

**Conference for Food Protection  
2014 Issue Form**

**Internal Number: 040  
Issue: 2014 I-032**

<b>Council Recommendation:</b>	Accepted as Submitted _____	Accepted as Amended _____	No Action _____
<b>Delegate Action:</b>	Accepted _____	Rejected _____	

*All information above the line is for conference use only.*

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**Title:**

Imminent Health Hazard - Modify the definition and enforcement action

**Issue you would like the Conference to consider:**

Modify the definition of "Imminent Health Hazard" so that a facility taking immediate corrective action to eliminate, prevent or control a risk or hazard is not debited as an "Imminent Health Hazard" situation. If corrective action has been taken, an "Imminent Health Hazard" does not exist and a facility should not have to cease operations.

**Public Health Significance:**

The FDA Food Code definition states that an "Imminent Health Hazard" exists if a product, practice, circumstance, or event requires immediate corrective action or cessation of operation to prevent injury. However, there is confusion about the status of the product, practice, circumstance, or event once the immediate corrective action is taken. Immediate corrective action is intended to prevent, eliminate or control the risk so that there is no health hazard. Therefore, if immediate corrective action is taken, there is no "Imminent Health Hazard."

Further, the FDA Food Code Section 8-404.11 states that if an "Imminent Health Hazard" may exist, then the permit holder must immediately discontinue operations. As written, even if immediate corrective action is taken, the operation must cease operation. In fact, if immediate corrective action is needed, then the facility must cease operation because by definition an "Imminent Health Hazard" exists. In reality, facilities are permitted to continue operations if corrective action has eliminated, controlled or prevented the risk to public health. A simple example is the use of a generator. If electrical power is interrupted, a facility may use a generator to ensure safe food temperatures are maintained. However, the Food Code could be interpreted to mean that in this situation, the facility must cease operations because the loss of power created an "Imminent Health Hazard" by the mere fact that the generator was used as a corrective action.

The CFP Emergency Action Plan (EAP) Committee was charged with reviewing and updating the *CFP Emergency Action Plan for Retail Food Establishments*. During the EAP Committee's deliberation, there was discussion about the confusion and seemingly contradictory definition of an "Imminent Health Hazard." A possible change to the Food Code was proposed, but because modifying this definition was not a charge of the EAP Committee, it was agreed that an interested person could submit this as a separate Issue.

The current *CFP Emergency Action Plan for Retail Food Establishments* and the proposed, revised *Emergency Guidance for Retail Food Establishments* include recommendations for corrective action steps that can be taken to ensure a safe food operation even when emergencies occur. The current definition of Imminent Health Hazard and Section 8-404.11 of the Food Code are incongruous because they require the facility to cease operation regardless of any corrective action taken to resolve the emergency.

The recommended solution does not alter existing requirements for reporting to Regulatory Authorities when certain emergency situations occur, nor does it change the requirement that when required to cease operations, a permit holder must obtain permission from the Regulatory Authority to resume operations.

**Recommended Solution: The Conference recommends...:**

that a letter be sent to the FDA requesting that paragraph 1-201.10 (B) and paragraph 8-404.11 (A) of the 2013 Food Code be amended as follows (underline format used for new language and striking through format used for language to be deleted):

1. Definitions 1-201.10 (B)

"Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that cannot be controlled by ~~requires~~ immediate corrective action ~~correction and requires~~ or cessation of operation to prevent injury based on:

- (1) The number of potential injuries, and
- (2) The nature, severity, and duration of the anticipated injury.

2. Imminent Health Hazard

Section 8-404.11 Ceasing Operations and Reporting

(A) Except as specified in ¶ (B) of this section, a PERMIT HOLDER shall immediately discontinue operations and notify the REGULATORY AUTHORITY if a significant threat or danger to health may exist and corrective action cannot be taken to prevent an IMMINENT HEALTH HAZARD ~~may exist~~ because of an emergency such as a fire, flood, extended interruption of electrical or water service, SEWAGE backup, misuse of POISONOUS OR TOXIC MATERIALS, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.

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