**Conference for Food Protection**

**2018 Issue Form**

**Issue: 2018 III-019**

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| **Council Recommendation:** | Accepted as  Submitted |  | Accepted as Amended |  | No Action |  |
| **Delegate Action:** | Accepted |  | Rejected |  |  |  |

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

**Issue History:**

This issue was submitted for consideration at a previous biennial meeting, see issue: 2014 III-005 and 2014 III-006; the recommended solution has been revised.

**Title:**

Amend Food Code - Room Temp Non-TCS Food Becoming TCS, Then Held Using TPHC

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

Amend section 3-501.19, Time as a Public Health Control (TPHC) of the FDA Food Code to allow for non-TCS food at or below 70°F to be held using time without temperature as the public health control from the time that product becomes a TCS food.

**Public Health Significance:**

When using TPHC, in 3-501.19 (B) (1) it is required to have the FOOD at an initial temperature of 41°F or below prior to being removed from temperature control. Following this criteria, a TCS food may then be left out of temperature control when utilizing time as a public health control for up to four (4) hours.

3-501.19 TPHC does not allow for a non-TCS food at ambient temperature, at the time that it is made into a TCS food (e.g. the act of cutting a whole melon, a whole tomato, harvest cut leafy greens; or opening canned tuna/chicken and making it into a sandwich spread; or mixing pancake/waffle batter that is prepared from ambient temperature ingredients) to be time stamped, left out for four (4) hours during service and then discarded, cooked and served, or served before the time limit is exceeded.

Non-TCS foods that are made into TCS foods must first be cooled 41°F or heated to or 135°F before an operator can utilize 3-501.19 TPHC. Therefore freshly mixed pancake/waffle batter at ambient temperature must first be chilled to or below 41°F before it can be time stamped and time as a public health control parameters in the code can be utilized. Under the Cooling section, 3-501.14 (B) allows for TCS foods that are made from ingredients at ambient temperature, up to four (4) hours to remain above 41°F. This TCS food can then be maintained at or below 41°F for up to 7 days prior to being removed from temperature control using TPHC under 3-501.19 for up to another four (4) hours (or even six (6) if maintained below 70°F).

In the FDA Food Code Annex section 3-501.19 it states:

"For food refrigerated at 41ºF or 45°F then transferred to an ambient temperature of 75°F for 4 hours, the growth rate of L. monocytogenes remains slow enough to ensure that the critical limit of 1 log growth is not reached. Published generation times at 75°F for L. monocytogenes in food were not found, however published values at 68ºF and 70°F in egg and milk products confirmed slow L. monocytogenes growth at room temperatures.

Using the USDA Pathogen Modeling Program (PMP) and assuming the optimum conditions of pH 6.8, 0.5% NaCl, 0.0% nitrite, L. monocytogenes would require more than 4 hours to grow 1 log at 75°F. The PMP is based on broth studies and not on food products. Therefore, the growth rates reported at various temperatures by the PMP are faster than growth rates in most food products. Another factor exaggerating the growth rate in this warming scenario as predicted by the PMP is the assumption that the food product spent all 4 hours at 75°F. Obviously food equilibrates with the surrounding environment at a gradual rate and would not equilibrate instantly."

The above studies show LM growth is less than 1 log at 68°F-70°F in egg and milk products and in the PMP model under optimum conditions at 75°F for up to 4 hours showed a slow rate of LM growth.

As LM is not specific to any particular TCS food and the food code currently allows foods from ambient to be out of temperature control for up to four (4) hours, therefore, a non-TCS food that becomes TCS to be kept for 4 hours will still allow an adequate margin of safety.

To substantiate the information in Chapter 3 of the Annex and provide greater detail on specific TCS food items, the 2012 TPHC CFP committee provided a report and submitted two issues. In 2014 based on the recommendations of the 2012 TPHC committee, CFP passed issues 2014 III-005 and 2014 III-006. Both of these issues were very similar to this issue. The FDA's response later that year did not concur with the recommendations of the CFP to adopt the recommended changes of the committee due to a couple of elements. In their response letter the FDA indicated concerns over identifying a single maximum temperature and if it is necessary to provide an itemized list of foods to which this criteria would be applied. No updates as requested by the 2014 biennial meeting to 3-501.19 have been made.

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

that a letter be sent to the FDA requesting Section 3-501.19 of the most current FDA Food Code be amended as follows (language to be added is underlined):

Section 3-501.19

(B) If time without temperature control is used as the public health control up to a maximum of 4 hours:

(1) The FOOD shall have an initial temperature of 5ºC (41ºF) or less when removed from cold holding temperature control, or 57°C (135°F) or greater when removed from hot holding temperature control, or at which time the FOOD is made TIME/TEMPERATURE CONTROL FOR SAFETY FOOD and shall begin below 70°F; P

(2) The FOOD shall be marked or otherwise identified to indicate the time that is 4 hours past the point in time when the FOOD is removed from temperature control or at which time it becomes a TIME/TEMPERATURE CONTROL FOR SAFETY FOOD; Pf

**Submitter Information:**

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| --- | --- | --- | --- |
| Name: | Troy Huffman | | |
| Organization: | Colorado Department of Public Health & Environment | | |
| Address: | 4300 Cherry Creek Dr. S | | |
| City/State/Zip: | Denver, CO 80246 | | |
| Telephone: | 3036923664 |  |  |
| E-mail: | troy.huffman@state.co.us |  |  |

**Supporting Attachments:**

* "2012 TPHC Committee Final Report"

It is the policy of the Conference for Food Protection to not accept Issues that would endorse a brand name or a commercial proprietary process.