in place that establishes a way to determine when conditions in an establishment change such that they require the form containing the IN, OUT, NA, and NO and that the switch to that form occurs.

5. Design and use of State inspection forms to conform with Program Standards

Keywords: STD-03, Inspection Program Based on HACCP Principles; STD-04, Uniform Inspection Program; and STD-06, Compliance and Enforcement, inspection forms, inspection uniformity, risk-based inspection; IN, OUT, NA, NO, low-risk firms, priority

Issue Description

Background

Much of the criteria contained in Standards #3, 4, and 6 are predicated on the inspection program containing risk-based approaches. The intent of designing inspection forms with the four options was to ensure that the inspector examined and evaluated items related to the factors most often associated with foodborne illness.

Question/Problem

The inspection report must use IN, OUT, NA, NO. Can an electronic version of this report default to IN compliance?

Recommendation

Some facts about the proposed inspection form:

- Rather than clearly marking an observation as "IN", the form leaves the assumption that if no points are taken, or nothing is marked, the item is "IN".
- "NO" and "NA" are options for observations on items to which they do not apply
- Not many counties are on electronic forms, so an automatic default to "OUT" or blocking inappropriate "NA" and "NO" would not be blocked.

Response from Clearinghouse Work Group (3-21-08)

The intent of the use of IN, OUT, NA and NO is that the inspector must choose from the options. An important item to remember is that this is required for risk factors and interventions only and is not required for all GRPs. Also, an option that is not appropriate need not be included. This is the same system/format as the FDA Risk Factor Study data collection form.

The requirement for an inspection form showing IN, OUT, NA, and NO for the risk factors and interventions can be met by using a different form from the model form in the Annex of the FDA Food Code (Form 3-A), however, the need for the inspector to make a decision about the compliance status of the risk factors and interventions must be maintained.

The importance of the NO is that an inspector could time their next routine inspection to ensure they observe the practice that was not observed during the time of this inspection. Two common examples would be cooling or reheating Time/Temperature Control for Safety Food (TCS). These processes generally occur over a period of time and often require two data points or measurements over time to determine compliance. Additionally, selecting NO may alert staff that the establishment does not cool foods in the morning or does not reheat foods in the evening. Based on the discussion above, an electronic form that defaults to "IN compliance", would not meet the intent of (part 1 of) Standard 3.

6. State Enforcement Policy

Keywords: STD-03, FDA

Issue Description

Background

As a result of 2019 legislation, our state implemented a new, progressive methodology for enforcement that became effective on January 1, 2020. This protocol takes into consideration not only the severity of the identified violation but also the prevalence of violations observed. The legislation provides for a uniform system to communicate inspection results which is based on an overall point system driven by assigned values of low, medium, and high pervasiveness. This point system establishes the criteria by which resources are to be directed for additional full re-inspections or enforcement activities.

Pervasiveness is the overall evaluation of specific issues observed to determine how prevalent the violation is. Using all available information such as active managerial control, previous inspection records, long term controls, and overall risk/severity of the specific situation, an inspector assigns a violation pervasiveness. This system then classifies routine and re-inspections into one of three ratings (“Pass,” “Re-inspection,” or “Closed”) based on the total cumulative violations/ points. This rating is then used to determine the next required action: no required action (the next routine inspections is scheduled), a full facility re-inspection, or the immediate suspension of a license to operate. Facilities that score less than 50 points pass the inspection and do not have to demonstrate correction of risk factor or intervention violations through re-inspection or other follow-up activities.

We are seeking clarification for criteria 4 of standard 3 – the requirement for an implemented policy that requires on-site corrective actions or follow-up activities for out of compliance foodborne illness risk factors. The policies established in Standard 3 for onsite and long-term corrective actions link to Standard 6, Compliance and Enforcement. The violations in the Standard 6 CFP crosswalk outlines violations that should have corrective actions, these violations include interventions and core violations as well as risk factors.

Question/Problem

The CFP cross-walk contains very specific code citations within items 1-29 of the FDA inspection form for risk factors and interventions that include Priority, Priority Foundation, and Core violations. Are core and intervention violations intended to be included in the requirement for on-site corrective actions and follow-up activities?

Does our inspection program meet standard 3 if we do not require corrective action or follow-up activities for violations that pose a low risk to public health?

Rationale

Standard 3 specifically does not appear to align with Standard 6 for State and Local programs that have developed alternative systems of assessment that can also accomplish the same goal. There are situations where appropriate corrective actions cannot occur at the time of the inspection and the violation has a low risk to the public's health. Because of the nuances in the code and a focus on mitigating risk and assessing active managerial control, it does not seem appropriate to require corrective action and follow-up activities for every situation in which risk-factors are out of compliance.

Standard 3 – Criteria 4

4. Corrective Action Policy

- a) The jurisdiction has a written and implemented policy that requires on-site corrective action for foodborne illness risk factors observed to be out of compliance.
- b) The jurisdiction has a written and implemented policy that requires discussion for long- term control of foodborne illness risk factors.
- c) The jurisdiction has a written and implemented policy that requires follow-up activities on foodborne illness risk factor violations.

Response from the Clearinghouse (11-30-22)

No. Standard 3 requires that a jurisdiction develop and implement a policy that requires timely corrective actions as appropriate to the type of violation. In some cases, an actual physical visit to an establishment may not be necessary, however documented activities should lead to a desired outcome where a regulatory inspection system uses HACCP principles to identify risk factors and to obtain immediate and long-term corrective action for recurring risk factors.

Core violations do not require an immediate on-site correction but follow up should be performed.

According to the 2017 FDA Food Code, the following is required: 8-406.11 Time Frame for Correction.

- (A) Except as specified in (B) of this section, the PERMIT HOLDER shall correct CORE ITEMS by a date and time agreed to or specified by the REGULATORY AUTHORITY but no later than 90 calendar days after the inspection.
- (B) The REGULATORY AUTHORITY may approve a compliance schedule that extends beyond the time limits specified under (A) of this section if a written schedule of compliance is submitted by the PERMIT HOLDER and no health HAZARD exists or will result from allowing an extended schedule for compliance.

STANDARD 4 - Uniform Inspection Program

This standard applies to the jurisdiction's internal policies and procedures established to ensure uniformity among regulatory staff in the interpretation of regulatory requirements, program policies and compliance / enforcement procedures.

1. Citing Code Provisions during Inspections

Keywords: STD-04, Uniform Inspection Program, code citation, quality assurance, quality assurance elements, quality assurance aspects, code provisions

2. Completion of Assessment Protocols

Keywords: STD-04, Uniform Inspection Program, quality assurance program, gaps, identifying gaps, self-assessment, self-assessment process, self-assessment of Standard 4, field review, field visits, aspects, field evaluations

3. Use of Standardization Inspections for Field Evaluation Inspections under Standard 4

Keywords: STD-04, Uniform Inspection program, standardization inspections, field evaluation inspections, quality assurance, quality assurance inspections, field evaluations, performance measurement

4. Consultant Inspectional Agencies

Keywords: STD-04, STD-06, Consultant, delegation, enforcement

5. State Field Evaluations and Inspection Report Reviews

Keywords: STD-04, Uniform Inspection Program, Field Evaluations, Inspection Reports, External Party

6. Auditor Verifying Training Associated with Standard 2

Keywords: STD-02, STD-4, Field Exercises, Verification Audit, File Review

1. Citing Code provisions during inspections

Keywords: STD-04, Uniform Inspection Program, code citation, quality assurance, quality assurance elements, quality assurance aspects, code provisions

Issue Description

Background

Standard #4 requires an on-going quality assurance program that evaluates inspection uniformity to ensure inspection quality, inspection frequency and uniformity among the regulatory staff. The assessment protocol defines 10 areas for evaluating each candidate. Area #4 requires the assessment of the candidate to ensure that the proper local code provisions for the CDC-identified risk factors and Food Code interventions are cited during inspections.

Question/Problem

Is the expectation of this component of the quality assurance evaluation that the candidates cite the specific code section number for each of the violations recorded on the inspection report?

Rationale

While we recognize the importance of understanding the regulatory foundation for all violations cited during inspections, the citing of specific section numbers for each violation recorded on the inspection form seems unduly arduous. The FDA, in its own *Food Code* standardization process does not require this level of documentation. Instead a reference sheet is used that associates a section number with the specific out-of-compliance observation.

To further complicate this assessment, many jurisdictions have condensed the FDA Food Code Standardization form into fewer items under each of the risk factor. The 5- page FDA Standardization form, while a good data collection tool, is not considered a good communication tool for prioritizing critical areas with the target audience – retail food protection managers/operators. State and local jurisdictions are exploring methods to condense the form and still maintain a meaningful assessment of risk factors as identified in FDA’s Baseline. This often leads to consolidating items to shorten the inspection form.

Consolidating items under broad risk categories present the challenge of assessing which provision of the Food Code the candidate actually cited when noting the violation. The FDA Standardization form can be used to illustrate this point. In FDA’s reference sheet for citing specific sections of the Food Code, six (6) separate sections of the Food Code are listed under:

Food from Approved Source

A. All food from regulated food processing plants/no home prepared or canned foods.

3-201.11 Compliance with food law

3-201.12 Food in a hermetically sealed container

- 3-201.13 Fluid milk and milk products
- 3-202.13 Shell eggs
- 3-202.14 Eggs and milk products, pasteurized
- 5-101.13 Bottled drinking water

The candidate is only required to make a determination of whether “A” above is “IN”, “OUT”, Not Observed (“NO”), or Not Applicable (“NA”). The candidate is not required to assess which one of the Sections applies unless specifically asked to do so by the Standard.

FDA has recognized the difficulty with citing specific code provisions within its own standardization procedure. We believe that the assessment of this component should be the jurisdiction’s development of a reference sheet much as FDA uses for citing specific sections of the Code. Assessing specific candidates' abilities to cite the appropriate section of their code as it pertains to observed violation should be a component of the 2 field inspections conducted by the candidate and the programs quality assurance officer.

Response from Clearinghouse Work Group (2-20-02 Updated 4/1/2021)

The submitter raises several issues that need clarification.

Standard No. 4 does not dictate a particular form to be used in routine inspections. Certain provisions of Standard No. 3 and Standard No. 6 require that the risk-control factors and risk interventions be identified as "in, out, not applicable, or not observed." Those provisions aside, there are no prohibitions against combining items on a routine inspection form. When several provisions of the local code are combined under one item, it is a very good idea that a reference sheet be made available to inspectors; otherwise, uniformity of marking becomes very difficult to achieve. The reference sheet should clearly list the provisions that have been combined under each item heading or number.

Standard No. 4 is made up of two parts. The first requirement is for an on-going quality assurance program that assures quality inspections in the 20 identified aspects and describes the actions that will be implemented when deficiencies in any of the 20 are identified. The second requirement describes the measurement that will be used to determine whether the quality assurance program in place is successful. The Standard does not dictate the specifics of the quality assurance program itself.

One of the quality aspects of Standard No. 4 is that each inspector is able to cite the proper local code provisions for the CDC-identified risk factors and Food Code interventions, but accuracy in citing all local code provisions (Good Retail Practices) is not required. This is a reasonable requirement in that the legal process used for enforcement in the majority of jurisdictions requires that a firm accused of a violation of a regulation or code must be charged against a particular provision of that regulation or code. It is reasonable to expect that an inspector with the responsibility and authority to charge a violation should know, or be able to identify, the specific charge that they are making. For example, when an inspector cites a firm for serving home-canned foods, he/she should know that the proper

citation is the one related specifically to "hermetically sealed containers." Standard No. 4 requires that you address and assure in some fashion that your inspectors are able to do this but does not dictate your process.

The process for measuring the success of your quality assurance program is described in the *Standard 4: Self-Assessment Instructions and Worksheet* document. This procedure involves two on-site inspections during every self-assessment period (three years). A file review of the three most recent inspection reports of the same establishments must accompany the field exercise in order to be able to judge the quality aspects:

- Repeat violations;
- Follow up on compliance and enforcement;
- Discussion and documentation of long-term corrective options; and
- Assignment of the firm to the proper priority category and inspection frequency.

Notice that the file review does not specifically target aspect 4. - Citing of proper local code provisions. Determinations of whether the inspector is able to cite proper local code provisions may be addressed during the one-on-one, on-site inspections, standardizations exercises, or other methods the jurisdiction deems appropriate.

There is just a final caution that it may not be wise to rely on the measurement/testing process of Standard No. 4 as your sole check for quality. While it is practical and acceptable to combine this QA check as a part of the standardization process, they are intended to serve separate purposes. When FDA personnel standardize state and local officials, the submitter is correct in stating that citing the specific provision is not required. That is because most jurisdictions that have adopted the *Code* use a different paragraph numbering system that is compatible with their own regulations or laws. However, in the FDA internal personnel standardization process, individual *Code* section and paragraph citing is required. It is recommended that during your internal standardization process you include a verification of the knowledge of specific local code provisions.

2. Completion of Assessment Protocols

Keywords: STD-04. Uniform Inspection Program, quality assurance program, gaps, identifying gaps, self-assessment, self-assessment process, self-assessment of Standard 4, field review, field visits, aspects, field evaluations

Issue Description

Background

Much of the criteria contained in Standard 4 are predicated on an inspection program containing risk-based approaches outlined in earlier Standards - in particular Standard #3. Our initial review of Standard #4 indicates that many of the 10* items contained as part of the Quality Assurance Program have not as yet been integrated into our retail food program. Some of these items include:

- Documents compliance status of risk factor/interventions;
- Obtains & documents on-site corrective action for risk factors appropriate to the violation;
- Documents offered options for long-term control of risk factors; and
- Verifies that the establishment is in the proper risk category.

Since our retail food program is lacking some key components, the assessment protocol outlined in Standard #4 cannot be completed as designed. Assessing staff's consistency in these areas through joint on-site inspections and corresponding file reviews seems premature until all the components are in place.

Question/Problem

Our internal self-assessment process has revealed significant gaps in our quality assurance program. Several components contained in Standard #4's criteria must be developed and integrated into our program before a meaningful field and file review can be performed against all the 10 components that should be included in a Quality Assurance Program.

For this initial self-assessment, is it sufficient to note the gaps within our current quality assurance program as rationale for why we do not meet Standard #4, or must we also complete a field and file review for each of our staff? If we are to continue on with a field and file review, against what criteria do we assess compliance with the Q.A. components we already have in place?

Rationale

None provided.

Response from Clearinghouse Work Group (03-20-02)

If a cursory look at a Standard compared to your program is sufficient to reveal gaps that prevent you from meeting the Standard and provides a rationale for your conclusion, then it is not necessary for you to proceed further. No one wants you to spend time that is not productive. You only need go as far as necessary to identify the gaps you would need to fill to help you establish a plan for ultimately meeting the Standard.

*5/2021 note: As a result of a Conference for Food Protection issue submittal, standard 4's quality assurance elements were changed from 10 to 20.

3. Use of standardization inspections for Field Evaluation Inspections under Standard 4

Keywords: STD-04, Uniform Inspection program, standardization inspections, field evaluation inspections, quality assurance, quality assurance inspections, field evaluations, performance measurement

Issue Description

Background

None provided.

Question/Problem

In order to achieve conformance with Standard 4, field assessments (and an associated file review) must be conducted with food safety inspection officers. Can this field assessment process occur at the same time as a Standardization inspection?

Rationale

None provided.

Response from Clearinghouse Work Group (02-16-05)

Yes, Standardization inspections may also be used as the field component of Standard 4's effectiveness measure. Whether this is appropriate or not will depend on a jurisdiction's standardization process, and so this practice will need to be evaluated on a case by case basis. There are specific performance elements that are to be evaluated during the Standard 4 field assessment inspections. These include such things as reviewing and acting on repeated or unresolved previous violations, following through on compliance and enforcement actions, obtaining immediate corrective actions and effectively communicating inspectional findings to the establishment's management. Some jurisdictions do not include all of these aspects of a regular inspection in a standardization inspection in order to shorten the time needed to complete the process. If all of the elements to be measured under Standard 4 are not a part of the standardization inspection process, then it would not be appropriate to conduct these field evaluations simultaneously. However, if the standardization inspections include all the pertinent elements of a regular inspection so that all ten of the elements of Standard 4 can be evaluated, there is nothing to prohibit these inspections from being conducted at the same time.

4. Consultant Inspectional Agencies

Keywords: STD-04, STD-06, Consultant, delegation, enforcement

Issue Description

Background

Government agency A is enrolled in the Program Standards. Government agency A conducts inspections based on the most current published FDA Food Code and uses the Inspection Report Form in Annex 7 of the Food Code. Government agency A also has written procedures for compliance and enforcement. However, legal authority for requiring compliance and enforcement belongs to Government Agency B. Therefore, inspection results are recorded by Agency A, and provided to Agency B. In addition to the inspection results, Agency A also provides consultation and recommended corrective actions to Agency B. Agency A recommends corrective actions that are consistent with Standard 4 and Standard 6. Agency B is responsible for determining when compliance and enforcement actions are necessary and is responsible for implementing compliance and enforcement actions. Agency B may or may not implement compliance and enforcement actions that are consistent with Standard 4 and Standard 6.

Question/Problem

Can a government agency achieve conformance with Standard 4 if they lack the legal basis to require immediate onsite compliance and/or lack the legal basis to implement an enforcement action when immediate onsite compliance is not possible?

Rationale

None provided.

Response from Clearinghouse Work Group (02-16-05)

In order to achieve conformance with Standard 4, a government agency must have the legal authority to require immediate on-site compliance for imminent health hazards and priority items and must be able to take enforcement action when immediate on-site compliance is not possible.

When conducting a self-assessment for Standard 4, the government agency must review food safety inspection officer's performance against the twenty quality elements listed in Standard 4. The following two quality elements pertain to compliance and enforcement:

1. Follows through with compliance and enforcement.
2. Obtains and documents on-site corrective action for out-of-control risk factors at the time of inspection as appropriate to the type of violation.

The ability to require immediate on-site compliance for imminent health hazards and priority items, and the ability to take enforcement action when immediate on-site compliance is not possible, is necessary for staff members to achieve these quality elements. Without this ability, food safety inspection officers will be unfairly penalized for not achieving these performance elements. Alternatively, an agency will never be able to assess achievement of these performance elements,

thus basing a determination of conformance with Standard 4 on the assessment of only eight performance elements instead of all ten performance elements.

This is less stringent than the level of achievement necessary for a jurisdiction that must assess performance of all ten performance elements. In this case, the jurisdiction cannot fully meet the Standard.

It is important to note that even if an enrolled jurisdiction cannot achieve conformance with Standard 4 due to the lack of legal authority for compliance and enforcement, they can still use the applicable performance elements in Standard 4 to evaluate inspection performance. These results can be useful for continually improving a food safety program.

5. State Field Evaluations and Inspection Report Reviews

Keywords: STD-04, Uniform Inspection Program, Field Evaluations, Inspection Reports, External Party

Issue Description

Background

Our state agency will be conducting field evaluations and inspection report reviews that follow Standard 4 requirements as part of an evaluation for agencies that have delegated authority to conduct retail food inspections under a formal agreement.

Question/Problem

Will the agencies be able to utilize the field evaluations and inspection report reviews conducted by our program towards the requirements in Standard 4, even though they will not be conducted internally?

Rationale

None Provided

Response from Clearinghouse Work Group (9-25-18)

Yes, Agencies can utilize field evaluations and inspection reports conducted by an external party if that external party has the legal authority to require immediate on-site compliance for imminent health hazards and priority items in addition to being able to take enforcement action when immediate on-site compliance is not possible.

The formal agreement currently in place that establishes the legal authority should reflect the ability of the delegate to require immediate on-site compliance and the ability for the delegate to take enforcement action when immediate on-site compliance is not possible. Legal delegations can be accomplished using several different written instruments such as delegation agreements, contracts for service, or memoranda of understanding.

For example, a state agency staff conduct program evaluations of delegated local agencies. Joint agency field evaluations and inspection report reviews are conducted as part of the program evaluation. State Statutes maintain that the state agency is ultimately responsible for compliance and enforcement of the rules, thus the field evaluation and inspection report reviews can be used towards the requirements for Standard 4.

6. Auditor Verifying Training Associated with Standard 2

Keywords: STD-02, STD-04, Field Exercised, Verification Audit, File Review

Issue Description

Background:

Currently there are no specifications that require an auditor to verify that the individual(s) performing the field reviews of other staff members has completed Steps 1-3 in Standard 2. Would this require the auditor to verify via training records, affidavits, and the like, that the individual(s) performing the field reviews has completed these steps? If so, is it recommended that a field evaluator course, track, and/or certificate be established to demonstrate Steps 1-3 of Standard 2 have been completed. This will be especially beneficial when auditing large jurisdictions with many individual(s) performing the field reviews.

Question/Problem

When conducting the field exercises and applicable file review for Standard #4, does the staff member conducting the review need to be trained in Standard #2, Trained Staff? Does an auditor need to verify that this training has occurred?

Response from Clearinghouse Work Group (1/1/21)

The Standard 4 Self-Assessment Instructions and Worksheet states that field reviews must be conducted by someone who has:

- A. Completed Steps 1-3 in Standard 2; and
- B. Recognized by the program manager as having the field experience and communication skills necessary to train new employees.

Currently there are no requirements that an auditor verify that staff members conducting field reviews with other employees have completed steps 1-3 in Standard 2. An auditor is not required to verify additional paperwork related to any Standard 2 criteria when conducting the Standard 4 verification audit.

STANDARD 5 - Foodborne Illness and Food Defense Preparedness and Response

This standard applies to the surveillance, investigation, response, and subsequent review of alleged food-related incidents and emergencies, either unintentional or deliberate, which results in illness, injury and outbreaks.

1. Final Outbreak Reports

Keywords: STD-05, foodborne illness reports, foodborne illness, illness reports, CDC, complaints, complaint reports, reports, report distribution

2. Complaints received by a jurisdiction other than foodborne illness complaints

Keywords: STD-05, complaints, risk, other complaints, prioritizing complaints

3. County independent of state on recall policy

Keywords: STD-05, recalls, recall, recall policy, conducting recalls

4. Must the trend analysis required in Standard 5 include all the data from a complaint log or database or will an analysis of all data from the epidemiology data base be sufficient to meet the intent of the Standard?

Keywords: STD-05, trend analysis, complaints, complaint logs, complaint database, analysis

5. What triggers the need for a mock foodborne illness investigation?

Keywords: STD-05, foodborne illness, investigation, mock investigation, table top, illness investigation

6. Alternative Lab Contacts

Keywords: STD-05, Foodborne Illness, Preparedness, Laboratory, Contacts

7. MOU or LOU with Laboratory

Keywords: STD-05, Memorandum of Understanding, Laboratory, Documentation

1. Final Outbreak Reports

Keywords: STD-05, foodborne illness reports, foodborne illness, illness reports, CDC, complaints, complaint reports, reports, report distribution

Issue Description

Background

None provided.

Question/Problem

The second paragraph under “Description of Requirement” in Standard 5 discusses follow-up on complaints of alleged food-related illness or injury. At the end of that paragraph, it says “the final report of the investigation is shared with the state epidemiologist and the Centers for Disease Control and Prevention.” Are all complaint follow-ups to be reported to the epidemiologist and CDC or only those that meet the definition of a foodborne illness?

Rationale

None provided.

Response from Clearinghouse Work Group (03-20-02; Updated 2011)

The final reports of investigations that meet the definition of a foodborne illness should be shared with the state epidemiologist and CDC. The paragraph does seem to mix “apples and oranges.” The intention is for you to record all complaints of alleged illness or injury, to perform an assessment of the complaint to determine appropriate follow-up, and to link that information to the establishment record for retrieval purposes in order to identify patterns and trends. In some instances, an investigation may be performed, and a short report written on complaints that do not meet the official definition of a foodborne illness. You are not required to share work reports of that nature with the state epidemiologist and CDC. For all investigations that meet the definition of a foodborne illness, a final report is to be written and shared with the state epidemiologist and CDC.

2. Complaints received by a jurisdiction other than foodborne illness complaints

Keywords: STD-05, complaints, risk, other complaints, prioritizing complaints

Issue Description

Background

None provided.

Question/Problem

Where is it required that a jurisdiction must prioritize and respond to complaints based on risk? An example is hair in food or a child throwing up in a restaurant.

Rationale

None provided.

Response from Clearinghouse Work Group (02-16-05; Updated 2011)

Standard 5 does not specify that complaints need to be prioritized according to risk. It addresses the logging of and response to all alleged food-related illness or injury, but other types of complaints are not required to be logged or prioritized to meet the Standard.

3. County independent of State on recall policy

Keywords: STD-05, recalls, recall, recall policy, conducting recalls

Issue Description

Background

None provided.

Question/Problem

If a county has a policy about how they work with the state on recalls, but the state does not have a policy similar to 21 CFP, Part C, and the county does not have authority for conducting recalls, can the county meet Standard 5?

Rationale

None provided.

Response from Clearinghouse Work Group (02-16-05)

Yes, as long as the county's policy covers its own responsibilities and has procedures for conducting effectiveness check of actions by firms when requested by cooperating agencies.

4. Must the trend analysis required in Standard 5 include all the data from a complaint log or database or will an analysis of all data from the epidemiology data be sufficient to meet the intent of the Standard?

Keywords: STD-05, trend analysis, complaints, complaint logs, complaint database, analysis

Issue Description

Background

None provided.

Question/Problem

Under the Trend Analysis section, it states that at least once per year, the program must conduct a review of the data in the complaint log or database and the illness and injury investigations to identify trends and possible contributing factors that are most likely to cause illness or injury. These periodic reviews of multiple complaints and contributing factors may suggest a need for further investigations and may suggest steps for illness prevention. The review should be conducted with prevention in mind and focuses on, but is not limited to, the following:

- Multiple complaints on the same establishment;
- Multiple complaints on the same establishment type;
- Multiple complaints implicating the same food;
- Multiple complaints associated with similar food preparation processes;
- Number of laboratory-confirmed, food-related outbreaks;
- Number of non-laboratory-confirmed but epidemiologically linked, food-related outbreaks;
- Contributing factors most often identified;
- Number of complaints involving real and alleged threats of intentional food contamination; and
- Multiple complaints involving the same agent and any complaints involving unusual agents.

The trend analysis areas in 1 - 4 above seem to indicate that all foodborne illness complaints should be taken into account in the analysis, even if the complaints were unsubstantiated or that were not resulting from outbreaks (i.e. sporadic cases of foodborne illness). If a jurisdiction, either on its own or in cooperation with a sister agency, issues a report(s) that summarizes the total number of foodborne illness complaints for each establishment, and in that report, conducts trends for items 2 - 9 using only outbreak data, is the intent of the Standard met?

Rationale

None provided.

Response from Clearinghouse Work Group (08-16-06; Updated 2011)

In reviewing the language of the Standard No. 5 as a whole, including the section on trend analysis,

there is very little room for interpretation. It is clear that the intent is for the analysis to include all complaints and not just outbreak data.

The Clearinghouse members agreed that a jurisdiction's investigative procedures and protocols should include all the elements as described in 1.a. through 1.i., including the handling and response to all complaints. The Clearinghouse engaged in a further discussion regarding whether an analysis as described in 7.a. through 7.c. of all unsubstantiated complaints and sporadic illnesses was practical, feasible and/or of value, but was unable to reach a consensus. This question requires broader input from regulators, and any change to the Standard 5 language to eliminate the requirement for analysis of complaint data would require action by the CFP. The Clearinghouse will recommend that the question be forwarded for reviewed by the CFP Program Standards Committee.

CFP addressed this issue, and Standard 5 was altered in 2007 to rename this section as 'review and analysis.' The review is to include all complaints, not just outbreak data; although this kind of information does not lend itself to analysis per se. All unsubstantiated complaints and sporadic illnesses are to be reviewed to determine whether a pattern exists or whether factor is at work in the community which may not be recognized as relating to a confirmed outbreak.

5. What triggers the need for a mock foodborne illness investigation?

Keywords: STD-05, foodborne illness, investigation, mock investigation, table top, illness investigation

Issue Description

Background

None provided.

Question/Problem

In the version of Standard 5 that was passed in 2006, under the heading of Trend Analysis, item c. states:

“In the event that there have been no illness or injury outbreak investigations conducted during the twelve months prior to the trend analysis, program management will plan and conduct a mock foodborne illness investigation to test program readiness. The mock investigation should simulate response to an actual illness outbreak and include on-site inspection, sample collection and analysis. A mock investigation must be completed at least once per year when no illness outbreak investigations occur.”

Must a jurisdiction have a full investigation that results in samples taken and a full report sent to CDC to avoid a mock investigation? Or is a smaller investigation sufficient to avoid the mock investigation requirement? What triggers the need for a mock investigation?

Rationale

None provided.

Response from Clearinghouse Work Group (08-16-06)

The Standard 5 language states that the purpose of the mock investigation is to “test the program readiness” to respond to an outbreak. The desired outcome for Standard 5 is that a food regulatory program has a systematic approach for the detection, investigation, response, documentation and analysis of alleged food-related incidents that involve illness, injury, unintentional or deliberate food contamination. Any event that activates communication between the various parties with a role/responsibility in an outbreak investigation and demonstrates that the system can respond if needed would serve to test the readiness of the system. If the system’s readiness has been demonstrated, then there would be no need for a mock exercise.

6. Alternative Laboratory Contacts

Keywords: STD-05, Foodborne Illness, Preparedness, Laboratory, Contacts

Issue Description

Background

None Provided

Question/Problem

Standard 5, element 3b requires that a program maintain a list of alternative laboratory contacts for assistance in the event of an emergency. Our lab has made it clear that the counties should not contact any other labs directly; they must first work with the state lab who will coordinate testing at other laboratories (maybe this is because were a FERN lab?). So, can we just document that the counties should work with the lab when requesting testing? Or, alternatively, would the following page suffice? It is part of a guide that is available to local health departments when seeking testing services (<http://azdhs.gov/documents/preparedness/state-laboratory/public-health-microbiology/lab-guide.pdf>).

Response from Clearinghouse Work Group (9-25-18)

Standard 5, requirement 3.b. states that a program maintains a list of alternative laboratory contacts from which assistance could be sought in the event that a food related emergency exceeds the capacity of the primary support lab(s) listed in paragraph 3.a.

The requirement is that a program maintains a list of alternative laboratory contacts, however it does not reference making contact with any of the alternative labs. It is intended that the list provides assurances that the program has access to additional laboratory capacity, or to specific analysis, that might not be available from the programs primary support laboratory. In order for a jurisdiction to satisfy part 3.b., the supporting lab may be required to provide a copy of its alternate list. If the lab does not maintain an alternative list, the jurisdiction will need to draft its own alternative list.

7. MOU or LOU with Laboratory

Keywords: STD-05, Memorandum of Understanding, Laboratory, Documentation

Issue Description

Background

None Provided

Question/Problem

For Standard 5, element 3a, our agency was going to draft an MOU or letter of understanding for laboratory support available to the local health

departments. However, we were informed that Arizona State Public Health Laboratory (ASPHL) provides this information on their website, specifically stating that the mission is to protect the public health by providing direct clinical and reference microbiological testing and reference microbiological laboratory services. They then provide a guide with all the services that public health microbiology provides, including sample collection and submission requirements. Would this be sufficient to meet the intent of Standard 5 element 3a? (<http://azdhs.gov/preparedness/state-laboratory/public-health-microbiology/index.php>)".

Response from Clearinghouse Work Group (9-25-18)

Standard 5, requirement 3.a. provides four examples of documentation that may satisfy the criteria for laboratory support. A jurisdiction may provide one of these examples in order to satisfy the requirement.

The following are all examples of documentation that may be submitted by a jurisdiction intending to meet the requirement:

- Letter of Understanding;
- Written procedures;
- Contract; or
- Memorandum of Understanding.

Regardless of whether the documentation is a letter of understanding, written procedures, contract or MOU it must acknowledge that a laboratory(s) is willing and able to provide analytical support to the jurisdiction's food program; It must clearly describe the type of biological, chemical, radiological contaminants or other food adulterants that can be identified by the laboratory. The documentation must also speak to whether or not lab support is available with the ability to conduct environmental sample analysis, food sample analysis and clinical sample analysis.

If documentation on the Laboratory's website clearly conveys each key piece of information described above and a letter or email exists between the two parties ensuring the lab services will be provided, then the jurisdiction has satisfied the intent of this element.

STANDARD 6 - Compliance and Enforcement

This standard applies to all compliance and enforcement activities used by a jurisdiction to achieve compliance with regulations.

1. Determining Conformance with a Standard

Keywords: STD-06, Compliance and Enforcement, compliance protocol, risk-based enforcement, self-assessment, extent of self-assessment, cursory review

2. Files with No Risk Factor/Intervention Violation on the Start-Point Inspection

Keywords: STD-06, Compliance and Enforcement, start-point, start-point inspection, random selection, random files selection

3. Standardization Inspection/exercise used as a Start Point Inspection or any inspection as part of the file review

Keywords: STD-06, Compliance and Enforcement, Use of Standardization Inspections

4. Determining conformance with a Standard

Keywords: STD-06, Compliance and Enforcement, compliance protocol, risk-based enforcement; timely correction for compliance

5. Consultant Inspectional Agencies

Keywords: STD-06, STD-04, Consultant, delegation, enforcement

6. Auditing as a District while maintaining individual jurisdiction work

Keywords: STD-06, Compliance and Enforcement, Establishment Files, Jurisdiction

7. Length of Policy Implementation

Keywords: STD-06, Compliance, Enforcement, Policy Implementation, Establishment Files

8. State Enforcement Policy and Corrective Action

Keywords: STD-06, FDA

1. Determining conformance with the Standard

Keywords: STD-06, Compliance and Enforcement, compliance protocol, risk-based enforcement, self-assessment, extent of self-assessment, cursory review

Issue Description

Background

Much of the criteria contained in Standard #6 are predicated on the inspection program containing risk-based approaches outlined in earlier Standards - in particular Standard #3. Our initial review of Standard #6 indicates that much of the criteria rely on forms that record and quantify status of risk factors/interventions and other serious violations.

Since our current program is lacking a definitive step-by-step compliance and enforcement process based on the occurrence and correction of risk factors and interventions, the assessment protocol outlined in Standard #6 cannot be completed as designed. Assessing staff's consistency in these areas through file reviews seems premature until all the components are in place.

Question/Problem

Our internal self-assessment process has revealed significant gaps in our compliance and enforcement program. Several risk-based components contained in Standard #6's criteria must be developed and integrated into our program before a meaningful file review can be performed against all the criteria contained in the Compliance and Enforcement Standard.

For this initial self-assessment, is it sufficient to note the gaps within our current compliance and enforcement program as rationales as to why we do not meet Standard #6, or must we also complete a file review of randomly selected establishments. If we are to continue on with a file review, against what criteria do we assess compliance with the Compliance and Enforcement program components we already have in place?

Rationale

None provided.

Response from Clearinghouse Work Group (03-20-02)

This question is similar to a prior one concerning Standard 4, and the response applies regardless of the Standard in question. If a cursory look at a Standard compared to your program is sufficient to reveal gaps that prevent you from meeting the Standard and provides a rational for your conclusion, then it is not necessary for you to proceed further. No one wants you to spend time that is not productive. You only need go as far as necessary to identify the gaps you would need to fill and to establish a strategic plan for ultimately meeting the Standard.

2. Files with no Risk Factor or Intervention violation on the start-point-inspection

Keywords: STD-06, Compliance and Enforcement, start-point, start-point inspection, random selection, random files selection

Issue Description

Background

None provided.

Question/Problem

It is not clear how to mark files drawn for review that do not have a risk factor or Food Code intervention violation on the 'start-point inspection.' Should the self-assessor keep drawing files until he/she finds the requisite number of files with violations on the start-point inspection or are files without a violation considered as 'passing' files?

Rationale

None provided.

Response from Clearinghouse Work Group (Updated 2011)

The fourth oldest inspection can be used as the 'start point' if no risk factor violation was identified on the third oldest inspection. Sampling and instructions have also been updated and clarified. See the most recent version of Standard 6 and the worksheets and guidance documents on the website.

3. Standardization Inspection/exercise used as a Start Point Inspection or any inspection as part of the file review

Keywords: STD-06, Compliance and Enforcement, Use of Standardization Inspections

Issue Description

Background

None provided.

Question/Problem

Under Standard 6 may a standardization inspection be used for one of the 3 inspections or does one need to use the inspection before the standardization inspection? In the audit manual it states "the start-point inspection will be the third oldest routine inspection in the establishment's file at the time of the review. If it shows a violation of one of the risk factor or Food Code interventions, an X is placed under the appropriate food borne illness risk factor or Food Code intervention heading if a violation was noted on the start-point inspection." My question is since a standardization inspection focuses on risk factors and interventions, could it count toward meeting this standard?

Rationale

None provided.

Response from Clearinghouse Work Group (Updated April 2021)

Standard 6 focuses on outcomes from the jurisdiction's compliance and enforcement program. Specifically, it establishes that a jurisdiction's compliance and enforcement program should achieve compliance at least 80% of the time when out-of-control risk factors or interventions are observed during a routine inspection. There are numerous methods that could be used to assess a jurisdiction's compliance and enforcement program against this criterion. Therefore, FDA developed a specific methodology to ensure that Standard 6 could be uniformly interpreted and self-assessed by different jurisdictions across the nation.

There are three considerations that support the current methodology for assessing Standard 6:

- It is not reasonable for the self-assessor to review each establishment file in the inventory. Therefore, the methodology must incorporate a smaller sample size of establishment files and inspections;
- The sample of establishment files and regulatory inspections must be representative of the inventory of establishment files and regulatory inspections. In other words, it is important that the results from assessing the sample can be extrapolated to the entire inventory; and
- The methodology must provide for a simple, common yardstick that can be used by different jurisdictions to assess their regulatory inspections relative to the criteria in the Standard.

In light of the second consideration: The bulk of inspections in a jurisdiction's inventory will be routine regulatory inspections. In order to extrapolate the results from the self-assessment to the jurisdiction's entire inventory, it is necessary to review inspections that are similar in nature to the bulk of the inspections that comprise the inventory. Standardization inspections tend not to be representative of routine regulatory inspections for two key reasons:

- Standardization inspections involve two inspectors, the Candidate and the Standard, whereas typically one Standardized inspector performs routine, regulatory inspections.
- The purpose of Standardization is for the Standard to evaluate the Candidate. This is different than a routine, regulatory inspection. The focus in a Standardization inspection is on the Candidate's performance and not the establishment's compliance with provisions of the Food Code. Standardization is part of a jurisdiction's training program which is assessed in Standard 2, not Standard 6.

Because of these reasons, Standardization inspections tend not to be representative of most routine regulatory inspections conducted in a jurisdiction. As a result, incorporating Standardization inspections into a self-assessment of Standard 6 may yield results that do not provide an accurate picture of the enforcement and compliance actions in a jurisdiction.

In light of the third consideration: The focus of Standard 6 is enforcement and compliance. Most, if not all, enforcement and compliance action stems from routine regulatory inspections. This is consistent regardless of the state or locality. Therefore, the Standard seeks to focus attention on these types of inspections, which represent the bulk of inspectional activity in most regulatory food protection programs.

Incorporating Standardization inspections into the assessment of Standard 6 takes the focus away from routine regulatory work. Moreover, it introduces a degree of variation between jurisdictions because there are significant differences in how Standardization inspections are conducted throughout the United States. Some of these differences include:

- Some jurisdictions leave a written report with the establishment after the Standardization inspection, while others do not.
- Some jurisdictions do not conduct Standardization inspections.
- Some jurisdictions require enforcement and compliance action after a Standardization inspection, while others do not.

Because of these differences, incorporating Standardization inspections into the Standard 6 self-assessment would result in inconsistent assessment of Standard 6 by different jurisdictions.

Although the Clearinghouse recognizes that due to staff and resource limitations, Standardization inspections have been used as regulatory inspections in some manner, the Standards are Standards of excellence and the ability to meet or not meet a Standard is not reason enough to interpret a lesser criterion to be used.

Due to the intent of Standardization, some of the differences between a Standardization inspection and a routine inspection, the variability that may exist in how a jurisdiction may handle post-Standardization compliance and the potential problems of delineating whose observations are

considered regulatory, Standardization inspections shall not be used to determine compliance with Standard 6.

4. Determining conformance with a Standard

Keywords: STD-06, Compliance and Enforcement, compliance protocol, risk-based enforcement; timely correction for compliance

Issue Description

Background

None provided.

Question/Problem

The State has recently revised their scoring protocol to address the new Food Code risk designations of core, priority foundation, and priority. Core items will be cited as a violation, however they will be non-debitable and not require any compliance timeline. Standard 6 does not prescribe the type of regulatory action required for violations, however it does require "credible follow-up for each violation" be demonstrated. If core items are marked as violations with no other associated compliance or enforcement actions, would this meet Standard 6?

Rationale

None provided.

Response from Clearinghouse Work Group (10-18-12)

The Food Code states that Code provisions are either appropriate for citing and debiting on an inspection report or they are not. A Code provision that is cited as a violation is considered debitable and therefore requires a time frame for correction. This includes Core Item violations, as per Section 8-406.11 of the Food Code.

Within the context of the Food Code, Core Items by definition are items usually related to general sanitation, operational controls, sanitation standard operating procedures, facilities or structures, equipment design, or general maintenance. Non-debitable provisions of the Code provide further information for consideration, such as provision for an exception or for an allowance to comply via an alternative method. Exceptions and allowances often contain conditions of compliance, i.e., conditions that must be met in order for the exception or allowance to convey.

If a jurisdiction chooses to use a non-debitable status for Core Items, it would mean that none of the Core Items would be capable of being debited or cited on an inspection form as a violation. That is not the intent of the Food Code in having a non-debitable status.

Code sections considered as non-debitable should not be cited as violations. If a Code section is cited as a violation, compliance or enforcement action should be taken as recommended in Section 8-406.11. Implementing the recommendation in 8-406.11 is one aspect of meeting Standard 6. By not requiring a time frame for correcting Core Items, a jurisdiction does not meet the intent of 8-406.11 and therefore does not meet part of Standard 6.

5. Consultant Inspectional Agencies

Keywords: STD-06, STD-04, Consultant, delegation, enforcement

Issue Description

Background

Government agency A is enrolled in the Program Standards. Government agency A conducts inspections based on the most current published FDA Food Code and uses the Inspection Report Form in Annex 7 of the Food Code. Government agency A also has written procedures for compliance and enforcement. However, legal authority for requiring compliance and enforcement belongs to Government Agency B. Therefore, inspection results are recorded by Agency A, and provided to Agency B. In addition to the inspection results, Agency A also provides consultation and recommended corrective actions to Agency B. Agency A recommends corrective actions that are consistent with Standard 4 and Standard 6. Agency B is responsible for determining when compliance and enforcement actions are necessary and is responsible for implementing compliance and enforcement actions. Agency B may or may not implement compliance and enforcement actions that are consistent with Standard 4 and Standard 6.

Question/Problem

Can a government agency achieve conformance with Standard 6 if they lack the legal basis to require immediate onsite compliance and/or lack the legal basis to implement an enforcement action when immediate onsite compliance is not possible?

Rationale

None provided.

Response from Clearinghouse Work Group (12-19-13)

In order to achieve conformance with Standard 6, a government agency must have the legal authority to require immediate on-site compliance for imminent health hazards and priority items and must be able to take enforcement action when immediate on-site compliance is not possible.

When conducting a self-assessment for Standard 6, the government agency must take a random sample of establishment files. The inspections contained within each establishment file must be reviewed to verify that the appropriate compliance and enforcement action was taken. In instances where the government agency conducts inspections at establishments for which it lacks legal authority to require onsite compliance and take enforcement action, these establishment files should be excluded from the random sample of establishment files.

In other words, conformance with Standard 6 should only be assessed using establishment files for which the government agency has the legal authority to require onsite compliance and take enforcement action. Therefore, a government agency cannot achieve conformance with Standard 6 if, at all inspected establishments, the agency lacks legal authority to require immediate on-site compliance for imminent health hazards and priority items or lacks the legal authority to take enforcement action when immediate on-site compliance is not possible.

6. Auditing as a district while maintaining individual jurisdiction work

Keywords: STD-06, Compliance and Enforcement, Establishment Files, Jurisdiction

Issue Description

Background

Our district is made up of 10 individual counties, with 10 Boards of Health which help ensure the health and safety of our public. While we are 10 individual counties, we still must work as a team to accomplish many of our goals because of the lack of resources. Several of our 10 counties only have one Environmentalist which diminishes the chances of them ever accomplishing many of the Standards by themselves. Our counties strive to maintain their individuality because each county is unique in their own way.

However, we do recognize the need for uniformity, district policies, and the need to work together to make our food program better. Each county within our district follows the same compliance and enforcement protocols to bring uniformity within our 10 counties.

Question/Problem

Because our 10 individual counties work together as a district, is it possible to work on Standard 6 together, audit as a district and turn the district audit in for each individual jurisdiction? The problem for our jurisdictions that have only one Environmentalist is the lack of resources. These counties are unable to audit their own files. With these limited resources in our district, it is almost impossible to achieve Standards 6 without auditing as a district and sharing the workload. For example, if we audit as a district for Standard 6, we would only need to audit 63 inspections versus 400 if we audit as individual counties. Even if we use resources outside of the small counties, we do not have the power to audit so many files and continue to work on other Program Standards to improve our food program.

Rationale

While we certainly understand the complexity of the situation, we see first-hand the barrier that is placed on many of our small counties. Our counties train together and follow the same compliance and enforcement protocols so we feel the 63 inspection audits verses 400 would be sufficient in allowing our individual counties to know if we are following the guidelines for Standard 6. If we audit as a district it would set those small counties equal to our larger counties while still maintaining the vision of Standard 6 and make it achievable for our counties.

Response from Clearinghouse Work Group (9-25-18)

The Clearinghouse workgroup understands the potential resource advantage in pooling the establishment inventories from all 10 independent counties however there are a couple of key issues with that approach.

The audit requires a minimum amount of files to review in order to confirm if a jurisdiction is following its Compliance and Enforcement program. The random selection of establishments for the audit is necessary to provide a statistically sound means of confirming if a jurisdiction is following it

compliance and enforcement. This sub-set of files should represent the complete inventory of the jurisdiction's food establishments.

The statistical framework in Standard 6 is compromised if you pool the food establishment inventories. The random selection could omit file reviews from one or several jurisdictions in the inventory pool thus impacting the validity of the audit. Some jurisdictions maybe overrepresented and others perhaps not represented at all.

Each county in this case is not bound to a single entity that promulgates regulation or has oversight of the food establishments in the 10 counties. This is different than other examples of Districts that do have oversight of several towns or counties. In the case represented here, if one county fails then all the counties fail together. Another issue with pooling the food establishment inventories from the 10 separate Jurisdictions relates to Direct Regulatory Authority (DRA) as its defined in the Standards: "The organizational level of government that is immediately responsible for the management of the retail program. This may be at the city, county, district, state, federal, territorial, or tribal level." It appears each of the 10 jurisdictions is their own DRA, therefore they should be assessing Standard 6 separately.

7. Length of Policy Implementation

Keywords: STD-06, Compliance, Enforcement, Policy Implementation, Establishment Files

Issue Description

Background

A retail food regulatory program implemented a compliance and enforcement policy for Standard 6. Prior to this, they did not have a written policy. The compliance and enforcement policy was implemented sometime around year 4 of the 5-year self-assessment cycle.

They are now attempting to assess conformance with Standard 6. Many of the files pulled have inspections that were conducted under the previous policy (i.e. under a system without a written policy). In some instances, all of the inspections within a particular file were conducted prior to implementation of the written policy. The state asked FDA if they draw replacement files in the following instances:

- Establishment files where some inspections were conducted under the old policy and some inspections were conducted under the new written policy.
- Establishment files where all inspections were conducted under the old policy.

In other words, the retail food regulatory program wanted to assess Standard 6 by only using establishment files that had the three most recent inspections conducted under the new written policy.

Question/Problem

A retail food regulatory program does not have a written compliance and enforcement policy. After implementing a written compliance and enforcement policy, how long does a retail food regulatory program need to wait before assessing conformance with Standard 6?

Rationale

None Provided

Response from Clearinghouse Work Group (9-25-18)

Per the instructions in the Standard 6: Self-Assessment Instructions and Worksheet, the self-assessor must exclude (and replace) establishment files during the self-assessment process if the establishment has not been in business long enough to have at least three routine inspections; or If no risk factor or public health intervention violation is shown on the inspection.

The self-assessor may not exclude (and replace) establishment files during the self- assessment process if inspections within the file were conducted before the written policy was implemented.

Per Standard 6, requirement 1, it states, "A written step-by-step procedure that describes how compliance and enforcement tools are to be used to achieve compliance". Unwritten polices cannot be assessed. Only the written policy must be

assessed, and the policy cannot be adequately assessed without the third oldest routine inspection in the establishment's file (aka Start Point Inspection).

Therefore, the Clearinghouse Work Group recommends that the self-assessor wait the length of time it takes for all the establishments in its inventory to have at least 3 inspections under the written policy. This ensures the policy can be adequately assessed to determine whether the Jurisdiction meets the Standard 6 requirements. For example, if the Jurisdiction's lowest inspection frequency is 1 year, then the Jurisdiction must wait at least 3 years for its inventory to have 3 inspections.

For situations where a written policy has been changed, the assessor will use a different assessment approach with the 3 inspections. The assessor will assess to the policy that was in place at the time of inspection. For example, If the Start Point Inspection was conducted under the old written policy, then the assessor will assess to the old policy. If the second oldest and previous inspections are under the new policy, then the assessor will assess to the new policy.

8. State Enforcement Policy and Corrective Action

Keywords: STD-06, FDA

Issue Description

Background

As a result of 2019 legislation, our state implemented a new, progressive methodology for enforcement that became effective on January 1, 2020. This protocol takes into consideration not only the severity of the identified violation but also the prevalence of violations observed. The legislation provides for a uniform system to communicate inspection results which is based on an overall point system driven by assigned values of low, medium and high pervasiveness (identified in the attached document “19-09 Requirements for Communicating Inspection Ratings”). This point system establishes the criteria by which resources are to be directed for additional full re-inspections or enforcement activities.

Pervasiveness is the overall evaluation of specific issues observed to determine how prevalent the violation is. Using all available information such as active managerial control, previous inspection records, long term controls, and overall risk/severity of the specific situation, an inspector assigns a violation pervasiveness. This system then classifies routine and re-inspections into one of three ratings (“Pass,” “Re-inspection,” or “Closed”) based on the total cumulative violations/ points. This rating is then used to determine the next required action: no required action (the next routine inspections is scheduled), a full facility re-inspection, or the immediate suspension of a license to operate. Facilities that score less than 50 points pass the inspection and do not have to demonstrate correction of risk factor or intervention violations through re-inspection or other follow-up.

Question/Problem

The current enforcement system in our state focuses on comprehensive compliance with the food code through a points-based rating system. Establishments that achieve a “Pass” rating during an inspection will not be required to show resolution for any out-of-compliance risk factor or intervention violations. Does this enforcement system meet the intent of Standard 6, Compliance and Enforcement?

Rationale

It is possible to have a risk factor violation that was unable to be corrected on-site at a facility that did not receive enough accumulated points to warrant a full re-inspection and actually achieved a “Pass” rating. At the time of the inspection, a “Pass” rating requires no further action by the operator to demonstrate correction of a violation and the next routine inspection will be scheduled. The “Pass” score during a full risk-based inspection has demonstrated that the operator had an overall effective control of the food safety risks. The system in Colorado was designed to allow regulatory resources to be focused on the operators that have significant food safety risks (resulting in a full “Re-inspection” or “Closure” of the facility) and not on those facilities that have their food safety risks

under control (resulting in a “Pass” score) and have demonstrated active managerial controls are in place.

The desired outcome is to focus resources to effectively achieve compliance with regulatory requirements at facilities that have a significant lack of control over risk factors and interventions. Point values are reflective of risk factors and interventions and are given more emphasis based on prevalence.

Standard 6 – Criteria 1

1. Compliance and Enforcement Procedure

- a) The jurisdiction has written step-by-step compliance and enforcement procedure that describes what actions and tools (i.e. forms, documents, interventions) are to be used to achieve compliance

Response from Clearinghouse Work Group (11-30-2022)

No. The intent of Standard 6 is to evaluate the effectiveness of a jurisdiction’s compliance and enforcement policy. Compliance and enforcement activities should result in follow up actions for out-of-control risk factors and timely correction of code violations. The program must demonstrate credible follow up for each violation noted during an inspection with particular emphasis placed on risk factors that most often contribute to foodborne illness.

STANDARD 7 - Industry and Community Relations

This standard applies to industry and community outreach activities utilized by a regulatory program to solicit a broad-spectrum input into a comprehensive regulatory food program, communicate sound public health food safety principles, and foster and recognize community initiatives focused on the reduction of foodborne disease risk factors.

1. Could CFP Participation Be Used to Meet This Standard?

Keywords: STD-07, Industry and Community Relations, CFP, participation, industry relations

2. District Health Department participation in State-level food advisory committees for compliance with the first part of Standard 7 (referenced below).

Keywords: STD-07, Industry and Community Relations, industry and consumer interaction, food advisory boards, task forces, or committees.

3. Holding separate regulatory, industry and public stakeholder meetings

Keywords: STD-07, Industry and Community Relations, industry and consumer interaction, separate meetings

4. Use of web based or social media for fostering stakeholder communication and feedback

Keywords: STD-07, Industry and Community Relations, communication, information exchange

1. Could CFP participation be used to meet this Standard?

Keywords: STD-07, Industry and Community Relations, CFP, participation, industry relations

Issue Description

Background

None provided.

Question/Problem

Would participation in CFP via a board, committee or council constitute meeting the requirements of the Standard where it states, “or other forums for presenting food safety strategies” in that the representative brings information and strategies from their jurisdiction and takes back information to their jurisdiction?

Rationale

None provided.

Response from Clearinghouse Work Group (02-16-05)

No, the intent of Standard 7 is to foster communication and understanding between the jurisdiction and its own industry and consumer constituency. You are encouraged to participate in the CFP to the fullest extent possible since, as you say, representatives bring their perspectives to the Conference and take strategies back to their own jurisdictions. It is important to have the widest representation possible at the Conference because of the parliamentary-style decision making. The number of participant positions at CFP is limited, however, and thus not all industry and consumers are represented. It is important to have channels for open dialogue between each regulatory jurisdiction and its regulated industry and with the public whose health interests it protects. The establishment of community- focused interaction is the goal of Standard 7.

2. District Health Department participation in State-level food advisory committees for compliance with the first part of Standard 7

Keywords: STD-07, Industry and Community Relations, industry and consumer interaction, food advisory boards, task forces, or committees.

Issue Description

Background

Industry and Consumer Interaction: The jurisdiction sponsors or actively participates in meetings such as food safety task forces, advisory boards or advisory committees. These forums shall present information on food safety, food safety strategies and interventions to control risk factors. Offers of participation must be extended to industry and consumer representatives.

Question/Problem

The Idaho Food Protection Program has sponsored the "Idaho Food Safety Advisory Committee" (IFSAC) for the past few years. IFSAC consists of industry, academia, state regulatory, consumers, and other stakeholders. There has only been limited involvement by local regulatory agencies. A few of Idaho's 7 District Health Departments have formed their own food safety advisory committees and they have worked well. However, in the more rural parts of the state, the formation and maintenance of such a committee is proving to be quite difficult.

Question: If the IFSAC were to expand and include participants from each of the District Health Departments, could each District then claim that they met the first part of Standard 7?

Rationale

The intent of Standard 7 is to foster communication and understanding between the jurisdiction and its own industry and consumer constituency. Further, it is important to have channels for open dialogue between each regulatory jurisdiction and its regulated industry and with the public whose health interests it protects. The establishment of community-focused interaction is the goal of Standard 7.

Response from Clearinghouse Work Group (03-21-08)

Including participants from each of the District Health Departments on the State Food Advisory Committee would meet the intent of Standard #7.

3. Holding separate regulatory, industry and public stakeholder meetings

Keywords: STD-07, Industry and Community Relations, industry and consumer interaction, separate meetings

Issue Description

Background

A jurisdiction may be in the process of conducting public meetings pertaining to the adoption of a new Food Code. They intend on meeting with industry, regulatory, and consumer groups but plan to hold 3 separate public meeting for each of these stakeholder groups.

Question/Problem

Does the jurisdiction meet the intent of the Industry and Community Relations criteria of Standard 7 if the meetings with regulatory, industry and the public are held separately?

Rationale

None provided.

Response from Clearinghouse Work Group (2-1-12)

Standard 7 states that invitations for participation in meetings must be extended to all stakeholders including industry, consumers and regulatory with the intent to foster enhanced communication and information exchange. The desired outcome as stated is to solicit broad stakeholder input to improve the jurisdiction's food safety program. The specific question posed is based on public meetings which would by definition be open to all.

Standard 7 does not prohibit a jurisdiction from holding multiple separate meetings to facilitate private group dialogue and development on program issues. It does not require the use of a consensus process that might necessitate that all parties be present at the same time, only that the jurisdiction hold meetings that provide quality feedback from regulators, industry and consumer groups. The Standard requires an invitation to industry and consumer representatives annually to ensure open discourse and feedback so that program decisions are not made in a vacuum. Although the CH encourages efforts to bring the stakeholders together for these meetings to better understand each others interests, separate meetings would be acceptable.

4. Use of web-based or social media for fostering stakeholder communication and feedback

Keywords: STD-07, Industry and Community Relations, communication, information exchange

Issue Description

Background

Standard 7 requires participation in forums that foster communication and information exchange among regulators, industry and consumers representatives. Item #1 under the "Description of Requirement – Industry and Consumer Interaction" specifically states that the jurisdiction sponsor or actively participate in meetings for this purpose. The stated desired outcome is to enhance communication with industry and consumers through forums designed to solicit input to improve the food safety program. With the increasing use of web based communication, availability of general department electronic mailboxes and social media, are face to face meetings the only forum that can be recognized as meeting this requirement. Would an option on a program's website for "contact us" or "please provide feedback" or similar communication meet the intent of this for both industry and consumers and perhaps even enhance communication since regular participation at face to face meetings is often challenging for industry members and almost non existent for consumers, despite invitations and solicitations for involvement?

Question/Problem

Would other types of web based or social media be acceptable such as web based feedback options, general program electronic mailboxes, social media (Face Book, Linkedin, Twitter accounts, etc.) if they are 2 way communications forums open to industry, consumers, and regulatory in lieu of traditional face to face meetings?

Rationale

None provided.

Response from Clearinghouse Work Group (12-14-11)

The Clearinghouse agrees that a strict requirement limited to public meetings may be locking out growing trend that could be useful for program feedback and communication. Web-based social media is a significant means of communication for younger people in the community if not fully embraced by all. Since this Standard was written over 10 years ago, it may be time to consider this aspect as an important venue for public communication. However, the criteria would need to be developed and, if accepted, would involve changes to the current Standard 7 language, a task beyond the scope of the Clearinghouse.

The Clearinghouse recommends that the question be referred to the FDA Program Standards Workgroup for consideration as either meeting the existing intent with additional language or as a new requirement including:

- View of social media as supporting the intent of “#1 Industry and Consumer Interaction” requirements in Standard 7
- Criteria for adding web-based communication or social media option – demonstrating 2

way communication, responses, possible real time requirements or trending for response, required documentation for various possibilities.

- Effect on audit forms, language of the Standard
- FOI issues for documentation of communication records that might be required
- Use of email voting

The Clearinghouse believes that it is too early to determine whether a Standard should be made more stringent or lenient. Information should be gathered from the current participants, and then recommendations for change can be based on experiential data gathered from across the country from both large and small jurisdictions. The Clearinghouse does not recommend action on this item at the present time. However, any CFP participant can submit issues to alter the Standards through the CFP process.

STANDARD 8 - Program Support and Resources

This standard applies to the program resources (budget, staff, equipment, etc.) necessary to support an inspection and surveillance system that is designed to reduce risk factors and other factors known to contribute to foodborne illness.

1. Is inspection write-up and data entry part of the direct inspection time?

Keywords: STD-08, Program Support and Resources, administrative time, report writing, data entry

2. Why is the FTE Ratio not tied to Number of Establishments?

Keywords: STD-08, Program Support and Resources, FTE ratio, number of inspections, number of establishments, comparing staff ratios

3. Administrative Time

Keywords: STD-08, Program Support and Resources, FTE ratio, number of establishments, comparing staff ratios, administrative time, report time.

1. Is inspection write-up and data entry part of the direct inspection time?

Keywords: STD-08, Program Support and Resources, administrative time, report writing, data entry

Issue Description

Background

None provided.

Question/Problem

Standard 8 establishes a recommended FTE-to-Inspection ratio for retail food regulatory programs. Does the FTE-to-Inspection ratio account for the inspector's time required to complete the inspection write-up and data entry?

Rationale

None provided.

Response from Clearinghouse Work Group (02-16-05)

Office time used for reports, data entry and other types of paperwork are administrative functions and are not considered a part of productive time. The built-in allowance for administrative overhead is the reason that productive hours or full-time equivalent hours are less than the total employee time available. Also, depending on the process for generating reports and data entry, the administrative time required for these functions can vary greatly. Jurisdictions with highly automated systems might require much less administrative time than others. The measurement criteria are for productive time used for critical regulatory functions in the establishment that can be applied to any jurisdiction regardless of administrative process.

2. Why is the FTE ratio not tied to number of establishments?

Keywords: STD-08, Program Support and Resources, FTE ratio, number of inspections, number of establishments, comparing staff ratios

Issue Description

Background

None provided.

Question/Problem

Why is the Standard 8 staffing level element based on the FTE-to Inspection ratio instead of an FTE-to-Establishment ratio?

Rationale

None provided.

Response from Clearinghouse Work Group (Updated 01-01-21)

A jurisdiction that inspects each establishment once per year and one that inspects each establishment three times per year would require different ratios under the FTE-to- Establishment figure in order to achieve approximately the same average inspection time per visit. The Standard 8 criteria is established so that the same unit of measure can be used for any jurisdiction regardless of the frequency of routine inspections conducted among the various priority categories. Annex 5, Risk Based Routine Inspections of the Food Code, recommended that 8 to 10 hours of staff time be allocated for each establishment per year to include all the activities included in the definition of an inspection in Standard 8: routine inspections, re-inspections, complaint investigations, outbreak investigations, compliance follow-up inspections, risk assessment reviews, process reviews, variance process reviews and other direct establishment contact time such as on-site training. The criterion of 280 to 320 broadly defined inspections per FTE is consistent with these previous figures.

To illustrate, assume that the average FTE equals 1200 productive hours:

- From the 1976 Code, 150 establishments/per FTE was the recommendation. The recommendation was 2 routine inspections per year, then allowing for the other on-site inspectional and assessment work to equal 8 hours X 150 establishments = 1200 hours, or 1 FTE/150 establishments.
- From the Food Code, the recommendation was 8 to 10 hours per establishment. Working from the other direction, one FTE of 1200 hours / by 8 hours per establishment = 150 establishments per FTE. Or one FTE of 1200 hours / by 10 hours per establish = 120 establishments per FTE.
- *From Standard 8, assuming an average activity time of 4 hours per on-site activity, then 4 hours X 280 activities (broadly defined as inspections) per person = 1120 productive hours; 4 hours X 320 activities = 1280 productive hours per person. This represents a reasonable range of 1120 to 1280 hours or one FTE per every 280 to 320 inspectional activities.

This last measure does not dictate a required number of routine inspections. It therefore allows for an inspection frequency for different establishment categories based on safety prioritization. It also allows the same unit of measure to be applied to all jurisdictions regardless of their procedures and processes; and therefore, represents better national Standard criteria for measuring inspectional staffing levels.

3. Administrative Time

Keywords: STD-08, Program Support and Resources, FTE ratio, number of establishments, comparing staff ratios, administrative time, report time.

Issue Description

Background

None provided.

Question/Problem

How do you show administrative time necessary to support the Standards?

Rationale

None provided.

Response from Clearinghouse Work Group (02-16-05)

Except for the specified requirements for Full-Time Equivalents (FTEs) for field work and the specified equipment for each inspector, Standard 8 is intended as a guide for a program to self-analyze general program needs and the administrative support necessary to function properly. There are no identified criteria or minimum levels for the support of the other Standards or overall administration of the program. It is intended that by completing the Standard 8 worksheet, a manager would look realistically at his or her environment and identify the elements that hinder achievement of a quality program.

There are two examples to illustrate this concept:

- For Standard 1, it may not be funding or staffing that prevents a jurisdiction from meeting the requirements for regulatory foundation: Rather, it may well be a lack of industry or health board support.
- For Standard 3, the obstacle may be a lack of technology in the form of adequate computer systems or it may be the lack of clerical staff to support the records and reporting system currently in use.

Once the obstacle to achieving a Standard is identified, then appropriate strategies to overcome the obstacle may be developed. The area of administrative support is too broad and too diverse for any one formula to be proposed. You are encouraged to look realistically at all program needs, identify short falls, and garner support by articulating those needs along with proposals for improvements to those with the power to help.

STANDARD 9 - Program Assessment

This Standard applies to the process used to measure the success of jurisdictions in meeting the Voluntary National Retail Food Regulatory Program Standards 1 through 9 (hereafter referred to as the National Standards) and their progress in reducing the occurrence of foodborne illness risk factors.

1. Facility Types to be Included in Risk Factor Study

Keywords: STD-09, Program Assessment, sample size, baseline, baseline survey, survey, risk factor survey. Facility type.

2. Risk Factor Study Sample Size

Keywords: STD-09, Program Assessment, sample size, baseline, baseline survey, survey, risk factor survey

3. Risk Factor Study – Use of lower confidence levels than recommended in the FDA Data Collection Manual

Keywords: STD-09, Program Assessment, baseline survey, risk factor survey, survey, confidence level

4. Cooperation within a state on Risk Factor Surveys

Keywords: STD-09, Program Assessment, baseline survey, risk factor survey, survey, cooperation, joint survey

5. Appropriate auditor for the risk factor survey

Keywords: STD 9, auditor, conflict of interest, risk factor survey

1. Facility types to be included in Risk Factor Study

Keywords: STD-09, Program Assessment, sample size, baseline, baseline survey, survey, risk factor survey, facility type

Issue Description

Background

Our jurisdiction is considering limiting our risk factor study data collection to only one of the facility types that we regulate. We are thinking of surveying only the full service restaurants since it is the more complex segment of the industry and includes the majority of our permitted establishments. There are two reasons for limiting the scope of our survey.

The first reason is to conserve the expenditure of resources during these tight budget times. The second reason is that we would like to gain some experience in the methodology and surveying techniques before we put too many resources into the process only to discover that changes need to be made in the process.

Question/Problem

If we limit the scope of our data collection survey to only one of the facility types that we regulate, will we still meet the intent of Standard 9?

Rationale

We believe that we will meet the intent of Standard 9 by surveying only one facility type. The Standard does not spell out which facility types must be surveyed. It simply requires that risk factor study data be collected and that additional data be collected on subsequent three-year cycles. Further FDA did not collect information on all of the potential facility types in existence or that might be regulated by a jurisdiction. Therefore, we should be free to select the scope of the survey that meets our needs.

Response from Clearinghouse Work Group (Updated 2020)

Standard 9 was changed based on the 2004 CFP recommendation so that a risk factor study need only be completed once every five years. In later revisions it was clarified that surveys of the various facility types can be conducted independently over the 5-year evaluation period as long as all the facility types under the jurisdiction's authority are surveyed within the recurring survey cycle. The Standard was also revised to allow regular inspection data to be used in determining the occurrence of the risk factors most in need of priority attention.

FDA currently has four industry segments that include the following facility types: Health Care (hospitals, long-term care facilities), Schools (K-12), Restaurants, Retail Food Stores (must have a deli operation). Jurisdictions must include in their study, all establishments that fall under the four industry segments for which they have regulatory oversight.

2. Risk Factor Study sample size

Keywords: STD-09, Program Assessment, sample size, baseline, baseline survey, survey, risk factor survey

Issue Description

Background

At the Program Standards workshop, information was presented related to determining a jurisdictions sample size to ensure a valid risk factor data measurement of CDC identified foodborne illness risk factors. In order to ensure a comparable study with FDA, a jurisdiction that has 100 or more establishments in any of the 9 categories was instructed to sample at least 100 of those establishments in each category for a valid sample size. If a category had less than 100, the jurisdiction was expected to sample all the facilities within that category.

Question/Problem

Aren't the sample size parameters presented above unnecessarily high given the fact that FDA's sample size for any of the nine categories did not exceed 100 and theirs is a national study comprising about one million establishments? Is there an alternative to this suggested model that would provide a statistically valid confidence level given the much smaller total number of establishments within any given jurisdiction?

Rationale

While we are awaiting feedback from the work group, we strongly believe that a statistically valid study is achievable from a sample size that is significantly less than what the FDA has presented as a model.

Response from Clearinghouse Work Group (Updated 2020)

Statisticians within FDA's Center for Food Safety and Applied Nutrition (CFSAN) Biostatistics Branch have re-examined this issue and determined that smaller sample sizes can be used to attain a statistically valid confidence level for the establishment of a Baseline of Occurrence of Foodborne Illness Risk Factors. For complete guidance on conducting a baseline and ensuring comparability with FDA national study, see "Protocol for the Risk Factor Study Data Collection or Study on the Occurrence of Foodborne Illness Risk Factors in Selected Retail and Foodservice Facility Types (2013-2024)." This document can be found:

<https://www.fda.gov/food/retail-food-protection/retail-food-risk-factor-study>

3. Risk Factor Study – Use of lower confidence levels than recommended in the FDA Data Collection Manual

Keywords: STD-09, Program Assessment, baseline survey, risk factor survey, survey, confidence level

Issue Description

Background

None provided.

Question/Problem

I am the director of a jurisdiction that is participating in the Standards, and I have completed my self-assessment. Although I would like to conduct a risk factor baseline survey, I have very limited resources. The FDA Data Collections Manual recommends sample sizes that will result in a 95 percent confidence level. It seems that if I am willing to accept a lower confidence, for example 80 or 90 percent, I can collect fewer samples. This will allow me to conduct my survey using fewer person hours.

Rationale

I realize that I would not be able to compare my results with the FDA National data. I also realize that the results would not be as reliable using a lower confidence level; however, I think the information I gather will be sufficient to help me tweak my program to gain some improvements. I'm not sure I need the scientific justification of a 95 percent confidence level. If I'm willing to accept the lower confidence levels, are there other reasons why I shouldn't reduce sampling to stretch my resources?

Response from Clearinghouse Work Group (07-15-03; Updated 2020)

Note: The FDA Data Collections Manual referenced in the above question is no longer published and has been replaced with the “Protocol for the Risk Factor Study Data Collection or Study on the Occurrence of Foodborne Illness Risk Factors in Selected Retail and Foodservice Facility Types (2013-2024).”

There are a number of issues to be considered here. In a nut shell, the statistics show that although you may be able to reduce sample size somewhat, your ability to measure trends over time is greatly compromised. You will lose precision to a degree that you may not be able to detect increases or decreases in compliance of risk factors in future surveys. Indeed, upward trends in compliance may even be mistaken for downward trends. The complete mathematical explanation for this phenomenon that argues against using confidence levels lower than 95 percent (95%), as outlined in the “Protocol for the Risk Factor Study Data Collection or Study on the Occurrence of Foodborne Illness Risk Factors in Selected Retail and Foodservice Facility Types (2013-2024)

<https://www.fda.gov/food/retail-food-protection/retail-food-risk-factor-study>

The surveys are intended to track over time the occurrence of risk factors known to cause or

contribute to foodborne illness. The idea is that the information uncovered will allow you to focus your efforts in selected areas where compliance is low in order to achieve significant improvement. Future surveys would then reveal whether your efforts and strategies were successful in changing the occurrence of the selected risk factors. If your survey is conducted in such a way that you are unable to identify changing trends in risk factor occurrence, then the purpose of the survey is defeated. You may conserve resources used to conduct the surveys, but if the information gathered does not serve the intended purpose, then the resources will have been wasted.

An initial baseline survey and future risk factor surveys can be a tremendously powerful tool to demonstrate the usefulness of your program to the Board of Health, City Council or whatever body has influence over your budget and resources. For the first time, there exists an effectiveness measure for a public health program. It has always been difficult to justify preventive programs, especially during austere economic times. The surveys allow you to identify areas that represent potential problems affecting consumer health and the well being of the community at large. You can then develop logical strategies to reduce the risk in those specific problem areas and to demonstrate the positive impact of your program. Conducted properly, risk factor surveys can provide tangible justification for your food program in a way never before possible. This being the case, your surveys should be conducted in such a way as to maintain the highest integrity and maximum usefulness of the survey results. For these reasons the Clearinghouse cannot recommend the use of lower confidence levels.

However, see the latest version of Standard 9 since facility types now do not have to be surveyed in the same year and regular inspection data may now also be used as an alternative to conducting a specific data collection.

4. Cooperation within a State on Risk Factor Surveys

Keywords: STD-09, Program Assessment, baseline survey, risk factor survey, survey, cooperation, joint survey

Issue Description

Background

None provided.

Question/Problem

If a state-wide baseline is conducted, can the enrolled jurisdictions in that state utilize that state-wide baseline to satisfy the criteria for Standard 9 if they participate?

Rationale

The Food Protection Program in Idaho consists of a state program manager that provides rule implementation and interpretation. The Food Protection Program delegates jurisdictional authority to seven (7) district health departments to issue licenses, conduct inspections, and investigate complaints and potential foodborne illnesses.

All of Idaho's seven health districts have enrolled in the Voluntary Program Standards as well as the Food Protection Program of the State Department of Health and Welfare. In other words, all of Idaho's health jurisdictions that deal with retail food are enrolled in the standards.

Individual baseline studies conducted by the individual health districts will result in some districts collecting data from approximately 50% of all food establishments within the district while other districts would be required to collect data from 28% of all food establishments due to the varying sizes of the districts. This would result in unequal costs to the districts. In some cases, this cost differential will likely prohibit a district from conducting an effective baseline study.

A state-wide baseline would result in a sample size equivalent to 16% of all food establishments in the state. In Idaho, data collected from a state-wide baseline study would be used to develop the goals and objectives of the Food Protection Program for the next several years. These goals and objectives would also be implemented by each of the seven districts.

Given the unique structure of public health delivery in Idaho, we believe that the Clearing house's agreement with this position and affirmative decision on the question posed above does not set any kind of difficult precedent. Rather, it creates a cost-effective way to evaluate potential risks for developing foodborne illness throughout the State of Idaho and optimizes ways to implement effective intervention strategies statewide. In addition, an affirmative decision on the question would be consistent with the following paragraphs from the document:

“Jurisdictions may choose to work together on the Baseline to develop a comprehensive establishment inventory. This takes some coordination and cooperation between agencies but often results in a more efficient use of limited resources, particularly travel time associated with data collection at randomly selected facilities located throughout a large region or state.” (Page 10)

“Many jurisdictions have relatively small establishment inventories. Some are one-person health jurisdictions. Small jurisdictions may consider working together to establish a regional baseline. To accomplish this, they would pool their establishment inventories and follow a random selection process. The sample size and selected establishments would have a regional distribution allowing the jurisdictions to collectively determine specific responsibilities for the actual data collection.” (Page 13)

Response from Clearinghouse Work Group (08-18-04)

Note (10-7-20): The document *Developing a Baseline on the Occurrence of Foodborne Illness Risk Factors: Data Collection Manual* referenced above no longer is published by FDA.

The methodology described in the background for this question appears sound in that the proposal follows the guidance given in the Baseline Data Collection Instruction Manual for conducting a state-wide or region-wide study.

- The State plans one overall survey by combining all the district inventories and sampling randomly from the single combined inventory.
- Each district will conduct the survey inspections of the facilities in their district that were drawn from the sampling of the combined inventory.
- The districts will not attempt to analyze the data by district, nor will they compare districts using the data collected since they recognize that collecting the data on a state-wide basis results in a state-wide survey.
- The survey will result in one report that will be used to develop goals and objectives to be applied within all of the participating districts.

The audit criteria for risk factor occurrence surveys require that jurisdictions understand the results and limitations of their surveys and produce meaningful information for improving programs. That requirement will be met in the Idaho proposal.

We have heard throughout the country that conducting a risk factor occurrence survey is difficult because of resource issues. The Clearinghouse Work Group and FDA have been asked to look at ways to overcome this problem. Working together on a state-wide approach is an innovative way to overcome the resource issue and still have a meaningful measurement of the occurrence of risk factors.

This model could be useful for very small jurisdictions. The FDA has encouraged small jurisdictions, especially one- and two-person departments to work together on the Standards. Area-wide risk factor occurrence surveys conducted by a consortium of small jurisdictions working together would be one cost-effective method for smaller jurisdictions to gather the information needed to develop program improvement strategies. As long as accurate conclusions are drawn based on the data and appropriate strategies are developed, there is no reason why this kind of cooperation cannot take place.

The Clearinghouse Work Group accepts the Idaho structure and agrees that each of the participating Idaho districts will meet the intent of Standard 9 related to risk factor occurrence surveys.

5. Appropriate auditor for the Risk Factor Survey

Keywords: STD 9, auditor, conflict of interest, risk factor survey

Issue Description

Background

None provided.

Question/Problem

The State of Idaho has completed a statewide baseline study. Inspections were completed by the seven (7) individual health districts. The reports were sent to the Food Protection Manager with the State of Idaho. The Food Protection Manager used the Access Database to enter the inspection results from the districts and completed the report using the FDA Study report as a guideline. If the Food Protection Manager did not complete the actual field collection activities, can he be the auditor for the 7 individual health districts for this Standard? If so, can he also get credit for the States Standard 9?

Rationale

The Food Protection Manager is not the one who actually did the inspections. He is simply the individual who entered the data from the inspections and produced the reports from the Access Database. He then created a report along the lines of the FDA Risk Factor Studies. Please refer to the Clearinghouse Opinion of August 2004.

Response from Clearinghouse Work Group (01-17-07)

Our understanding of your risk factor survey is that the seven health jurisdictions combined your inventories and made one random selection of facilities to represent a State-wide survey that would be used by each of the seven districts to set goals and directions for the next several years. Your State asked for and got a favorable response for this methodology before embarking on the survey. We see your point that the input of data and constructing of the report by the State Program Manager would not constitute a significant influence on his part over the outcome of the survey. One purpose of the verification audit is to show outside agreement that a jurisdiction's interpretation of the process and outcome was valid. It is also to give validity and credibility to the Standards process and preserves integrity of the system. While we believe that the Program Manager could serve objectively as the auditor, some might view this arrangement as a conflict of interest. For this reason, the Clearinghouse recommends that you obtain a different auditor for this particular element of Standard 9.

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