

**Conference for Food Protection  
2020 Issue Form**

**Issue: 2020 I-018**

**Council Recommendation:** Accepted as Submitted \_\_\_\_\_ Accepted as Amended \_\_\_\_\_ No Action \_\_\_\_\_

**Delegate Action:** Accepted \_\_\_\_\_ Rejected \_\_\_\_\_

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

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**Issue History:**

This is a brand new Issue.

**Title:**

Amend the Food Code to Require Consumer Notification of Food Recalls

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

This Issue helps to ensure that consumers are notified by food retailers after adulterated food has been offered for sale. During a recall, retailers have a unique role in notifying consumers who have purchased contaminated food. Consumers often return to the same grocery store week after week, affording opportunity to see in-store notices for recalled food purchased on a prior visit. Moreover, grocery stores frequently maintain purchase information through customer loyalty programs, which enables targeted communications directly to affected consumers via email, telephone text, or register printout.

Consumer notification of recalls is recommended as an industry best practice, and the majority of large food retailers have already adopted policies requiring such notice. Unfortunately, the scope and effectiveness of these policies vary, and there are no federal, state, or local standards to ensure effectiveness or appropriate implementation.

Section 211 of the Food Safety Modernization Act aimed to address this problem by authorizing the Food and Drug Administration (FDA) to publish one-page notices for recalled foods online, which grocery stores would then be required to download and post in-store. Unfortunately this authority, which has not been implemented, would be narrower, less efficient, and less informative than alternative methods of communication that could be developed directly by food retailers and their suppliers.

Amending the Food Code to require consumer notification of food recalls offers a more effective means to ensure that consumers are notified of recalls, while also providing flexibility for food retailers in identifying means to achieve that end.

**Public Health Significance:**

Between 2013 and 2018, the Food and Drug Administration (FDA) and US Department of Agriculture (USDA) together oversaw nearly 4500 food recalls, averaging more than 700 recalls annually. About half of which were Class I recalls, meaning they involved a

reasonable probability of serious adverse health consequences or death.

[https://uspirg.org/sites/pirg/files/reports/WEB\\_USP\\_Safe-Food-Report\\_Jan19.pdf](https://uspirg.org/sites/pirg/files/reports/WEB_USP_Safe-Food-Report_Jan19.pdf).

An important priority during such recall events is ensuring that affected consumers receive timely and actionable information about the recall. Such notices are essential to enable consumers to identify and discard food that may be contaminated, as well as seek out appropriate medical care (e.g. prophylaxis for Hepatitis A exposure).

Consumer notification is especially important when product may be frozen or has a long storage life, meaning purchased food can remain a risk to consumers for weeks or even months after the recall. For example, ground beef tied to a *Salmonella* outbreak recalled in October and December of 2018 continued to sicken dozens of patients for months after. The last case of illness in that outbreak was reported in February 2019, more than four months after the initial recall was initiated. <https://www.cdc.gov/salmonella/newport-10-18/epi.html>. Similarly, flour tied to an *E coli* outbreak was recalled three times between May and July of 2016, yet illnesses from that outbreak continued into September of that year, more than three months after the initial recall. <https://www.cdc.gov/ecoli/2016/o121-06-16/epi.html>. Such long delays between initiation of a recall and onset of illness suggests that contaminated product has the potential remain in consumers' homes for a substantial period, placing unknowing consumers at risk.

When a recall is initiated, the responsible firm generally ensures notice is communicated to customers and retail consignees, providing the information needed to carry out the recall. The federal agencies responsible for overseeing food recalls also conduct audit checks (FDA) and effectiveness checks (USDA) to verify that the recall has been effectively communicated to consignees and affected product is removed from commerce.

Yet the same obligation to communicate food recall information has not been extended to the end purchaser: the consumer. Instead, if consumers learn of recalls at all, the notice is typically relayed through mass media, often now amplified through posting on the FDA or USDA website, media lists, and social media. Consumers surveyed for the 2015 U.S. Grocery Shopper Trends report, issued by the Food Marketing Institute, reported learning about food recalls primarily through television (73 percent), print media (27 percent), or radio (25 percent), with only a small minority reporting having received recall notices from a grocer through in-store postings (12 percent) or email alerts (7 percent). (See Supporting Attachment: 2015 Shopper Trends).

A system driven by media communications is extremely limited: neither the news media nor consumers can reasonably be expected to take notice of hundreds of recalls announced publicly each year, many for products distributed nationwide only to select retailers or food service providers. In contrast to mass announcements, notices issued by grocery stores have the potential to be more effective, because they target information towards the population of shoppers most likely to have purchased the affected food. The average consumer visits the store for groceries 1.6 times per week, often returning to the same store more than once within a few days. <https://stores.org/2019/08/05/are-retailers-prepared-for-the-changing-grocery-shopper/>. This presents an opportunity for shoppers to identify recalled food from a prior visit and dispose of it before it is consumed. In some cases, grocery stores even retain purchase history information, enabling them to send messages via phone, email, and print mail directly to affected consumers.

Consumers have expressed a strong preference for receiving notice in this manner: the 2015 Shopper Trends report cited above found that if given the option, most consumers (58 percent) would prefer to receive recall notifications via email, and many would also like to see notices posted where the product is sold (40 percent) or at the checkout register (26 percent). (See Supporting Attachment: 2015 Shopper Trends).

Many grocery stores have already responded to this interest by adopting policies requiring consumer notification of recalls. A 2010 study commissioned by FMI and the Grocery Manufacturers Association (GMA) showed that 69 percent of major food retail companies surveyed reported posting signage in-store as part of the recall notification process.

[https://www.gmaonline.org/downloads/research-and-reports/WP\\_RecallExecution.pdf](https://www.gmaonline.org/downloads/research-and-reports/WP_RecallExecution.pdf).

Another survey published in 2016 by the Center for Science in the Public Interest (CSPI) (the organization submitting this Issue) found that 15 out of 16 respondents posted recall notices in-store. <https://cspinet.org/resource/building-food-recall-system-really-protects-consumers>. Moreover, CSPI found that 8 of 9 respondents with customer loyalty programs used the information from those programs to alert customers to food recalls affecting products they purchased.

In-store notification of recalls is recommended as a retailer best practice: The Food Marketing Institute (FMI) provides guidance recommending that consumer notifications be posted in the store, directly to the consumer (e.g. via email, phone, or mail), or other means for at least two weeks following the recall. <https://www.fmi.org/docs/default-source/food-safety/guidance-for-food-retail-product-recall.pdf?sfvrsn=2>.

In spite of this declared progress, many recall notices are still not effectively reaching consumers. As noted above, the FMI's 2015 Shopper Trends report showed that only a small minority of consumers report receiving recall notices from their grocers through in-store postings (12 percent) or email alerts (7 percent). This may be attributable to the fact that the design, coverage and consistency of the postings varies by store. The 2016 survey by CSPI found that the location, prominence, and information provided in recall postings varied substantially. Some store had no store-wide policy for posting location, leaving discretion to managers in determining where to post notices. Others limited the postings to certain foods, such as produce or products made on the premises.

Section 211 of the Food Safety Modernization Act (FSMA) aimed to remedy this problem by authorizing the FDA to publish one-page notices for foods listed in the Reportable Food Registry (RFR), and requiring grocery stores to post such notices. Yet Section 211, which has not been implemented by the FDA, is by its nature limited to FDA-regulated foods, meaning it would fail to cover meat and poultry. It is important for recall notification policies to cover such products, which are often a source of illness and can be frozen, posing a threat long after a recall.

Section 211 also hinges on a cumbersome process: first, the recalling firm must submit consumer-oriented information to the RFR within 24 hours of learning of an issue. Then the agency must generate and post a one-page summary of the information on the government's website. Grocery stores with more than 15 locations who sold the food are obligated to post either the one-page summary "or the information from such summary" within 24 hours of posting. Yet relying on such notices conveyed through the RFR and FDA's website could substantially slow notification, as food retailers have report they often receive information from suppliers well before it is posted in the RFR.

<https://www.federalregister.gov/documents/2014/03/26/2014-06614/implementation-of-the-food-and-drug-administration-food-safety-modernization-act-amendments-to-the>.

In addition, Section 211 does not require the standardized information from such notices to include the reason for the recall, a key piece of information in light of the fact that many recalls involve undeclared allergens that pose a health hazard to only a subset of consumers.

The notification system laid out under Section 211 is therefore potentially slower and less informative than an alternative system under which consumer-targeted information is transmitted directly to stores by the recalling firm.

Such a system could be required directly under the Food Code, which could fill a key gap in the current system by ensuring that recall communications delivered through the supply chain reach all the way to the end user: the consumer. Such a policy would re-enforce existing voluntary practices by creating additional incentives for retailers and their suppliers to improve the quality and consistency of consumer-directed recall communications.

Any Food Code requirement could also be harmonized with Section 211, by ensuring that notices required under the Food Code include all of the consumer-oriented information that would be submitted to the RFR were the agency to implement Section 211. Notices generated to satisfy the requirements of the Food Code would then also be compliant with the requirements of Section 211 in the event that the agency moves forward with this authority.

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

*The Conference recommends* that a letter be sent to the FDA requesting that the Food Code be amended to add, after Section 3-603.11 (Consumer Advisory), a section requiring that food establishments post notification to consumers when food sold for consumption off the premises is later subject to a recall. This new section should be harmonized with the requirements of Section 211 of the Food Safety Modernization Act and generally conform to the following criteria:

Consumer-oriented recall notices should be developed in conformance with the FDA's guidance on Public Warning and Notification of Recalls, which generally recommends a public warning be issued for recalls that are likely to be classified as Class I recalls unless specific circumstances indicate that the warning would not be beneficial to the public.

<https://www.fda.gov/media/110457/download>.

Such notices should be posted for a minimum of two weeks and should be prominently and conspicuously located at the primary point of display for the recalled food, at the register, or other such locations and manners as will provide comparable notification to consumers.

If the food establishment maintains purchase history information for individual consumers, the notices may also be directed to such consumers via email, phone, mail, print-out at the register, or other such methods as will provide comparable notification to consumers.

The content for such notices should include a product description, identification code such as a UPC or sell by/use by date, contact information for the party responsible for the recall, as well as the reason for the recall, if known (such as undeclared allergen, specific pathogen, or foreign material contamination).

Instructions for enforcement of this section should be added to Annex 5 after 3.G.12. (Assessing Compliance with Consumer Advisory). The instructions should establish a process whereby the inspector may verify compliance with the requirement using either records provided by the Food and Drug Administration or records requested from the person in charge at the food establishment.

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**Supporting Attachments:**

- "U.S. Grocery Shopper Trends 2015"

*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.*