

May 4, 1999

Donna Shalalia

Dear Dr Shalalia,

Thank you for taking the time out of your busy schedule to call me. I thoroughly enjoyed our conversation and look forward to working with you in the future. As we discussed, food safety is a number one priority for the restaurant industry, so in many ways we are truly partners with a common goal. It is my sincere desires to improve our partnership in the future through increased our cooperation and communication.

During our discussion I raised a few restaurant industry issues regarding expanded acceptance of the 1999 FDA Model Food, CDC foodborne illness reporting and federal agency regulatory coordination. I wanted to follow-up our conversation with a little more detail on the specific issues I raised.

**FDA Food Code Issues:**

Since 1997 we have been working to expand restaurant industry acceptance and encourage state adoption of the FDA Model Food Code. It is clearly in our best interest, and those of our customers, to bring uniform science based regulations to all 50 states. However, several unresolved issues have inhibited industry acceptance and slowed the state adoption of the FDA Model Code since it's release in 1994. In 5 years only 16 or so states have adopted the FDA Model, we would like to bring cooperative resolution to the following issues which have inhibited wide acceptance of the FDA Model Food Code.

1. The FDA Food Code requires the absolute elimination of all bare hand contact with ready to eat foods. This requirement is generally viewed by many in industry and regulatory communities as unattainable and unenforceable. Scientific studies have shown that food contact with clean washed hands pose little risk to the dining public. However, the FDA has maintained this absolute prohibition even if there is effective hand washing management. A reasonable resolution, which recognizes the importance of limiting bare hand contact, effective hand washing management and the proper use of gloves, is sorely needed.
2. The FDA Food Code requirement that all cold foods to be maintained at 41<sup>0</sup> F temperature is costly and may not be fully justified. This is both an economic and scientific view shared by many. It is commonly agreed that long term storage at 41 F is appropriate and desirable. However, to apply this regulatory standard to short-term food storage is costly and may not offer improved food safety. The difference between 45<sup>0</sup> F standard and 41<sup>0</sup> F standard may seem insignificant. However it is

extremely challenging in open top refrigeration and small prep units designed for short-term food storage. The effect of this requirement would be to require nearly wholesale replacement of every open top and prep-line refrigeration unit built before 1998. We strongly support the application of HACCP in this situation. Refrigeration should be viewed as a time and temperature standard, which would allow short-term storage at 45 F for three days or less. This would allow the continued use of millions of refrigeration units with operational controls in place.

3. The 1999 FDA Food Code requires that a written consumer advisory be provided for undercooked (rare and medium rare) pinned steaks. Recent Kansas State University research has clearly shown that the surface cooking of pinned steaks removes pathogens of significance, therefore the safety of these stakes is no different than unpinned steaks. Therefore, there is little increased risk to the consumer to necessitate a written consumer advisory. In fact, based upon FDA research written consumer advisories at retail are generally ineffective and unwanted by consumers.
4. The FDA Food Code requires a minimum 140<sup>0</sup> F temperature for hot holding of potentially hazardous foods. Again science, experience and USDA studies have shown that 130<sup>0</sup> F hot holding is safe. We would like to see this issue resolved based upon clearly undisputed food science.
5. Demonstration of knowledge or certification is not mandatory for federal, state and local food safety inspectors. The FDA Food Code does require a demonstration of knowledge or certification, which assures that food managers have a minimum level of food safety knowledge. There is currently no corresponding requirement in the FDA Food Code to guarantee that local inspectors enforcing the FDA Model Food Code have any basic food safety knowledge. We recommend that FDA support and incorporate a requirement for, mandatory certification of local food safety inspectors
6. The FDA currently changes the FDA Model Food Codes biannually without seeking any review, input or comment from affected industries, local regulators or other interested parties. FDA does consider recommendations of the Conference for Food Protection however, the Conference is a body primarily composed of state regulatory officials. We strongly recommend that the FDA open up its Food Code development process for review and comment before publication.

#### **Foodborne Illness Reporting Issue:**

The uncertainty over the actual numbers of foodborne illness in the nation has allowed publicity-seeking activist groups and others to claim that there are hundreds of millions of cases and ten thousand deaths annually from foodborne illness. CDC should provide regulators, consumers and the food industry with an accurate numbers, based on science, and fact. For too long we have been guessing at the true causes of foodborne illnesses in this country. We need accurate foodborne illness data to properly design and identify the true causes and incidences of foodborne illness. Without an accurate identification of the problem our efforts may be misdirected and success may only be speculative.

## **Regulatory Inconsistencies between federal agencies:**

1. Sanitizing tableware, surfaces and equipment is very important in the restaurant industry. There is an inconsistency between FDA and EPA regulatory recommendations for the appropriate concentration of the most widely used sanitizer. The FDA has established a maximum concentration of no more than 200 ppm of chlorine for sanitizing use in retail environment. Solutions above 200 PPM are marked as violations (FDA Food Code 4-501.114). The EPA, which regulates sanitizer use, sets a maximum of 600 PPM for chlorine. Research studies have shown that chlorine concentration of 600 PPM maybe necessary to fully sanitize wooden cutting boards. We would like to see the EPA and FDA agree on this fundamentally important issue.
2. The FDA Food Code requires that eggs be held at 41<sup>0</sup> F in retail establishments. However, the USDA just recently published requirements that call for storage of eggs at 45<sup>0</sup> F in production and transport. Again, USDA and FDA fundamentally disagree on proper refrigerated storage temperatures.
3. The FDA Food Code establishes minimum ground beef cooking temperatures at 155<sup>0</sup> F for 15 sec. The USDA recommends to consumers that they cook hamburger to 160 F for 15 sec. USDA research has generally supported the FDA recommendation as appropriate, with an adequate safety margin. This is just one example, almost all cooking temperature recommendations from FDA and USDA vary to some degree. It would be advantageous and remove confusion to have consistent science based agreement between FDA and USDA on meat and poultry cooking temperatures.

Thank you for your interest and taking time to review issues. The National Restaurant Association Technical Services staff has been working with FDA CFSAN staff over the years to resolve these and other issues and there are many success stories. We stand ready to assist and move forward on the successful resolution of these issues as well.

Please feel free to contact Steven Grover our Vice President of Technical Services, Public Health and Safety at any time on these matters.

Sincerely,

Herman Cain, CEO & President

Cc: Stephen Caldeira, President & COO, NRA Educational Foundation  
Steven Grover, Vice President, Technical Services, Public Health and Safety