

**Conference for Food Protection  
2016 Issue Form**

**Issue: 2016 I-038**

<b>Council Recommendation:</b>	Accepted as Submitted _____	Accepted as Amended _____	No Action _____
<b>Delegate Action:</b>	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:**

Raw Animal Foods – Consumer Advisory

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

Section 3-401.11(D) and 3-401.11(D)(3) in the 2013 FDA Food Code allow:

"3-401.11(D) A raw animal food such as raw egg, raw fish, raw-marinated fish, raw Molluscan shellfish, or steak tartar; or a partially cooked food such as lightly cooked fish, soft cooked eggs, or rare meat other than whole-muscle, intact beef steaks as specified in ¶ (C) of this section, may be served or offered for sale upon consumer request or selection in a ready-to-eat form if:"

"3-401.11(D)(3) the CONSUMER is informed as specified under 3-603.11 that to insure its safety, the FOOD should be cooked as specified under (A) or (B) of this section;"

However, Section 3-603.11 does not require that the food establishment provide language informing the consumer how to request or select the animal food cooked as specified under 3-401.11(A)(B)

Since section 3-603.11 does not require the food establishment to provide language for how consumers can request or select animal food cooked as specified under 3-401.11(A)(B) people who want to order their animal food cooked safely may accidentally receive it partially cooked.

Food establishments that utilize the consumer advisory should have to have an ordering system in place that informs the consumer what to say to request or select their animal cooked as specified under 3-401.11(A)(B). Ordering animal food raw or partially cooked should be a willful act on the part of the consumer. Serving an animal food raw or partially cooked should be an intentional act on the part of the food establishment.

If, for example, a food establishment uses the terms rare, medium-rare, medium, medium-well and well done for placing an order they need to be able to convey to the consumer and the regulatory authority, in writing and upon request, which of those terms will result in the food being cooked pursuant to 3-401.11(A)(B).

By adding a new section to 3-603.11 it will:

1. Still enable consumers to request or select animal foods raw or partially cooked.
2. Allow consumers to order animal foods that are subject to the consumer advisory to be cooked safely.
3. Allow each food establishment that utilizes the consumer advisory to use their own ordering language to comply with this requirement.
4. Give regulators a way to hold the permit holder more accountable to the temperature requirements of section 3-401.11(A)(B) for those menu items that have a consumer advisory.

### **Public Health Significance:**

The 1993 E. coli O157:H7 outbreak linked to a popular fast food restaurant chain fundamentally changed how beef is slaughtered, processed, distributed, and cooked in the United States. The outbreak, which sickened over 500 people and caused the death of four children was the catalyst for:

- E. coli O157:H7 and Hemolytic Uremic Syndrome (HUS) being added to the federal list of reportable diseases by the Center for Disease Control (CDC) in 1995,
- The Food and Drug Administration (FDA) raising their recommended internal temperature of cooked hamburgers to 155 degrees Fahrenheit in 1993,
- The United States Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS) declaring E. coli O157:H7 to be an adulterant in raw ground beef in 1994. (In 2011 six additional strains of E. coli were declared to be adulterants.)
- The USDA initiating a monitoring program for E. coli O15:H7 in raw ground beef,
- FSIS initiating a program to encourage better testing and controls by industry and,
- FSIS began requiring safe food handling labels on all raw meat and poultry.

Those measures, along with systematic changes in critical control points in processing by the beef industry, were intended to minimize E. coli contaminated beef from entering the food supply. However, the approximately 1.8 million pound recall of ground beef tied to E. coli O157:H7 in 2014; separate 5.3 million pound and 1.36 million pound recalls in 2008; a 21.7 million pound recall in 2007; and a 25 million pound recall in 1997 highlight the continued risk of contaminated beef reaching the consumer. The risk associated with E. coli is of particular concern as there is still no effective way to prevent the onset of HUS in those patients that contract a Shiga toxin-producing E. coli infection.

There are many other pathogens associated with raw and partially cooked animal foods. Poultry, Pork, Egg and Seafood Producers as well as the producers of other amenable and non-amenable meats all have challenges similar to the Beef Producers and yet unique to their own industries. Hepatitis A, *Listeria monocytogenes*, *Clostridium botulinum*, *Clostridium perfringens*, *Campylobacter jejuni*, *Staphylococcus* spp., *Salmonella* spp., *Shigella* spp., *Vibrio* spp., and *Norovirus* are among those diseases that are transmissible from raw animal foods. The risk of these illnesses being transmitted is increased when the animal foods associated with these pathogens are served raw or partially cooked.

At a food establishment, a consumer should be able to order animal foods- cooked safely- to minimize the risk of getting sick from these foodborne pathogens. Given the current

language of the FDA Food Code, if there is a consumer advisory present on the menu, there is often no effective means for the consumer to order food cooked safely.

The annex of the 2013 FDA Food Code states "the requirements specified under 3-401.11(D) acknowledge the rights of an informed consumer to order and consume foods as preferred by that consumer based on the consumer's health status and understanding of the risks associated with eating raw or partially-cooked animal foods."

However, I do not believe that 3-401.11 and 3-603.11, as written, adequately protect the rights of the consumers who want their animal foods cooked pursuant to 3-401.11(A)(B). Those consumers often have no effective means to order animal food cooked safely in those food establishments that choose to provide a consumer advisory.

It also has caused the unintended consequence that the regulatory community is not able to hold a food establishment accountable for accidentally undercooking animal food when there is a consumer advisory present on the menu.

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

a letter be sent to the FDA requesting the 2013 Food Code be amended as follows (language to be added is underlined):

Section 3-603.11

(A): Except as specified in ¶ 3-401.11(C) and Subparagraph 3-401.11(D)(4) and under ¶ 3-801.11(C), if an animal FOOD such as beef, EGGS, FISH, lamb, milk, pork, POULTRY, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in READY-TO-EAT form or as an ingredient in another READY-TO-EAT FOOD, the PERMIT HOLDER shall inform CONSUMERS of the significantly increased RISK of consuming such FOODS by way of a DISCLOSURE and REMINDER, as specified in ¶¶ (B) and (C) of this section using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means. Pf table tents, placards, or other effective written means; and provide an effective means for ordering as specified in (D) of this section.

(D) the FOOD ESTABLISHMENT has, in writing and available to the CONSUMER and REGULATORY AUTHORITY, ordering information that will give the CONSUMER an effective means of requesting or selecting the animal FOOD cooked pursuant to 3-401.11(A)(B)<sup>Pf</sup>

### **Submitter Information 1:**

Name: Rebecca Krzyzanowski  
Organization: Great Lakes Conference on Food Protection  
Address: 615 Englewood Dr  
City/State/Zip: Roscommon, MI 48653  
Telephone: 5177197919  
E-mail: krzyzanowskir@michigan.gov

### **Submitter Information 2:**

Name: Karla Horne  
Organization: Great Lakes Conference on Food Protection

Address: 525 W AlleganPO Box 30017  
City/State/Zip: Lansing, MI 48909  
Telephone: 231.357.0727  
E-mail: hornek@michigan.gov

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