DEPARTMENT OF HEALTH AND HUMAN SERVICES Public Health Service
Food and Drug Administration
College Park, MD 20740

October 29, 2008

Mr. David Gifford
Chair, Conference for Food Protection
1302 Silver Spur Circle
Lincoln, California 95648-2070

Dear Mr. Gifford:

This correspondence is in response to your letter to the Center for Food Safety and Applied Nutrition, dated May 20, 2008, in which you transmitted the 2008 Conference for Food Protection (CFP) recommendations related to the Food and Drug Administration's (FDA) Food Code and other issues that recommend FDA involvement. The CFP has once again provided a number of recommendations that will serve to enhance food protection in the United States. FDA appreciates the efforts of participants in the 2008 biennial meeting who worked hard to develop recommendations that will further the collaborative efforts of Federal, state, local, territorial and tribal agencies and our partners in industry, academia, and consumer protection.

Of the thirty-three recommendations conveyed to FDA by the 2008 CFP, we conceptually agree with the recommended action on twenty-eight of them at this time. Please note that some of the recommendations that propose specific wording changes to an FDA document and with which we conceptually agree, may require some modification to enhance clarity or achieve consistency with the structure or conventions of the FDA document.

FDA requests that the recommendation regarding Issue I1I-007 (food allergen resource information) be included as part of the recommended curriculum in the FDA Voluntary National Retail Food Regulatory Program Standards, Standard No. 2, Trained Regulatory Staff and be referred to the Council II Program Standards Committee's Certification of Food Safety Regulation Professionals Work Group for execution. Collaboration between the CFP and FDA is needed to develop learning objectives and a curriculum that meets the needs of the target audience within the structure of ORA-U and Program Standard No. 2.

FDA further requests that the CFP Executive Board carefully consider the information pertaining to the five CFP recommendations identified below. We look forward to continuing to engage with the CFP Executive Board while proceeding with further action on these recommendations.

2008-1-014: Interstate Shipment of Shellfish
The CFP recommendation regarding the inspection and listing of re-shippers of molluscan shellfish on the Interstate Certified Shellfish Shippers List (ICSSL) calls attention to a valid concern facing re-shippers located in states that lack a State-run shellfish shipper certification program. FDA is committed to working with the Interstate Shellfish Sanitation Conference (ISSC) and the CFP to address these concerns and determine the best course of action. As stated by FDA during the Council I deliberations, any workable solution that involves changes to the way that shellfish shippers and re-shippers are certified and listed under the National Shellfish Sanitation Program will need to be carefully considered by the ISSC if the solution is to be successful in protecting the consumer and ensuring safer shellfish products. As FDA is not in a position to act on this 2008 CFP recommendation without first fully engaging the ISSC, we recommend that the CFP convey its recommendation to the ISSC prior to the 2009 ISSC biennial meeting. FDA is prepared to assist the CFP in that effort and will participate in discussions on the strengths and weaknesses of the three possible solutions offered by CFP.

2008-111-019 Cooling and reheating of partially cooked meat and poultry products
FDA recognizes that the 2005 Food Code does not adequately address the appropriate control measures for the food establishment practice in which meat or poultry products are partially cooked, cooled, and, then subsequently heated to the required final cook temperature before serving. Significant progress was made during the 2008 CFP Council III deliberation of this issue and the resulting CFP recommendation represents an important step toward defining the appropriate safeguards for the practice of partial cooking. However, it is our opinion that the CFP recommendation alone does not contain an adequate description of the conditions that must be achieved to safely carry out the practice in a wide variety of foodservice and retail settings. FDA does not agree that the proposed modifications should be incorporated into the 2009 Food Code without first better defining the appropriate heating, cooling, storing and labeling practices that will ensure the safety of the specified products. FDA welcomes CFP input on how the Food Code can best address the assessment of food preparation practices involving partial cooking.

2008- 111-21 Storage Temperature of Certain Natural Cheeses
This recommendation speaks directly to a matter that was addressed in the recommendation regarding Issue 2006-111-010, from the 2006 CFP meeting. FDA already acted on that prior recommendation by meeting with industry personnel and, after careful consideration, provided a written report describing our position to the 2007 spring meeting of the Executive Board. This 2008 CFP recommendation requests that FDA now consult the National Advisory Committee on the Microbiological Criteria for Foods (NACMCF) on the matter. At FDA's prior request, NACMCF is already considering issues pertaining to the use of inoculation studies and other means to determine if certain food products require temperature control for safety. While not the focus of NACMCF's work, it is reasonable to expect that its upcoming report may address the issue as it pertains to cheeses.

FDA does not question that specific cheeses may be formulated such that they may be held safely without refrigeration. However, for the reasons stated in our 2007 report to the Executive Board, we do not support the notion that an entire classification of cheese (such as Cheddar or Romano) can be categorically designated as not requiring temperature control for safety at retail. A retailer or foodservice operator wishing to store or display an individual brand or make of cheese at a temperature other than those specified in the Food Code for potentially hazardous foods should consult with the manufacturer and/or supplier to verify that the specific product is, in fact, one that does not require temperature control for safety. . No additional information was provided with Issue 2008-1I1-021 to suggest a change to that position.

2008-III-022 Time/Temperature Control for Safety (TCS) for Cut Leafy Greens
FDA appreciates both the careful consideration by Council III of this Issue on the appropriate temperature control for cut leafy greens and the fact that the CFP acknowledges that temperature control during storage and display is important to the safety of cut leafy greens. FDA also recognizes that the CFP recommendation represented an attempt to achieve a compromise that would improve the practices used by some food establishments to store and display cut leafy greens while acknowledging the potential impact on establishments that are not adequately equipped to maintain such product at 41°F or less. However, the CFP recommendation that the Food Code specify a maximum ambient temperature of 45°F for the storage and display of cut leafy greens represents a departure from the 41°F maximum product temperature that is specified for holding other foods that require temperature control for safety, including certain other types of cut produce. Specifying a maximum 45°F ambient storage temperature in the Food Code would also depart from the guidance FDA offers for cut produce throughout the supply chain. The February 2008 Guide to Minimizing Microbial Food Safety Hazards for Fresh Cut Fruits and Vegetables recommends that the temperature of fresh cut produce determined to need temperature control for safety be maintained at 41°F or less. This FDA recommendation is supported by a number of studies showing that cut leafy greens support the growth of pathogens in the absence of refrigeration. FDA requests that the CFP reconsider the studies and research presented in the Issue submission that shows that refrigeration at 41°F or less prevents the growth of pathogens that may be present in or on cut leafy greens. Further, it is our understanding that the storage of cut leafy greens at temperatures of 41°F or below is also consistent with the quality recommendations of suppliers of cut produce for the storage and display of their product in the retail setting.

FDA is also concerned that the CFP recommendation that cut leafy greens be stored in "refrigerated equipment that maintains an ambient air temperature of 45°F or less" will be difficult to implement and enforce with respect to open product on display in salad bars and buffets that rely, in part, on conductive heat transfer to achieve the desired product temperature. Maintaining the temperature of the airspace directly above cut leafy greens on an open buffet line at 45°F or less may present significant engineering challenges. In addition, accurately monitoring the air temperature in that open space may not be feasible using the tools available to establishment and regulatory personnel.

2008-11-054 FDA Evaluation of State Retail Food Safety Programs
FDA is committed to assisting all regulatory agencies to effectively use the Voluntary National Retail Food Regulatory Program Standards to improve their inspection programs and recognizes that some state programs could benefit from a "program evaluation" by FDA. However, the Program Standards are designed to encourage retail regulatory programs to embark on a process of continuous improvement and central to that concept is the program self-assessment. While FDA Retail Food Specialists are ready and able to assist agencies in conducting their program self-assessments and verification audits, currently FDA has no program in place to conduct formal program evaluations or to issue reports of findings and recommendations to state agencies on their level of conformance with the Retail Program Standards.

Regarding FDA training on conducting verification audits, FDA is developing training tools for those individuals who may be in the best position to conduct verification audits. In some states it will make sense to direct those tools to state employees or designees who can conduct verification audits of other jurisdictions in their states. FDA is considering this recommendation as it determines how to best allocate resources to maximize the effectiveness of the Program Standards initiative. The CFP and FDA both recognize that having well trained auditors available is important to the success of the initiative.

I trust that this letter adequately responds to your May 20, 2008 letter and provides sufficient information about our position on these issues. I look forward to continuing in our cooperative relationship with the Conference.

Sincerely yours,

[Original Signature- Janice F. Oliver]

Stephen F. Sundlof, D.V.M., Ph.D.
Director
Center for Food Safety
and Applied Nutrition