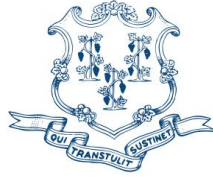


# STATE OF CONNECTICUT

## DEPARTMENT OF PUBLIC HEALTH

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Lt. Governor

### Environmental Health Section

EHS Circular Letter #2018-04

DATE: May 11, 2018

TO: Directors of Health  
Certified Food Inspectors  
Interested Parties

FROM: Tracey Weeks, MS, RS  
Food Protection Program Coordinator

RE: **Update on the Status of FDA Food Code Adoption, the Proposed Registration System for Food Establishments, and the New FDA Menu Labeling Requirement**

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The purpose of this letter is to provide a preliminary update on 1) the status of the adoption of the FDA Food Code and 2) the new FDA menu labeling requirement that became effective on May 7, 2018. A more detailed notice on the FDA Food Code adoption will be provided once the 2018 Public Act has been issued.

### 1. Status of FDA Food Code Adoption

#### Background:

In June of 2017 Public Act 17-93 was passed. This Act included enabling language for adoption of the FDA Food Code by July 1, 2018, new definitions applicable to food regulations including hot and cold holding temperatures of time/temperature controlled for safety (TCS) foods, a licensing requirement for all food establishments, a registration requirement for all food establishments, a requirement for certified food protection managers in Class 2, 3, and 4 food establishments, revised food establishment classification and inspection intervals, revised food inspector certification requirements, new language to allow the DPH to approve variances for acidification of sushi rice and the sous vide cooking process on an interim basis, and other changes.

#### 2018 Legislative Proposal:

In response to concerns from some directors of health that additional time was needed to prepare for adoption of the FDA Food Code, legislation was proposed this year to extend the adoption date for the FDA Food Code from no later than July 1, 2018, to no later than January 1, 2019. On May 9, 2018, Bill 5163, *An Act Concerning the Department of Public Health's Recommendations Regarding Various Revisions to the Public Health Statutes* was unanimously passed by the Senate Chamber and will now go to the Governor. This bill included the proposed language to change the adoption date to no later than January 1, 2019, a correction to the definition of a Class 1 food establishment, language to allow for an alternate person in charge when the certified food protection manager cannot be present, and new language providing an exemption for certain residential care homes.



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### FDA Food Code Effective Date

The extension of the adoption date to no later than January 1, 2019 should allow ample time for the necessary changes and training to occur on both the state and local levels. It is important to remember however, that the FDA Food Code **will not become effective** until the regulations to implement it are approved. Draft regulations are currently under review and we anticipate they will be approved before, but very close to the January 1, 2019 date. The draft regulations are brief and primarily consist of necessary enforcement language that is purposefully not included in the FDA Food Code in order to provide the flexibility needed by states. The proposed regulations will be available for review and comments once the appropriate stage in the process has been reached.

### Revised Class 1 Definition

The definition of a Class 1 food establishment was revised as follows:

*"Class 1 food establishment" means a retail food establishment that does not serve a population that is highly susceptible to foodborne illnesses and only offers (A) commercially packaged processed food that (i) is time or temperature controlled for safety and may be heated for hot holding, but (ii) is not permitted to be cooled, or (B) food prepared in the establishment that is not time or temperature controlled for safety.* This correction was necessary to better reflect the intent of the lowest risk classification and should alleviate some of the issues raised by local health departments.

Local health departments were advised to begin reviewing their establishment classifications to determine how the new class definitions will apply to food establishments. This review should continue using the new Class 1 definition above since it is likely to result in changes. Note: The intent is that commercially packaged food may be reheated and hot held in its original packaging only.

### Alternate Person in Charge

New language allows for an alternate person to be in charge when the certified food protection manager cannot be present which is consistent with what is currently allowed per section 19-13-B42(s)(8)(B) of the Regulations of Connecticut State Agencies.

### Exemption for Residential Care Homes

Bill 5163 also includes language to exempt residential care homes (RCHs) with thirty beds or less from the FDA Food Code provided that the administrator or their designee has passed a food protection manager certification test as approved by the Conference for Food Protection. This was included because most RCHs of this size that are licensed by the Department of Public Health have home style equipment for the purpose of involving the residents in meal preparation.

## **2. Status of the Registration System for Food Establishments:**

PA 17-93 requires that food establishments must register with DPH before a license or permit from the local director of health can be issued. (This requirement will become effective once the regulations to implement adoption of the FDA Code have passed.) This system has been developed using the existing CT e-Licensing system and it is expected to be functional within the next few months if not sooner. DPH FPP will begin testing the system within the next few weeks. LHDs will be informed when it is operational so they can notify their regulated establishments. There is no cost associated with registration and LHDs will have the ability to look up individual establishments or download a list of food establishments in a specific town. Additionally, food establishment operators will be able to print out a receipt as proof of registration. NOTE: Temporary food establishments and certified farmers' markets are exempt from the registration requirement. Local health departments that are issuing licenses in this interim period should inform owners that the registration requirement is not yet in effect.

### **3. New FDA Menu Labeling Requirement**

On May 7, 2018 the new FDA menu labeling rule became effective. The purpose of this rule is to provide consumers with access to calorie and nutrition information in certain chain establishments covered by the rule. The rule applies to restaurants and similar retail food establishments that are part of a chain with 20 or more locations that are doing business under the same name and offering substantially the same menu items. FDA has stated that during the first year they will not be enforcing the rule. Their focus will be on providing education and guidance to help affected establishments come into compliance. FDA has not yet stated how they plan to have the rule enforced, so at this time it is not clear if the expectation is that next year enforcement will be the responsibility of local, county, or state inspectors (depending on the state) as part of a routine inspection, special investigations, or by contract with FDA. The 2017 version of the FDA Food Code does not include menu labeling requirements except for §3-602.12 that requires food not be offered in a way that will mislead or misinform consumers and §3-603.11 that refers to the consumer advisory.

The FDA website provides extensive information and guidance on this new rule. While at this time it is not an enforcement item for local inspectors, food establishment operators affected by this new rule should be directed to the FDA website if they have questions. The following links provide information on the new rule.

#### **Main page with links to guidance and the new rule:**

<https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm217762.htm>

#### **Summary**

- Legislation to change the adoption date of the FDA Food Code to no later than January 1, 2019 has passed. The language also includes a corrected definition for Class 1 food establishments, a provision for an alternate to the certified food protection manager and an exemption for RCHs with 30 beds or less.
- Regulations to implement the FDA Food Code no later than January 1, 2019 have been drafted and are under review.
- The registration system for food establishments has been developed and is currently in the testing stage.
- The new FDA rule concerning menu labeling for certain chain restaurants went into effect on May 7, 2018, however, FDA will not be enforcing this rule the first year. Instead they will provide education and guidance to assist establishments with compliance. It is not known at this time how FDA expects the rule to be enforced next year.

A much more detailed letter will follow once the 2018 Public Act for Bill 5163 is issued sometime in the next few weeks. At this time local health departments should continue to focus on ensuring that certified food inspectors who attended the FDA Food Code classroom training are working towards completion of the required FDA online courses as outlined in EHS Circular Letter 2017-16. This is required if they intend to be certified to enforce the FDA Food Code once it becomes effective.

The FPP will also be adding questions to the FAQ page on the DPH website that may not be answered in the Circular Letters and holding webinars to provide inspection form training and address other FDA Food Code related concerns.

C: Suzanne Blancaflor, MS, MPH, Chief, Environmental Health Section

