

**Conference for Food Protection  
2018 Issue Form**

**Issue: 2018 I-015**

**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 is a brand new Issue.

**Title:**

Amend Food Code Consumer Advisory: Food Allergies - Allergen Disclosure

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

The FDA Food Code recognizes that consumers should have notice regarding the risk of foodborne illness from raw or undercooked meats, poultry, seafood, shellfish, or eggs. However, the model consumer advisory fails to provide adequate notice for persons to accurately assess the risk of severe illness and death from the known regulated US Food & Drug Administration (FDA) eight (8) food allergens. Specifically, the eight foods identified by the FDA law are: Milk, Eggs, Fish, (e.g., bass, flounder, cod) Crustacean shellfish, (e.g., crab, lobster, shrimp) Tree nuts, (e.g., almonds, walnuts, pecans) Peanuts, Wheat, Soybeans.

Every country is impacted by food allergies as it is a significant public health concern and global burden that impacts every social culture. Other developed countries such as the United Kingdom and the European Nations (EU) require Food Service Operations (FSO) to list/disclose regulated food allergens on the menu per customer request. The EU requires that each FBO needs to define this to know the ingredients in the menu items they are serving/selling. 7 Food safety laws do not allow servers and/or chefs to say they do not know what regulated allergens are on their menu nor are they allowed to say that all the items contain an allergen. Simply put, ignorance is no excuse for lack of food allergen safety. Like any other manufacturing/product industry, restaurants and take-outs must know and disclose what regulated food allergens are contained in products listed on the menu when asked by the consumer.

Currently, retail food service establishments in the United States are not required to know the food allergens contained in foods listed on the menu. Given the potential for food allergy exposures that can result in hospitalizations, lost work, accidental illness and death, retail food service should be required to know what regulated food allergens (FDA's eight (8) food allergens) are contained in food menu products.

The EU requires every Food Business Operation (FBO) to disclose each known regulated food allergen ingredient upon request (Note: EU has 14 food allergens, compared to the 8

food allergens in the US- From 13 December 2014, the EU Food Information for Consumers Regulation No. 1169/2011 requires food businesses to provide allergy information on food sold unpackaged, in for example catering outlets, deli counters, bakeries and sandwich bars). It is time for the United States to join other developed countries and take steps to reduce exposure to food allergens. Therefore, I am proposing that retail food service establishments provide a Material Safety Data Sheet "MSDS" for staff and customers to be available upon request. I have attached an example which is used in the EU and is incorporated into a food service operator's restaurant plan review process. Typically, it is part of the already created recipe and food menu creation process by chefs, that is shared with servers.

### **Public Health Significance:**

Direct quote from the FDA Website:

<https://www.fda.gov/Food/IngredientsPackagingLabeling/FoodAllergens/default.htm>

"Each year, millions of Americans have allergic reactions to food. Although most food allergies cause relatively mild symptoms some food allergies can cause severe reactions that are life-threatening.

There is no cure for food allergies. Strict avoidance of food allergens and early recognition and management of allergic reactions to food are important measures to prevent serious health consequences".

Food allergies are a significant and emerging public health concern and impact approximately 15 million Americans, including 5.9 million children under the age of 18. That's 1 in 13 children or roughly two in every classroom. Economically, the eight (8) food allergens cost US families 25 billion dollars annually. In addition, tax funded local, state and federal food safety agencies are forced to respond to what can be a preventable food safety/poisoning-type exposure. It also should be noted that a food allergy is an impairment that limits a major life activity and may qualify an individual for protection under the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973. 2

The Centers for Disease Control & Prevention reports that the prevalence of food allergies in children increased by 50 percent between 1997 and 2011. Given there is no cure for food allergies, public health prevention measures remain the best method to reduce the number of anaphylactic reactions that result in the following:

- Every three minutes, a food allergy reaction sends someone to the emergency room. 1
- Each year in the U.S., 200,000 people require emergency medical care for allergic reactions to food. 2
- Pediatric hospitalizations for food allergies tripled between the late 1990s and the mid - 2000s. Between 2004 and 2006, an average of 9,500 children received in - patient hospital care for food allergies each year. 3
- About 40 percent of children with food allergies have experienced a severe allergic reaction such as anaphylaxis. 4
- Each year, roughly 30,000 individuals require emergency room treatment and 150 individuals die because of allergic reactions to food. 6

The Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282, Title II) (FALCPA) improved food labeling information for the millions of consumers who suffer from food allergies. The Act is especially helpful to children who must learn to recognize the allergens they must avoid.

Furthermore, according to the Food Allergen Labeling and Consumer Protection Act (FALCPA) the eight major allergens must be declared in simple terms either in the ingredient list or via a separate allergen statement. However, FALCPA does not regulate the use of advisory/precautionary labeling (e.g., "may contain," "made in a facility that also processes"). 5

Like other developed countries similar to the United States, affording consumers information to make informed decisions provides them the opportunity to prevent unintended food allergen exposures. Given there is no cure, prevention is the best public health food safety control method to prevent unintended illness and death.

References: (Note : For all sections of this form)

1. Clark S, Espinola J, Rudders SA, Banerji, A, Camargo CA. Frequency of US emergency department visits for food - related acute allergic reactions. *J Allergy Clin Immunol.* 2011; 127(3):682 - 683.

2. U.S. Department of Education, Office for Civil Rights. Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools. <http://www2.ed.gov/about/offices/list/ocr/docs/dcl - 504faq - 201109.html>, retrieved December 28, 2015.

3. Branum A, Lukacs S. Food allergy among U.S. children: Trends in prevalence and hospitalizations. NCHS data brief, no 10. Hyattsville, MD: National Center for Health Statistics. 2008. Retrieved from [www.cdc.gov/nchs/data/databriefs/db10.htm](http://www.cdc.gov/nchs/data/databriefs/db10.htm)

4. Gupta RS, Springston MR, Warrier BS, Rajesh K, Pongracic J, Holl JL. The prevalence, severity, and distribution of childhood food allergy in the United States. *Pediatrics* 2011; 128(1):e9 - 17.

5. NIAID - Sponsored Expert Panel. Guidelines for the diagnosis and management of food allergy in the United States: Report of the NIAID - sponsored expert panel. *J Allergy Clin Immunol.* 2010; 126(6):S1 - 58

6. <https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Allergens/ucm106187.htm>

7. Food allergen labelling and information requirements under the EU Food Information for Consumers Regulation No. 1169/2011: Technical Guidance. April 2015

Content Documents: Attached please a food allergy chart that has been used in the EU for many years as an example for consumer disclosure and to assist FBO's. In addition, please find the

Food allergen labelling and information requirements under the EU Food Information for Consumers Regulation No. 1169/2011: Technical Guidance. April 2015

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

That a letter be sent to the FDA requesting § 3-603.11, Consumption of Animal Foods that are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens, of the most current edition of the FDA Food Code be amended as follows (new language underlined):

(D) FOOD ALLERGEN DISCLOSURE shall include a statement on the menu indicating that upon request by a consumer, the PERSON IN CHARGE shall provide (1) additional information about the menu showing where the eight MAJOR FOOD ALLERGENS are used as ingredients and (2) The following REMINDER statement: Consuming food allergens may cause a severe allergic reaction to a person who diagnosed with a FOOD allergy.

**Submitter Information:**

Name: Michael A. Pascucilla, Director of Public Health  
Organization: East Shore District Health Department  
Address: 688 East Main Street  
City/State/Zip: Branford, CT 06405  
Telephone: 2036191286  
E-mail: mpascucilla@esdhd.org

**Supporting Attachments:**

- "1. EU Food Allergy Regulation N0. 1169/2011 (2015)"
- "FSA Food Allergen Information & Disclosure Chart / MSDS Form"
- "Food Allergy White Paper"

*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.*