

**Conference for Food Protection
2023 Issue Form**

Issue: 2023 I-020

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: 2020-I-015; the recommended solution has been revised.

Title:

FBIIC2-Interpret if 2022 FDA Food Code Provides Investigation Authority

Issue you would like the Conference to consider:

The Committee would like for the U.S. Food and Drug Administration (FDA) to provide a Food Code interpretation to inform regulatory authorities that Food Code Section 8-304.11(H) coupled with Section 8-402.11 provides sufficient authority for the regulatory authority to investigate and obtain information, including records, that are needed as part of the foodborne illness investigation from food establishments.

Food Code section 8-402.11 states that:

After the REGULATORY AUTHORITY presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the PERSON IN CHARGE shall allow the REGULATORY AUTHORITY to determine if the FOOD ESTABLISHMENT is in compliance with this Code by allowing access to the establishment, allowing inspection, and providing information and records specified in this Code and to which the REGULATORY AUTHORITY is entitled according to LAW, during the FOOD ESTABLISHMENT'S hours of operation and other reasonable times.

Food Code section 8-304.11(H) states that the permit holder shall:

Comply with directives of the REGULATORY AUTHORITY including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the REGULATORY AUTHORITY in regard to the PERMIT HOLDER'S FOOD ESTABLISHMENT or in response to community emergencies:

Public Health Significance:

Every year in the United States there are millions of cases of foodborne illness (Scallan et al., 2011), and a majority of these cases are attributable to food establishments (Jones & Angulo, 2006). Investigation of these reports of illness is of paramount importance to a) stop additional people from being exposed and becoming ill; b) understand the system

failure within a food establishment that led people to become ill; and c) identify a source of contaminated food that may have entered the food establishment.

The Food Code explicitly gives regulators authority to conduct inspections. Authority to access the facility, conduct the inspection, and enforce the Food Code is clear throughout Chapter 8 - Compliance and Enforcement. However, there is no direct reference to foodborne illness investigations which are more focused on obtaining information, including traceback records, and customer purchase history needed to investigate and quickly identify the source of the outbreak and to ensure that control measures are in place to prevent additional illnesses. In addition to public health, the economic impact and industry liability can be mitigated when the source of a foodborne illness outbreak is quickly identified.

The Food Code Annex 2's supporting documents reference the Voluntary National Retail Food Program Standards (VNRFPS) along with the Council to Improve Foodborne Outbreak Response's Guidelines for Foodborne Outbreak Response. Both documents include the need for investigating foodborne illness outbreaks.

Despite not including investigations specifically in the Food Code, an FDA interpretation is needed to determine if that authority is implied.

Jones, T. F., & Angulo, F. J. (2006). Eating in Restaurants: A Risk Factor for Foodborne Disease? *Clinical Infectious Disease*, 43, 1324-1328. doi:1058-4838/2006/4310-0017

Scallan, E., Hoekstra, R. M., Angulo, F. J., Tauxe, R. V., Widdowson, M. A., Roy, S. L., . . . Griffin, P. M. (2011). Foodborne illness acquired in the United States--major pathogens. *Emerg Infect Dis*, 17(1), 7-15. doi:10.3201/eid1701.091101p1

Recommended Solution: The Conference recommends...:

that a letter be sent to the FDA requesting an interpretation of the Food Code clarifying that Section 8-304.11(H) coupled with Section 8-402.11 and other relevant sections provide sufficient authority for a regulatory authority to conduct a foodborne illness investigation and obtain access to needed information.

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