

**Conference for Food Protection
2018 Issue Form**

Issue: 2018 I-014

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: 2012-040; new or additional information has been included or attached and the recommended solution has been revised.

Title:

Amend Food Code - Exempt Restaurant-Type Food from label requirements

Issue you would like the Conference to consider:

We would like the FDA to consider amending the most current published edition of the Food Code section 1-201.10 (B) by adding the definition of restaurant-type food and amending the definition of PACKAGED subsection (2) to include all restaurant-type food, without regard to the method of delivery to the consumer and eliminate the required full features of a label when posted that all information is available upon request.

21 Code of Federal Regulations (CFR) 101.11(a) has clarified the definition of a restaurant-type food to mean food that is:

(i) Usually eaten on the premises, while walking away, or soon after arriving at another location; and

(ii) Either:

(A) Served in restaurants or other establishments in which food is served for immediate human consumption or which is sold for sale or use in such establishments; or

(B) Processed and prepared primarily in a retail establishment, ready for human consumption, of the type described in paragraph (ii)(A) of this definition, and offered for sale to consumers but not for immediate human consumption in such establishment and which is not offered for sale outside such establishment.

The FDA has a history of utilizing statutory context as a starting point for a regulatory definition and we propose that this same strategy must also be used in the exemption portion of the definition of PACKAGED. 21CFR101.9 (j)(2)(i)(ii) was used as the source for the definition of restaurant-type food in 21CFR101.11(a). The logic of using this source to add the definition of restaurant-type food to the next FDA Food Code will standardize multiple regulations, while simultaneously giving clarity to the definition of PACKAGED.

Consider the wrapper being used for self-service grab and go food as the effective dispensing method as required in the most recent published edition of the Food Code section 3-306.13 (B) Consumer self-service operations for ready-to-eat foods must be provided with suitable utensils or effective dispensing methods that protect the food from contamination. This wrapper is not intended to be the type of packaging that protects a food for extended periods of time, through transportation, or storage. The food is merely wrapped to facilitate service and delivery of the food to the consumer in a protected manner.

The FDA has clarified their position that consumers that choose to obtain food wrapped for self-service from a grab and go hot food display do not have the same access to allergen, ingredient, and weight information as consumers that order a similar type of grab and go food from a restaurant employee staffing the service counter or drive up window.

We challenge the above position and submit that a consumer's ability to request and receive accurate ingredient information is synonymous whether the request is made of a retail co-worker or a restaurant employee. The same system will be utilized by the employee to retrieve the information, regardless of operation size, or data source, e.g. electronic copy, hard copy, or from the ingredient label on the bulk packaging. This leads us to the conclusion that consumers that obtain restaurant-type food from a self-service grab-and-go display have the same opportunity to ask for and receive allergen, ingredient and weight information as consumers that order the same restaurant-type of food from a restaurant employee. Information in both situations would be provided upon request, rather than being printed directly on the label or packaging.

The retail food industry is committed to ensuring that ingredient and allergen information is readily available to consumers in a readable format, and propose that prominently posting a notice to consumers that the information is available upon request, is a model that has successfully been used to provide consumers with additional information for those products and situations identified in 2013 FDA Food Code 3-602.11(C)(2); 21CFR 101.100(a)(2)(ii); and moving forward will be utilized to comply with 21CFR101.11 (b)(2)(i)(C).

To enforce packaged food labeling requirements to restaurant-type food is placing an unreasonable regulatory burden, increased costs and inefficiencies to our business without the added benefit of increasing public health protection.

Public Health Significance:

Often changes are made to a supplier or the supplier's ingredients and it is essential to the protection of public health that the change is applied rapidly. When the information is managed electronically an immediate change can be made to the internal database ensuring the most current information is provided to the consumer. Conversely, it may take an extended period of time to order/produce new wrappers corresponding to the updated ingredient list. Combined with the time it takes to implement the use of the new wrapper, there is a much greater opportunity to put the consumer at risk.

We submit that continuing to provide consumers with ingredient and nutritional information upon request is a successful model and poses no health risk to consumers. We further submit that "serving" the food through a grab and go case vs. being handed that same food does not diminish the access a consumer would have to ingredient and nutritional information. There is a long history of retail stores making ingredient and nutritional

statements available upon request for those products identified in 2013 Food Code sections 3-602.11(C) (2) and 3-602.11 (D) (1-3). Consumers do not hesitate to ask an employee, or look up the information on a website themselves, and will continue to do the same with wrapped self-service restaurant-type food.

Recommended Solution: The Conference recommends...:

that a letter be sent to the FDA requesting that the most current published edition of the Food Code be amended as follows (with new language being shown with underline and language to be deleted indicated with ~~strike thru~~):

1) New definitions be added in Section 1-201.10(B)

Restaurant-type food means food that is:

Usually eaten on the premises, while walking away, or soon after arriving at another location; and either:

(A) Served in restaurants or other establishments in which food is served for immediate human consumption or which is sold for sale or use in such establishments; or

(B) Processed and prepared primarily in a retail establishment, ready for human consumption, of the type described in paragraph (ii)(A) of this definition, and offered for sale to consumers but not for immediate human consumption in such establishment and which is not offered for sale outside such establishment.

Self-service food means restaurant-type food that is available at a salad bar, buffet line, cafeteria line, or similar self-service facility and that is served by the customers themselves. Self-service food also includes self-service beverages

2) Amend the definition of "Packaged" as follows:

Packaged

*(2) "**Packaged**" does not include RESTAURANT-TYPE FOOD wrapped or placed in a carry-out container to protect the FOOD during ~~service or delivery to the CONSUMER, by a FOOD EMPLOYEE, upon CONSUMER request.~~*

3) Amend Section 3-602.11(C)(2) as follows:

(2) A card, sign, or other method of notification that includes the information specified under Subparagraphs (B)(1), (2), and (6) of this section; or

4) Amend Section 3-602.11 to add subparagraph (C)(3) to read as follows:

(C) (3) Prominently post a notification in a clear and conspicuous manner stating the information specified in Subparagraphs (B) (1) (2) (5) and (6) of this section is available upon request.

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Supporting Attachments:

- "CFR 2018 Ref 21 CFR 101 Supporting Documentation"

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.