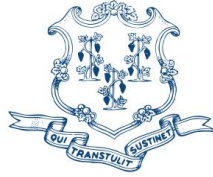


# STATE OF CONNECTICUT

## DEPARTMENT OF PUBLIC HEALTH

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Commissioner



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Governor  
Nancy Wyman  
Lt. Governor

### Environmental Health Section

EHS Circular Letter #2018-17

DATE: July 24, 2018

TO: Directors of Health  
Certified Food Inspectors  
Interested Parties

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

RE: **Update on FDA Food Code Adoption, Other Legislation, and Pending Regulations**

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The purpose of this notice is to provide information on:

1. Recent legislative changes to Section 19a-36h of the Connecticut General Statutes (CGS) that relate to the date of adoption of the FDA Food Code
2. A correction to a statement in Circular Letter 2017-16 regarding changes to CGS§19a-36f (natural latex rubber gloves)
3. Modifications to CGS §19a-36g to clarify the definition of a Class 1 food establishment
4. New language added to CGS §19a-36i to allow for an alternate person in charge when the certified food protection manager cannot be present
5. Status of the requirement for food establishments to register with the Department of Public Health before receiving a permit/license to operate by a local health department
6. Changes to CGS §19a-36j regarding the date for changes to the food inspector certification process and certification renewal
7. Requirements for currently certified food inspectors to maintain their certification for enforcing the FDA Food Code when it becomes effective
8. Modification of the time frame during which food service establishments may request a variance from the Commissioner to utilize the sous vide cooking process or acidify sushi rice
9. New language in CGS §19a-36m(d) that exempts residential care homes with 30 beds or less from the food code
10. New legislation that allows cottage food operations where food that was prepared in a residential home can be sold direct to consumers with minimal regulatory oversight
11. The status of draft regulations to implement the FDA Food Code as Connecticut's Food Code



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## **Introduction**

Circular letters previously sent provided information on legislative changes that included adopting the FDA Food Code (#2017-16), new training requirements for food inspectors (#2017-20), guidance for classifying food establishments (#2017-23), classroom training on the FDA Food Code for Food inspectors (#2017-35) and a preliminary update on the status of the FDA Food Code, the proposed registration system for food establishments, and the new FDA menu labeling requirements (#2018-04). Public Act 18-168 includes new and modified language to CGS §19a-36 that rendered some of the information previously provided as inaccurate. This notice provides the most current information on these topics to assist local health departments and food inspectors in preparing for the coming changes. Additional details will be provided at a later date as needed.

### **1. Date of Adoption of the FDA Food Code**

Public Act **18-168** modified CGS §19a-36h(a) as follows:

**“Not later than January 1, 2019**, the commissioner shall adopt and administer by reference the United States Food and Drug Administration's Food Code, as amended from time to time, and any Food Code Supplement published by said administration as the state's food code for the purpose of regulating food establishments.”

While this change moves the date for adoption beyond the original date of July 1, 2018, the regulations that will implement this provision and CGS §19a-36i through 19a-36m **must be approved** before the FDA Food Code and the aforementioned sections become effective. (per CGS §19a-36h(b)) This change was made to provide additional preparation time for local health departments.

### **2. Natural Latex Rubber Gloves**

EHS Circular Letter #2017-16 mistakenly indicated that the language in CGS §19a-36f(b) for fining food establishments that require or use natural latex rubber gloves was deleted. A change **was** made to §19a-36f(a) however, but only to remove extraneous language that specified the type of establishments affected. The language to allow local health departments to issue fines for natural latex rubber gloves, **was not deleted**. Local health departments may continue to issue fines for food establishments using or requiring the use of natural latex rubber gloves as per CGS §19a-36f(b).

### **3. Definition of a Class 1 Food Establishment**

The definition of a Class 1 food establishment in CGS §19a-36g(3) was modified to better reflect the original intent. The revised definition is:

**“(3) Class 1 food establishment means a retail food establishment that does not serve a population that is highly susceptible to food borne illnesses and only offers (A) commercially packaged food in its original commercial package that is time or temperature controlled for safety, or (B) commercially prepackaged, precooked food that is time or temperature controlled for safety and heated, hot held and served in its original commercial package not later than four hours after heating, or (C) food prepared in the establishment that is not time or temperature controlled for safety”**

The purpose of the change was to eliminate the inclusion of food establishments that only sell non-time/temperature controlled for safety foods such as gas stations or department stores that sell only packaged candy bars, chips, drinks, etc.

#### **4. Alternate Person in Charge**

New language added to CGS §19a-36i provides for an alternate person in charge in food establishments where a certified food protection manager is required:

“The owner or manager of the food service establishment shall designate an alternate person or persons to be in charge at all times when the certified food protection manager cannot be present. The alternate person or persons in charge shall be responsible for ensuring the following: (A) All employees are in compliance with the requirements of this section; (B) foods are safely prepared in accordance with the requirements of the food code; (C) emergencies are managed properly; (D) a food inspector is admitted into the food establishment upon request; and (E) he or she receives and signs inspection reports.”

The intent was to provide an option similar to what currently exists in 19-13-B42(s)(8)(b). Additional language to clarify the responsibilities of the alternate person in charge is included in the draft regulations that are currently undergoing review.

#### **5. Requirement for Food Establishments to Register with the Department of Public Health**

Public Act 17-93 included new language that requires all food establishments to register with DPH before receiving a permit/license to operate by a local health department. CGS §19a-36i(3) will become effective when the regulations to implement the FDA Food Code are approved. The registration system was built into eLicense, an existing state licensing system used for licensing purposes by multiple state agencies. It is important to note that this registration is required to obtain a license from a local health department - it is not a license to operate. The purpose of the registration is to have a means of capturing basic information of all food establishments in Connecticut in one location. Ultimately, the intent is to have a central repository for food establishment inspections that the public can access electronically. The registration is currently in the testing phase and local health officials will be notified once it is available for use. Food establishment owners will register and renew their registration annually - 1 year from the date of their initial registration. The date that local health departments issue their license renewals will not be an issue since as long as the establishment is registered in the DPH system, a license can be issued. Local health departments will be notified once the system is operational so they can inform their regulated food establishments.

#### **6. Food Inspector Certification Process, and Certification Renewal Requirements**

PA 18-168 also included changes to CGS §19a-36j(a):

"On and after January 1, 2019, no person shall engage in the practice of a food inspector unless such person has obtained a certification from the commissioner in accordance with the provisions of this section. The commissioner shall develop a training and verification program for food inspector certification that shall be administered by the food inspection training officer at a local health department."

The date was extended from July 1, 2018 to January 1, 2019, however, the regulations to implement the FDA Food Code will need to be passed first.

**Reminder:** CGA §19a-36j(a)(1)-(3) states the certification procedure for new inspectors and certification renewal requirements:

“(1) Each person seeking certification as a food inspector shall submit an application to the department on a form prescribed by the commissioner and present to the department satisfactory evidence that such person (A) is sponsored by the director of health in the jurisdiction in which the applicant is employed to conduct food inspections, (B) possesses a bachelor's degree or three years of experience in a regulatory food protection program, (C) has successfully completed a training and verification program, (D) has successfully completed the field standardization inspection prescribed by the commissioner, and (E) is not involved in the ownership or management of a food establishment located in the applicant's jurisdiction.

(2) Each director of health sponsoring an applicant for certification as a food inspector shall submit to the commissioner a form documenting the applicant's qualifications and successful completion of the requirements described in subdivision (1) of this subsection.

(3) Certifications issued under this section shall be subject to renewal once every three years. A food inspector applying for renewal of his or her certification shall demonstrate successful completion of twenty contact hours in food protection training, as approved by the commissioner, and reassessment by the food inspection training officer.”

Once trained by the local health department, a candidate who meets the qualifications noted above, will be evaluated in the field by an FPP standardization officer. Certification will be granted to candidates who meet the qualifications and successfully complete the requirements as specified. Renewal of certification will be dependent on completion of **20 contact hours** (formerly 16 hours) of approved training and an assessment by the local food inspection training officer (FITO). This new process requires training for food inspection training officers to conduct assessments of inspectors and train candidates for the certification process. The pilot program for training food inspection training officers is nearing completion. When training of the 2 remaining FITOs in the pilot program has been completed, FPP staff will begin training FITOs at other local health departments.

**NOTE:** To prepare for the next phase of training, local health departments should consider who among their certified inspectors will be responsible for training new candidates and conducting assessments. Priority will be given to full-time local health departments with 3 or more full-time certified food inspectors. Details on the FITO training process, responsibilities, and request process will be provided in a separate letter.

## **7. Training Requirements for Currently Certified Food Inspectors**

Currently certified food inspectors will need to have completed the 15 FDA required online courses (46 modules) as detailed in Circular Letter 2017-20 and have attended one of the six classroom training courses provided by the FPP in December of 2017 and January, February, and March of 2018 to maintain food inspector certification under the FDA Food Code. Those who have not completed the required online courses and classroom training will no longer be certified when the regulations to implement the FDA Food Code have passed.

## **8. Variance to Utilize the Sous Vide Cooking Process or Acidify Sushi Rice**

Due to the change in the date for adoption of the FDA Food Code, the time frame during which food service establishments may request a variance from the Commissioner to utilize the sous vide cooking process or acidify sushi rice was modified. CGA §19a-36o now states:

“Notwithstanding any provision of the general statutes, from June 30, 2017 until December 31, 2018, a food service establishment may request a variance from the Commissioner of Public Health from the requirements of the Public Health Code, established under section 19a-36, to utilize the process of sous vide and acidification of sushi rice, as defined in section 3-502.11 of the United States Food and Drug Administration's Food Code, as amended from time to time. The Commissioner of Public Health shall review the request for a variance and provide the food establishment with notification regarding the status of its request not later than thirty days after the commissioner receives such request. The commissioner may grant such variance if he or she determines that such variance would not result in a health hazard or nuisance.”

Once the FDA Food Code is in effect, DPH will continue to review variance requests, however, local health departments will review requests for reduced oxygen packaging (including sous vide) that are done **without** a variance. That is, those that follow the specific requirements of section 3-502.12 of the FDA Food Code will only need approval from the local director of health. Any deviation from the specific requirements under that section would require a variance and therefore, a review by DPH. Acidification of sushi rice and other special processes requiring a variance will continue to be reviewed by DPH.

#### **9. Exemption for Residential Care Homes with 30 Beds or Less**

CGS §19a-36m(d) includes new language that exempts residential care homes with 30 beds or less from regulation. These are DPH licensed facilities where residents are often involved in their own meal preparation.

“ The provisions of the food code shall not apply to a residential care home with thirty beds or less that is licensed pursuant to chapter 368v, provided the administrator of the residential care home or the administrator's designee has satisfactorily passed a test as part of a food protection manager certification program that is evaluated and approved by an accrediting agency recognized by the Conference for Food Protection as conforming to its standard for accreditation of food protection manager certification programs, unless such residential care home enters into a service contract with a food establishment or lends, rents or leases any area of its facility to any person or entity for the purpose of preparing or selling food, at which time the provisions of the food code shall apply to such residential care home.”

#### **10. New Cottage Food Legislation**

Public Act 18-141 Section 3 includes language that allows cottage food operations. After receiving a license from the Connecticut Department of Consumer Protection (DCP), a residential home can be used by the owner to prepare non-TCS food for sale directly to the consumer. Several restrictions apply however. The complete language can be viewed here: [PA 18-141](#). DCP has licensing and inspection authority over cottage food operations, however complaints including reports of illness should be handled by local health departments as per usual.

#### **11. Status of Draft Regulations to Implement the FDA Food Code as Connecticut's Food Code**

A draft version of regulations to implement the FDA Food Code is currently under legal review at DPH. The regulations are brief and include a definition of “regulatory authority” as the term is used in the FDA Food Code. In most sections it means the local director of health, however in some it means the commissioner of DPH, and in

others it can mean the local director of health and/or the commissioner of DPH. It also includes requirements for the alternate person in charge, language for the disposition of food that is not safe, and enforcement language since the FDA Food Code does not include specific enforcement actions. Those interested will have an opportunity to comment during the public comment period.

### **Summary**

Public Act 18-168 included language that extended the date for adoption of the FDA Food Code as Connecticut's food regulations. The new date is now "not later than January 1, 2019" however, regulations to implement the FDA Code must first be passed. Draft regulations are currently under review and will be available for comment during the 30 day public comment period. The date change also impacts CGS Sections 19a-36i through 19a-36m. New language included in 19a-36 includes a revised definition of Class 1 food establishments, an alternate person in charge to act as the required person in charge of a Class 2, 3, or 4 food establishment when the certified food protection manager is not present, and an exemption from regulation by the FDA Food Code for Residential Care Homes with 30 beds or less.

To assist in preparing for conducting inspections utilizing the FDA Food Code once the regulations have passed, local inspectors are strongly encouraged to complete the required online courses as specified in Circular Letter 2017-20 as soon as possible and read the 2017 FDA Food Code. The final draft version of the proposed new inspection form will soon be posted on the DPH website along with related documents. The Annex to the FDA Food Code includes a section (Guide 3-B) on inspection form marking that should be reviewed along with the form. The FPP will continue to post questions and answers regarding the FDA Food Code on the DPH website and will provide additional training on the new inspection form in the coming months.

If you have questions regarding this letter, please contact the FPP at 860-509-7297.