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STATE OF DELAWARE FOOD CODE

CONSUMER ADVISORY

**Information for Food Establishment Permit Holders and Persons-In-Charge**

**Question:**     As the Permit Holder or Person-In-Charge of a food establishment, how can I serve my customers raw or undercooked foods of animal origin, and also advise them of the risk of foodborne illness risks to be in compliance with Food Code Section 3-401.11?

**Answer:**     The State of Delaware Food Code, in Section 3-401.11(D)(2,3), allows the service of raw or lightly cooked animal foods so long as the consumer is advised of the increased risk of foodborne illness. These requirements are explained below.

The consumer advisory is intended to apply to all food establishments where raw or undercooked animal foods or ingredients are sold or served for human consumption in a raw or undercooked form. This includes all types of food establishments whenever there is a reasonable likelihood that the food will be consumed without subsequent, through cooking – such as restaurants, raw bars, quick-service operations, carry-outs, and sites where groceries are obtained that have operations such as delicatessens or seafood departments.

Satisfactory compliance with the Food Code's Consumer Advisory provision is fulfilled when both a *disclosure* and *reminder* are provided. The information contained in the *disclosure* and *reminder* is to be *publicly available* and readable so that consumers have benefit of the total message (*disclosure* and *reminder*) before making their order selections.

**Definitions of Terms**

*Disclosure* means a written indication as to which items are, or can be ordered, raw or undercooked in their entirety, or items that contain an ingredient that is raw or undercooked.

*Essential Criteria* means the specifications that must be met when developing a custom-designed consumer advisory brochure regarding consuming raw or undercooked animal foods.

*Menu* means whatever consumers read (table tent, placard, chalkboard, or other written means) to make their order selections.

*Reminder* means a written statement concerning the health risk of consuming raw or undercooked animal foods.

*Molluscan Shellfish* means any edible species of raw or undercooked oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

*Shellstock* means raw, in-shell molluscan shellfish.

**Format Specifications for *Disclosure* and *Reminder*:**

**Language:** The language for the menu items is to match the language used for the *disclosure* and the *reminder*. For example, a menu written in English would have the *disclosure* and the *reminder* in English. The *disclosure* and *reminder* may also be in other languages.

**Text Size:**

Text size for statements on hand-held menus or table tents is to be visually equivalent to a minimum of 11 point.

For statements on a placard, the statements are to be equally readable as menu items that are on the placard. Whether the placard is also a menu or it is used solely for the reminder, the text size must be readable from the point at which consumers would normally stand to read it.

Other factors that can also affect the readability of a label or statement at the retail level are the type of font and background versus type color.

## Consumer Advisory Disclosure

### Objective

*Disclosure* must

- Be on the *menu* or, in the absence of a *menu*, be presented in writing to consumers, and
- Identify the food items that are required *disclosure*, and
- Specify that those food items are, or contain, raw or undercooked animal-derived foods.

### Methods of Compliance

1. *Disclosure* by description: Items are described, such as:
  - Oysters on the half-shell (raw oysters)
  - Raw-egg Caesar salad, and
  - Hamburgers (can be cooked to order); or
2. *Disclosure* by asterisking the food items to a footnote that states, depending on the situation, that the items:  
“Are served raw or undercooked,” or  
“Contain (or may contain) raw or undercooked ingredients;” and
3. When a *menu* is used:
  - Modified the *menu* through the use of permanent adhesive stickers; or
  - Reprint the *menu*; or
  - Present a separate written *disclosure* notice to the consumer in conjunction with the *menu*; or
4. In the absence of a *menu*:
  - Present a written *disclosure* notice to the consumer

## Consumer Advisory Reminder

### Objective

If either of the two *reminder* statements containing the actual advisory information is used, the statement must be in conjunction with the *disclosure* and placed according to one of the following:

- At least once on any page of the *menu* (preferably the first or last page) and located within the *menus* so that the consumer may easily find it; or
- On a placard, table tent, or by other written means.

### Methods of Compliance

1. Use one of the two *reminder* statements containing the actual advisory:
  - *Reminder* Statement 1:  
“Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness”; or
  - *Reminder* Statement 2:  
“Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions.”

2. Use a consumer advisory brochure.

#### Option 1:

The 2011 Food Code provides an option to have the disclosed items footnoted to a *reminder* statement that refers the reader to a consumer advisory brochure:

“Regarding the safety of these items, written information is available upon request.”

When the brochure is used to remind consumers of their risk and the brochure is not *publicly available*, the above *reminder* statement has to be mentioned on the *menu*.

When the brochure is used to remind consumers of their risk and the brochure is *publicly available*, the above *reminder* statement does not have to be mentioned on the *menu*.

#### Option 2:

- Use the text of the State of Delaware’s “4 Ways to Make Safer Food Selection” brochure, or
- Use a custom-designed brochure that meets the *Essential Criteria* in the document.