

**Conference for Food Protection
2016 Issue Form**

Issue: 2016 II-004

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-I-032; new or additional information has been included or attached and the recommended solution has been revised.

Title:

Imminent Health Hazard: Modify Enforcement & PIC Duties

Issue you would like the Conference to consider:

Modify both the enforcement action and the duties of the Person in Charge in the FDA Food Code relative to "Imminent Health Hazard" so that a facility 1) with a written emergency operating plan that is preapproved by the regulatory authority; and that 2) takes immediate corrective action to eliminate, prevent or control a risk or hazard in accordance with that written and preapproved emergency operating plan; and that 3) informs the regulatory authority of the risk or hazard having occurred and the written preapproved emergency operating plan having been implemented should not have to cease operations.

Public Health Significance:

As stated in CFP's 2014 Emergency Action Plan for Retail Food Establishments, "All retail food establishments are vulnerable to a potential emergency or disaster that could impact the safety of the food and products they sell or serve to consumers. Yet, in times of crises, these facilities can also serve the community and provide valuable resources." During crisis, industry and public health are partners with a common purpose; to restore normalcy to the community quickly while protecting the public health in the process. Industry is the expert at feeding people, not emergency management agencies. The sooner food establishments can get operating; the sooner communities can return to normal. Pre-approval of emergency operating plans enables facilities to remain in operation and the regulatory authority to deploy their limited resources more efficiently, starting with establishments that don't have emergency operating plans, because delays in re-opening hurt all stakeholders; customers, employees and first responders.

The proposed language for Food Code Section 2-103.11(P) is modeled after language in the State of Georgia Rules & Regulations Governing Food Service, 511-6-1 effective November 1, 2015, found in a supporting attachment accompanying this Issue.

In the following link, "Emergency Action Plan for Retail Food Establishments", CFP 2014, note in particular Localized Emergency or Event #s 2, 3 & 4 located on pages 4-5. Also note planning for Response to an Emergency paragraphs 1, 2 & 3 located on page 7. Also see chart I on page 17; Procedures for Handling Refrigerated TCS Foods during a Power Outage.

<http://www.foodprotect.org/media/guide/Emergency%20Action%20Plan%20for%20Retail%20food%20Est.pdf>

In the following link, "Lessons Learned: Food Safety Preparedness before the Next Natural Disaster" in Food Safety Magazine, August/September 2014, note in particular, authors Kalis & Blake (CDC), Hatch (AL DPH) & Corby (AFDO) on the value of preapproved emergency operating plans. Kalis & Blake add that in a crisis, food service providers with preapproved emergency operating plans become part of the infrastructure that protects public health.

<http://www.foodsafetymagazine.com/magazine-archive1/augustseptember-2014/lessons-learned-food-safety-preparedness-before-the-next-natural-disaster/>

Recommended Solution: The Conference recommends...:

that a letter be sent to the FDA requesting that the 2013 Food Code be amended by adding new paragraphs to Sections 8-404.11 and 2-103.11 as follows (underline format used for new language):

Section 8-404.11. Ceasing Operations and Reporting.

(A) Except as specified in ¶ (B) and (C) of this section, a PERMIT HOLDER shall immediately discontinue operations and notify the REGULATORY AUTHORITY if 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.

(B) A PERMIT HOLDER need not discontinue operations in an area of an establishment that is unaffected by the IMMINENT HEALTH HAZARD.

(C) A PERMIT HOLDER need not discontinue operations if the facility has experienced an interruption of water service or an extended interruption of electrical service for two or more hours so long as the facility has a specific written emergency operating plan that has been preapproved by the regulatory authority and if the Person in Charge takes immediate corrective action to eliminate, prevent or control the risk or hazard in accordance with the specific written preapproved emergency operating plan and if the Person in Charge informs the regulatory authority of the specific risk or hazard having occurred and of the specific written preapproved emergency operating plan having been implemented. ^{Pf}

Section 2-103.11. Person in Charge

The Person in Charge shall ensure that:

(P) Imminent Health Hazard. If an imminent health hazard exists because of an emergency such as a fire, flood, interruption of electrical or water service for two or more hours, sewage malfunction, misuse of poisonous or toxic materials, onset of an apparent

foodborne illness outbreak, gross unsanitary occurrence or condition, or other circumstances that may endanger public health, then operations are immediately discontinued and the Health Authority is notified.^P If, however, the Imminent Health Hazard consists of an interruption of water service or an extended interruption of electrical service for two or more hours, the establishment may continue to operate under a specific written emergency operation plan that has been preapproved by the Health Authority prior to the occurrence of the specific emergency event provided the Person in Charge notifies the Health Authority that the specific emergency event has occurred and the preapproved specific written emergency operation plan is being implemented.^{Pf}

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Supporting Attachments:

- "Rules & Regulations Governing Food Service for the State of Georgia"

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.