



FOOD PROTECTION CONNECTION

9 FOOD CODE UPDATES YOU NEED TO KNOW

BY CHRISSY CARROLL, MPH, RD

ON DECEMBER 28, 2022, the Food and Drug Administration (FDA) released the latest edition of the Food Code, which provides safety standards to mitigate the risk of foodborne illness. The code is a model that has been implemented at many state, local, and organizational levels to help regulate foodservice settings like schools, long-term care facilities, and hospitals.

Let's look at nine updates to the code that are most relevant for non-commercial foodservice organizations.

Disclaimer: This article should not be construed as legal advice and does not identify every change to the Food Code. Consult your organization's legal counsel, local health department, and current legislation to determine your organization's food safety requirements.

1. GUIDANCE ON DONATED FOOD (SECTION 3-204.10)

Recognizing that one-third of all food goes uneaten in the United States, the Food Code has clarified its recommendations for donations. If food has been stored, prepared, packaged, displayed, and labeled according to safety standards, it can be donated.

Interestingly, there was already precedent for this update more than 25 years ago. The Bill Emerson Good Samaritan Food Donation Act of 1996 was set in place to provide limited liability protection for organizations who make "good faith" donations of food and grocery products to nonprofit organizations that feed the hungry.

To be eligible for protection under the act, the donated food must be provided at no charge, and must be donated to a non-profit organization (the act does not provide liability protection for food donated directly to individuals). Food must also meet all federal, state, quality, and labeling standards.

With the new donation guidance added to the Food Code as well, your organization may feel reassurance about exploring donation partnerships. You could connect with non-profit food pantries or community meal programs that accept donations. It's a win-win for all – you reduce food waste, non-profits can better feed the community, and your organization may receive some positive press.

Be sure to get any necessary approvals from your organization prior to starting a donation initiative, and ensure that your program meets the guidelines set forth in both the Food Code and Bill Emerson Good Samaritan Food Donation Act.

2. SESAME IS A FOOD ALLERGEN (SECTION 1-201.10)

For a long time, we've known of the "top eight" food allergens—peanuts, tree nuts, dairy, soy, eggs, wheat, fish, and shellfish. Now, sesame has been added to the list as another top allergen.

This change brings the Food Code into line with the rules established by the Food Allergy Safety, Treatment, Education, and Research (FASTER) Act, which was passed



into law on April 21, 2021. This Act—mandated effective January 1, 2023—requires that sesame undergo the same food allergen labeling requirements as the other top allergens.

Keep in mind that products manufactured and distributed before this date may still contain labels that do not specifically call out sesame, so it will be important for your staff to be vigilant when dealing with sesame allergies.

While sesame oil and sesame seeds are easy to identify, here are some additional foods that do contain or may contain sesame:

- Tahini
- Hummus
- Crackers
- Hamburger and sandwich rolls
- Flavored rice or noodles
- Falafel



SESAME IS A FOOD ALLERGEN.

Sesame must undergo the same food allergen labeling requirements as the other top allergens.

- Snack mixes
- Sushi
- Veggie burgers

Of particular importance, ingredient lists on a package could contain undeclared sesame in “natural flavors” or “spices” if packaged prior to 2023. As such, it’s impossible to confirm a product with these terms produced under prior labeling guidelines is free from sesame, unless you speak to the manufacturer to confirm.

Consider conducting an in-service with your staff to train them on this new allergen, as well as reevaluating your inventory to determine if any items contain sesame.

3. EMPLOYEE ALLERGY AWARENESS (SECTION 2-103.11)

A slight language change was made from the 2017 to the 2022 Food Code that could impact your allergen training requirements for employees. The older version of the Code stated that the person in charge (PIC) must be able to describe food allergens and symptoms.

In addition to that requirement, the new version of the code states that the person in charge should ensure that “Employees are properly trained in food safety, including food allergy awareness...Food allergy awareness includes describing foods identified as major food allergens and the symptoms that a major food allergen could cause in a sensitive individual who has an allergic reaction.”

The onus is now on both the person in charge and employees to be well informed on these topics.

Examine current employee training and see if any additional training is necessary in line with this update. Ensure all employees can describe both the top nine allergens and symptoms of a reaction.

Note that the Annex to the Code does state that “it is not intended to require that all food employees pass a test that is part of an accredited program,” but rather that operationally-specific training is put into place which meets the knowledge standards.

4. UPDATED ALLERGEN LABELING REQUIREMENTS (SECTIONS 3-602.11 AND 3-602.12)

The latest edition of the Food Code now requires written disclosure about major food allergens in bulk food that is available for a consumer to self-dispense, as well as unpackaged food items.

These points could be open to interpretation by local governing bodies. For example, will your regulatory body require salad bars to be labeled for allergens? What about catered or special events, where consumers are serving themselves?

These are questions that can’t be answered broadly. Check your local laws and health departments to see what this language means for your operation. Regardless, taking additional steps to ensure allergy awareness (particularly at self-serve stations) is a smart move.

5. LOWER TEMPERATURES FOR HANDWASHING (SECTION 5-202.12)

Previous versions of the Food Code called for a minimum temperature of 100°F at handwashing sinks, while the new version calls for a minimum temperature of 85°F.

Interestingly, the prior baseline of 100°F was not grounded in science showing that it helped kill more pathogens. In fact, several studies have noted there was no difference between handwashing at temperatures as low as 40-60°F compared to 100°F.



WRITTEN DISCLOSURE ABOUT MAJOR FOOD ALLERGENS IN BULK FOOD

that is available for a consumer
to self-dispense, as well as
unpackaged food items, is
now required.

However, warm water can make hand washing more pleasant and encourage people to do so regularly. In addition, warm water is more effective than cold water in removing fatty substances from the hands. These reasons are presumably why a minimum temperature of 85°F is now called for in the Code.

6. REVISED MEAT DEFINITIONS (SECTION 1-201.10 AND ANNEX 3)

The Food Code also made revised definitions to the term “intact meat.” This applies to cattle, pork, sheep, and goat meat. Poultry is not included here; that is governed by separate definitions.

The new definition of intact meat “means a cut of whole muscle(s) meat that has not undergone comminution, mechanical tenderization, vacuum tumbling with solutions, reconstitution, cubing, or pounding.”

For example, if a cut of beef is cubed to use in a recipe, or a steak is scored and marinated, it is no longer considered intact meat. As such, that meat must be cooked according to time and temperature guidelines for non-intact meat.

7. NEW GUIDANCE ON READY-TO-EAT FOODS (SECTION 3-401.15)

A new section has been added regarding manufacturer cooking instructions for ingredients in ready-to-eat foods. The two parts of the section read as follows:

- “Commercially packaged food that bears a manufacturer’s cooking instructions shall be cooked according to those instructions before use in ready-to-eat foods

or offered in unpackaged form for human consumption, unless the manufacturer’s instructions specify that the food may be consumed without cooking.”

- “Food for which the manufacturer has provided information that it has not been processed to control pathogens, when used in ready-to-eat foods or offered for human consumption, shall be cooked according to a time and temperature appropriate for the food.”



WARM WATER IS MORE EFFECTIVE

than cold water in removing fatty substances from the hands.

Review your processes for using frozen ingredients in ready-to-eat meals. For example, perhaps you use frozen corn on your salad bar. If the package of frozen corn had instructions for cooking or the manufacturer specified the corn was not processed to control pathogens, you could not place the corn directly on the salad bar; it needs to be cooked first.

Another example would be adding packaged frozen vegetables to smoothies, unless the packaging specified the food could be consumed without cooking.

8. UPDATES TO TIME AS A PUBLIC HEALTH CONTROL (SECTION 3-501.19)

The section on time as a public health control has added new guidance as it relates to fresh fruits or vegetables cut at ambient temperature:

“If time without temperature control is used as the public health control up to a maximum of 4 hours...the food may have an initial temperature of 70°F or less if...

(a) It is a ready-to-eat fruit or vegetable that upon cutting is rendered a time/temperature control for safety food...

(c) The food temperature does not exceed 70°F within a maximum time period of 4 hours from the time it was rendered a time/temperature control for safety food...”

For example, let’s say your kitchen has whole tomatoes at a room temperature of 68°F. With the new guidelines, you can cut these without having to chill the tomatoes beforehand. The cut tomatoes could be placed on your salad bar for no more than 4 hours, assuming the temperature of the food does not exceed 70°F. The food must be discarded at the 4-hour mark (or if exceeding the 70°F temperature limit).

There are some additional language changes to this section as well that are worth reviewing with your team. It’s important to have intentional procedures and documentation if using time as a public health control, and be sure all food is labeled with the time frame for discarding.



REFERENCES

Scan QR code to view the list of resources for this article.

9. ADDITION OF FOURTH COOK-CHILL COOLING METHOD (SECTION 3-502.12)

If you're using a cook-chill or sous vide cooking process, this section specifies an additional cooling and storage option. The prior three options all still apply, however the new addition is defined as:

"Cooled to 34°F within 48 hours of reaching 41°F, removed from refrigeration equipment that maintains a 34°F food temperature and then held at 41°F or less for no more than 7 days, not to exceed 30 days from its date of packaging, at which

time the food must be consumed or discarded."

ADDITIONAL UPDATES

In addition to the major changes noted above, there are many other small changes throughout the Code. Many are simple updates to terminology, error corrections, and changes that affect commercial organizations (for example, pet-friendly outdoor dining). It is best practice to review the new document thoroughly to understand all the changes.

MOVING FORWARD

As a reminder, the Food Code serves as a model for best practices. Your state

or local authorities may implement this code, or use an alternative model that offers similar protection and practices. Changes may take place immediately, or could require legislation before they are finalized.

The Food Code represents the current best science. As such, you may wish to implement any changes that are stricter than prior guidance, even if those changes aren't yet required locally. (Do not make updates that are now more lenient than your current guidelines, though).

By following these guidelines, you can ensure your kitchen serves the safest food possible to your customers. **E**



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This **Level I** article assumes that the reader has introductory knowledge of the topic. The desired outcome is to ensure a basic understanding and explanation of the concepts of the subject matter and recalling of related facts.

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- Which of the following is *false* regarding the Bill Emerson Good Samaritan Food Donation Act?
 - The act provides limited liability protection for those who make “good faith” food donations to nonprofit organizations
 - Liability protection applies to food donated directly from your kitchen to individual people
 - Food donations must also meet all federal, state, and quality and labeling standards
- Which of the following meals is *least likely* to contain sesame?
 - Falafel, pita bread, sliced vegetables, and hummus
 - Salad with grilled chicken and roasted sweet potatoes, topped with lemon-tahini dressing
 - Seared steak, steamed mixed vegetables, roasted red potatoes (tossed in olive oil)
- Who is responsible for understanding the major food allergens and the symptoms of an allergic reaction?
 - Person in charge
 - Employees
 - Both
- What is the updated minimum temperature for handwashing stations in the 2022 FDA Food Code?
 - 75°F
 - 85°F
 - 100°F
- Which of the following would be considered “intact meat” under the 2022 FDA Food Code? (Assume the foods have not undergone any type of processing or tenderization unless listed.)
 - NY strip steak
 - Boneless skinless chicken breast
 - Lamb chop that’s been scored and marinated
- You would like to include corn on your salad bar. You purchase frozen corn with specific cooking instructions on the package. Which of the following is *true*?
 - The frozen corn can be placed on the salad bar as-is, as long as the corn is held cold
 - The frozen corn must be cooked according to the manufacturer’s instructions before placing on the salad bar
 - You cannot use the corn at all on the salad bar
- You are going to cut a ready-to-eat fruit which will become a “time/temperature control for safety” (TCS) food after cutting. Which of the following is *true* regarding time as a public health control?
 - The fruit must start at or below 70°F, and remain under 70°F for a maximum of 4 hours
 - The fruit must start at or below 70°F, and remain under 70°F for a maximum of 8 hours
 - The fruit must start at or below 41°F in all cases

