

Nadeau, Jessica

From: Metcalf, Benjamin
Sent: Tuesday, August 22, 2023 1:29 PM
To: Nadeau, Jessica; Bertocci, Elena; Poulin, Celeste
Subject: RE: Regarding Perishable Food Definition

Follow Up Flag: Follow up
Flag Status: Completed

Hi Elena and Jessica,

In looking at 21 CFR, the general definition of perishable food is as follows. (FDA Jurisdiction Foods, wholesale foods, retail foods, and some meat products that are not under USDA jurisdiction)

- *Perishable food* means food that is not heat-treated; not frozen; and not otherwise preserved in a manner so as to prevent the quality of the food from being adversely affected if held longer than 7 calendar days under normal shipping and storage conditions.

In looking at 21 CFR, the general definition of nonperishable food is as follows.

- The term *nonperishable processed food* means any processed food not subject to rapid decay or deterioration that would render it unfit for consumption. Examples are flour, sugar, cereals, packaged cookies, and crackers. Not included are hermetically sealed foods or manufactured dairy products and other processed foods requiring refrigeration.

In looking at USDA, the general definition of perishable food is as follows. (USDA Jurisdiction of foods i.e., meat and meat products, but not all meat products)

- Perishable foods are those likely to spoil, decay or become unsafe to consume if not kept refrigerated at 40 °F or below, or frozen at 0 °F or below. Examples of foods that must be kept refrigerated for safety include meat, poultry, fish, dairy products, and all cooked leftovers. Refrigeration slows bacterial growth.

There are two completely different families of bacteria that can be on food: pathogenic bacteria, the kind that cause foodborne illness, and spoilage bacteria, the kind of bacteria that cause foods to deteriorate and develop unpleasant odors, tastes, and textures.

Additionally, under 7 U.S.C. The Perishable Ag. Commodities Act, (Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. §§ 499a-499t,)

- A "perishable agricultural commodity" is any fresh fruit or vegetable, whether or not frozen or packed in ice, and includes cherries in brine, as defined by the USDA Secretary. 7 U.S.C. § 499a(b)(4). The PACA regulations define fresh fruits and vegetables as "all produce in fresh form generally considered as perishable fruits and vegetables, whether or not packed in ice or held in common or cold storage, . . . [except] those perishable fruits and vegetables which have been manufactured into articles of food of a different kind or character." 7 C.F.R. § 46.2(u).

These are a few definitions I was able to find to help clarify our discussion last week; hopefully, they help answer some of the questions and definitions that surround the food products we talked about. In looking at the definitions and examples, it might help clarify what items you are looking at regulating. Please feel free to contact me should you have any questions or further clarification on products. Hope this information helps.

Thanks,

Ben

Ben Metcalf, REHS, CP-FS

Inspection Program Manager,
Division of Quality Assurance and Regulations
Maine Department of Agriculture, Conservation & Forestry
(207) 287-4979 Office
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From: Metcalf, Benjamin
Sent: Thursday, August 17, 2023 11:29 AM
To: Nadeau, Jessica <Jessica.Nadeau@maine.gov>; Bertocci, Elena <Elena.Bertocci@maine.gov>; Poulin, Celeste <Celeste.Poulin@maine.gov>
Subject: RE: Regarding Perishable Food Definition

Sure Im available any time today should we shoot for 12:30

From: Nadeau, Jessica <Jessica.Nadeau@maine.gov>
Sent: Thursday, August 17, 2023 11:17 AM
To: Metcalf, Benjamin <Benjamin.Metcalf@maine.gov>; Bertocci, Elena <Elena.Bertocci@maine.gov>; Poulin, Celeste <Celeste.Poulin@maine.gov>
Subject: RE: Regarding Perishable Food Definition

Ben,

Thanks for a quick reply to our questions. Would you be available to meet with us sometime today or tomorrow to further discuss? Meeting before 2pm would work for us today, as for tomorrow we are open before noon.

Thanks!

Sincerely, Jessica

From: Metcalf, Benjamin <Benjamin.Metcalf@maine.gov>
Sent: Thursday, August 17, 2023 10:58 AM
To: Bertocci, Elena <Elena.Bertocci@maine.gov>; Nadeau, Jessica <Jessica.Nadeau@maine.gov>; Poulin, Celeste <Celeste.Poulin@maine.gov>
Subject: RE: Regarding Perishable Food Definition

Sure let me know when works for you for a teams.

Ben

From: Bertocci, Elena <Elena.Bertocci@maine.gov>
Sent: Thursday, August 17, 2023 10:52 AM
To: Metcalf, Benjamin <Benjamin.Metcalf@maine.gov>; Nadeau, Jessica <Jessica.Nadeau@maine.gov>; Poulin, Celeste

[<Celeste.Poulin@maine.gov>](mailto:Celeste.Poulin@maine.gov)

Subject: RE: Regarding Perishable Food Definition

Thanks, Ben. Here's a little bit more context.

There is a law that makes producers pay for the packaging or products they place on the market in Maine. They pay by amount and type. The payment is supposed to be an incentive to use less packaging and more recyclable packaging, and the money collected is used to help reimburse municipalities for the cost of waste management. The law places no restrictions on packaging.

It includes an exemption for entities that produce 15 tons or less of "perishable food" packaging.

D. The producer sold, offered for sale or distributed for sale in or into the State during the prior calendar year to retailers or direct to consumers products that were perishable food and that were contained, protected, delivered, presented or distributed in or using less than 15 tons of packaging material in total.

As used in this paragraph, "perishable food" means any food that may spoil or otherwise become unfit for human consumption because of its nature, type or physical conditions, including, but not limited to, fresh and processed meats, poultry, seafood, dairy products, bakery products, eggs in the shells and fresh fruits and vegetables. "Perishable food" does not include any such food that is sold, offered for sale or distributed for sale frozen except for frozen wild blueberries. [PL 2021, c. 455, §2 (NEW) .]

We are hoping to add a definition of perishable food in rule that will clarify and potentially tighten this up a bit. We think it will be useful to align with any definition you may have for a couple of reasons, mainly to simplify compliance but also to give a bit of credibility to whatever we throw out.

Have any time for a quick meeting on teams? We don't have any other way to conference call.

From: Metcalf, Benjamin <Benjamin.Metcalf@maine.gov>

Sent: Thursday, August 17, 2023 10:07 AM

To: Nadeau, Jessica <Jessica.Nadeau@maine.gov>; Poulin, Celeste <Celeste.Poulin@maine.gov>

Cc: Bertocci, Elena <Elena.Bertocci@maine.gov>

Subject: RE: Regarding Perishable Food Definition

Howdy Jessica,

There are several definitions for potentially hazardous foods (Time/ Temperature Control for Safety or {TCS} foods). If you could please clarify what exactly are you looking to implement, then I would be able to clarify the answer. That being said, 9 CFR 317, 21 CFR, 1, B,101, Maine Chapter 343, possibly Maine Chapter 329, and others could come into play.

As for the definition of perishable foods and TCS foods that gets further complicated depending on the food, food product, packaging, and ingredients of the foods, so further clarification would help provide a more concise answer.

As for enforceable standards in packaging, are you looking at strictly the labeling or what the package is made of?

The "Keep Refrigerated" label again needs more clarification, as many products have it placed on them for "Quality," not "safety" reasons, and most certainly, any meat, dairy, or animal-based product will have it on there unless the product has been specifically manufactured so as to be non-TCS food.

Please feel free to call me to help assist with clarification.

Thanks,

Ben

Ben Metcalf, REHS, CP-FS

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From: Nadeau, Jessica <Jessica.Nadeau@maine.gov>

Sent: Thursday, August 17, 2023 8:56 AM

To: Poulin, Celeste <Celeste.Poulin@maine.gov>; Metcalf, Benjamin <Benjamin.Metcalf@maine.gov>

Cc: Bertocci, Elena <Elena.Bertocci@maine.gov>

Subject: Regarding Perishable Food Definition

Celeste and Ben,

My name is Jessica Nadeau, and I am implementing the EPR for packaging law with Elena Bertocci. We got your contact from Lisa Silva at DHHS. We are working to clarify the perishable food definition for the Stewardship program for packaging and are hoping you may be able to point us to information you have on the topic.

Do you have a definition of perishable food/potentially hazardous food or something similar?

Does DACF have any guidelines or enforceable standards governing labeling of potentially hazardous foods or perishable foods? What sorts of foods require the "keep refrigerated" label in accordance with 9 CFR 317 (2)(k)?

Does DACF have any guidelines or enforceable standards governing packaging of potentially hazardous foods or perishable foods?

We appreciate any assistance you can provide.

Sincerely, Jessica

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