



September 5, 2014

Mr. John M. Luker, Chair  
c/o Conference for Food Protection  
30 Elliott Court  
Martinsville, Indiana 46151-1331

Dear Mr. Luker:

Thank you for your letter dated June 17, 2014, in which you transmitted the recommendations made by the Conference for Food Protection (CFP) at its 2014 Biennial Meeting in Orlando, FL. I apologize for the delay in responding.

The Food and Drug Administration (FDA or Agency) appreciates the efforts of meeting participants to develop recommendations intended to further food safety and foster cooperation among federal, state, local, territorial, and tribal agencies, our partners in industry and, academia, and consumers. FDA values the opportunity to fully participate in the CFP Biennial Meetings and to provide advice to the Executive Board and the numerous CFP Committees.

In accordance with the Memorandum of Understanding between FDA and the CFP, I am pleased to respond with FDA's current position on those recommendations that pertain to the FDA Food Code or otherwise recommend action on the part of FDA.

#### **Part 1 – Conference Recommendations for Changes to the FDA Food Code**

Your letter identified 13 recommendations accepted by the Assembly of Delegates to change the FDA Food Code or the Food Code Annexes.

FDA agrees with the final recommendations and anticipates making changes to the Food Code and its Annexes related to the following issues:

- 2014-I-014 Update Sec. 8-201.14 to better agree with NACMCF HACCP Definitions**
- 2014-I 020 Duties of Person In Charge- Hot and Cold Holding Monitoring**
- 2014-I-030 Equipment and Utensil Cleaning Agent, Availability**
- 2014-II-003 Align Competency of Inspectors (8-402.10) with Program Standard 2**
- 2014-II-009 Public Website Posting of Inspection Reports**
- 2014-III-002 Emergency Action Plan for Retail Food Establishments**
- 2014-III-028 Salmonella as a Reportable Illness**

Please note that FDA may agree in concept but may not agree with the specific proposed wording for the Food Code changes. In these cases, FDA may modify the recommended text to provide clarity or to achieve consistency with the structure or conventions of the Food Code.

For the following recommendations in Part 1 of your letter, FDA either does not concur or will need to further consider the matter and perhaps consult with the CFP Executive Board prior to deciding on whether to modify the Food Code in the recommended manner:

**2014-I-021 Sore Throat with Fever**

FDA does not believe that the recommended solution accepted by the Assembly of Delegates is fully consistent with the proposed Food Code change discussed in Council I during the Biennial Meeting. The recommendation forwarded to FDA suggests that Food Code Section 2-201.13(H) be modified to add “is asymptomatic for at least 24 hours” as a fourth condition that, when reported in medical documentation from a health practitioner and provided to the person in charge, would allow a food employee to be reinstated after a period of exclusion or restriction due to symptoms of sore throat and fever. FDA’s understanding was that the submitter of the proposed change was instead suggesting that the Food Code be modified to allow for an employee that was excluded or restricted due to sore throat and fever to be reinstated 24 hours after symptoms subside, even without any medical documentation. The intent of the Conference on this matter is not clear to FDA. Further, after discussion with experts from the Centers for Disease Control and Prevention, FDA is reluctant to relax the current requirements as they pertain to reinstatement of employees suffering from sore throat and fever. Together these symptoms may be indicative of an infection with *Streptococcus pyogenes* (commonly referred to as Strep Throat), which can be transmitted via food contaminated by infected food workers. FDA continues to believe that the current medical documentation requirements in the Food Code are important and that resolution of symptoms alone is not adequate to ensure that the risk of foodborne transmission of *Streptococcus pyogenes* has been adequately reduced.

**2014-I-022 Addition of whole raw fish and raw crustacean shellfish to Section 3-306.11  
– Food Display**

The CFP’s recommendation is to modify Section 3-306.11 of the Food Code to include raw, whole, finfish (head and tail intact), and raw crustacean shellfish (shell intact) among the list of foods that are exempt from the requirement that food on display to the consumer be protected from contamination by using packaging, guards, display cases, or other effective means. Although FDA recognizes that there are conditions under which raw fish and shellfish may be displayed in an unprotected manner that will minimize the risk of contamination, FDA does not concur with including a blanket exemption to this requirement in the Food Code.

An exception for the display of nuts in the shell and whole, raw fruits and vegetables is included in the Food Code; however, that exception acknowledges the fact that these types of products are routinely selected and handled directly by the consumer who is purchasing the

product and without the assistance of a store attendant. That is not the case with raw animal products such as fish and crustaceans where it is more important to ensure the product does not become contaminated or become the source of cross contamination of other foods. At this time, FDA will consider issuing an interpretation in our Food Code Reference System that will elaborate on what FDA would consider “other effective means” of protecting raw seafood during display to consumers and the conditions under which it may be appropriate to display the unpackaged product without protection by guards or solid display cases. FDA believes that this approach, rather than the proposed exception language in the Food Code, will prevent practices where consumers come into contact with the raw animal products in the retail environment.

#### **2014-I-032 Imminent Health Hazard - Modify the definition and enforcement action**

The recommended solution forwarded by Council I and accepted by the Assembly of Delegates did not properly use underlined text to designate how the 2013 Food Code requirement (Section 8-404.11) was to be modified. In fact, the proposed addition to the section with which FDA has specific concerns was not shown as underlined text when considered by the Assembly of Delegates. Specifically, the proposed addition to paragraph 8-404.11 (B) would make it unnecessary for the permit holder to discontinue operations “when corrective action has been immediately taken to ensure safe operations.” FDA has concerns that it may be beyond the capacity of many permit holders to gauge whether a particular corrective action is adequate to mitigate the impact or potential impact of the situation that created an imminent health hazard. In other words, simply taking a corrective action does not necessarily eliminate the imminent health hazard and, therefore, may not be grounds to preclude the discontinuation of operation. Consequently, before deciding whether to modify the Food Code in this regard, FDA is seeking additional consultation from the CFP Executive Board as to whether the scope of the proposed change is fully understood by represented stakeholders.

#### **2014-III-005 Foods starting at Room Temperature and Held Using Time Alone as a Public Health Control (TPHC)**

This recommendation asks that Food Code Section 3-501.19 be modified to better define the conditions under which time alone, without temperature control, can be used as a public health control to limit the growth of organisms in a working supply or a displayed quantity of foods that would normally require temperature control for safety. This section includes criteria to ensure that the foods are at the appropriate maximum cold-holding or minimum hot-holding temperature at the point in time when the use of TPHC is initiated. The primary CFP recommendation is to recognize that TPHC can safely be used with a food that quickly transitions from one that does not require temperature control for safety to one that does (e.g., cutting of tomatoes or melons, or opening a shelf-stable hermetically sealed can of food) and that this practice is acceptable even if the product, at the time it transitions to a temperature control for safety (TCS) food, is not at the cold-holding or hot-holding temperatures normally required for the storage and display of TCS foods. FDA agrees that there is a scientific basis to support recognizing this practice in the Food Code. However, FDA remains uncertain about some aspects of the recommendation and will require additional time to determine the

best course of action for modifying the Food Code, specifically: 1) whether the Food Code should establish a single maximum temperature at which all such products must start (CFP proposes 72°F); and 2) whether it is necessary and appropriate to include an itemized list of foods to which this criteria would apply in the Food Code.

**2014-III-021 Reduced Minimum Temperature for Microwave Steam Cooking of Seafood**

FDA agrees with the CFP that the 165°F minimum cooking temperature specified in Food Code Section 3-401.12 for raw animal foods cooked in a microwave oven may not be necessary if it can be verified that the food is heated throughout by the effect of steam being generated in the microwave. However, FDA does not concur with the Conference recommendation that the Food Code specify a procedure for steam cooking for specific types of foods such as lobster and shrimp in a microwave oven. FDA is considering whether an interpretation can be issued that would address what is necessary to verify that an animal food cooked in a microwave is cooked throughout by steam rather than by the action of the microwave energy and, therefore, would need only to be cooked to minimum temperatures specified in 3-401.11 of the Food Code. Additional research may be needed in this area.

**2014-III-030 Designating certain cheeses as non-time/temperature control for safety foods**

FDA concurs with the recommendation that we give consideration to the intrinsic properties of pH and % salt-in-moisture phase in cheeses as indicators of the extent to which certain cheeses require time/temperature control for safety and whether time alone can be used for extended periods of display. At this time, however, FDA does not anticipate adding the suggested criteria to the Food Code. We are interested in learning more about the ongoing research on these properties and if they represent viable indications of whether a cheese is likely to support the growth of pathogens and under what storage conditions. FDA will consider if there is a sound basis for issuing guidance that may help retailers and regulators determine appropriate storage and display conditions for different varieties of cheeses.

**Part 2 – Other Recommendations to the Food and Drug Administration**

Part two of your letter identified five recommendations that request FDA take certain actions but do not recommend specific changes to the FDA Food Code. FDA agrees with the recommendations in the five items below and will consider the availability of Agency resources to pursue the recommended actions. FDA will keep the CFP Executive Board and the Conference apprised of progress made between now and the 2016 Biennial Meeting in Boise, ID.

**2014-I-002 Guidance for Permanent Outdoor Cooking and Mobile Food Establishments**

**2014-II-010 Continued Data Collection to Determine Public Health Scoring**

**2014-III-006 Foods Needing More Research for Using TPHC**

**2014-III-014 Amend the water temperature requirements for handwashing sinks**



**2014-III-022 When partial cooking is actually incubation**

With regard to 2014-I-002, the recommendation that FDA make the subject documents available on the FDA website will be considered. However, rather than posting the documents on the FDA website, FDA may choose to direct the public to the CFP website for these materials.

I trust that this letter provides sufficient information about our current positions on the recommendations from the 2014 Biennial Meeting of the Conference. We very much look forward to continuing our cooperative relationship with the Conference.

Sincerely,



Michael M. Landa  
Director  
Center for Food Safety  
and Applied Nutrition

Identical Letter to:

Mr. William Shaw  
United States Department of Agriculture  
Food Safety Inspection Service  
1400 Independence Avenue, Rm2-211  
Washington DC 20250-3700

Kristin Delea  
Center for Disease Control  
University Park, Columbia Building  
2900 Woodcock Boulevard  
Atlanta, GA 30341