FOOD MARKETING INSTITUTE

Testimony of Mike Ambrosio

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On Behalf of the Food Marketing Institute

The Food Safety Enhancement Act
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Energy and Commerce Committee
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This is your neighborhood. This is your ShopRite.

Chairman Pallone, Ranking Member Deal and Members of the Health Subcommittee, I am honored to appear before you today on behalf of the Food Marketing Institute (FMI) to present our views and suggestions on the Food Safety Enhancement Act discussion draft. FMI and its member companies share the common goal of enacting legislation this year that will genuinely improve the safety of the food supply. Steps that actually prevent the presence of adulterants in the food supply are the only true way to improve the safety of our food.

I am Mike Ambrosio, Vice President, Quality Assurance, Wakefern Food Corporation. I have been in charge of food safety programs at Wakefern for almost 30 years. Founded in 1946, Wakefern Food Corporation has grown from a small struggling cooperative into the nation's largest retailer-owned (non-farm) cooperative in the United States. Headquartered in Keasbey, New Jersey, Wakefern, along with ShopRite stores, employs over 47,000 individuals throughout New Jersey, New York, Pennsylvania, Delaware, Connecticut, Massachusetts, Rhode Island and Maryland. In 2008, retail sales totaled over $10 billion for our company.

Today I am also representing FMI, a national trade association that has 1,500 member companies made up of food retailers and wholesalers in the United States and around the world. FMI members operate approximately 26,000 retail food stores with combined annual sales of roughly $400 billion, representing three quarters of all retail food store sales in the United States. FMI's retail membership is composed of national and regional chains as well as independent grocery stores.

The American consumer has access to a selection of products in today's grocery store that is unmatched. Our customers have products available to them everyday that are grown and made not only in the United States, but also throughout the world. As a result, fresh fruits and vegetables are available for purchase year round and fresh seafood can be found in the middle of our country far from any ocean. The average grocery store has over 50,000 individual items on their shelves with large supermarkets having over 100,000 different items for sale. Regardless of the number of items in a store though, the most important goal of food retailers and wholesaler is to ensure that the food we sell is as safe and of the highest quality possible.

In April 2008, I testified before this Subcommittee on legislation that would have modernized and overhauled food safety systems at the Food and Drug Administration (FDA). Since that time high profile food safety outbreaks and recalls involving tomatoes, jalapenos, peanuts and pistachios have not only made headlines, but regrettably have caused illness and in some cases even death.

Many of the themes and ideas that I share today will be similar to those that I shared in 2008, but there are differences that reflect lessons learned and new weaknesses in the existing food safety system identified from these latest recalls. As the purchasing agent for the consumer and the final link in the supply chain, our industry understands that it is vital to ensure that the FDA has the necessary authority, credibility and resources to meet the challenges of today's global marketplace.

Consumer confidence remains an essential factor in this debate. Food safety issues can be extremely complex and consumers vary greatly in their knowledge of the science and other issues affecting the safety of our food supply. However, as food safety issues draw national headlines, consumer awareness as well as concern about the safety of commercially prepared foods and products purchased at the supermarket heightens. As a result, shoppers may quickly alter purchasing decisions and will even go as far as avoiding an entire product category if they are not confident of its safety.

In FMI's annual survey of consumers, presented in the annual U.S. Grocery Shopper Trends report (Trends), 83 percent of shoppers say that they are either somewhat or very confident in safety of food in the supermarket. However, the vulnerability of consumer confidence is illustrated by the high percentage of shoppers who are only "somewhat" confident at 72 percent compared to those that are "very" confident at 11 percent. We believe that strengthening consumer confidence is the responsibility of both private industry and the government working together.

At the retail level, supermarkets have many prevention programs in place to protect our customers, including consumer education campaigns, employee food safety training, extensive sanitation programs, food safety management systems, and programs that involve working closely with our suppliers, especially those beyond our borders. I would like to share with the Committee some programs utilized by Wakefern, and many other companies in the food retail industry to help ensure the safety of the products on our shelves.

Wakefern is committed to working with the supplier community to constantly improve the safety of the food they manufacture and process, and to this end participates in the Safe Quality Food (SQF) Program. SQF provides independent certification that Wakefern's suppliers' food safety and quality management systems comply with international and domestic food safety laws and regulations. Recognized by the Global Food Safety Initiative (GFSI), the SQF certification program relies on highly qualified, accredited, third party certification entities to provide objective, independent assessments of a supplier's ability to produce, process, prepare and handle food according to the highest possible standards, which meet or exceed the standards set by the U.S. government. Wakefern has chosen to use accredited third party certification programs like SQF because they represent the cultural change that is needed in our food safety system. Such programs adhere to rigid requirements to avoid conflict of interest and ensure that only trained, qualified auditors perform the safety performance assessments. Accredited certification provides an additional layer of review above anything that is required by the local, state or federal government and helps ensure our brand integrity and the protection of our consumer.

Within the domestic retail setting, training store managers and workers in food safety is an important tool for protecting public health. Currently, Wakefern makes extensive use of the SuperSafeMark program to train and certify our store-level managers and associates. SuperSafeMark is the most comprehensive food safety and sanitation training

program designed specifically for food retail employees, and through the National Registry of Food Safety Professionals, offers accredited food handler certification to store associates. This instruction emphasizes methods for combating foodborne illness with time and temperature controls, measures to prevent cross contamination, and programs for personal hygiene, and cleaning and sanitizing best practices.

Along with these prevention-based programs, we have in place rapid response systems to ensure that when a problem is identified, we take immediate action to remove recalled product from the distribution chain and retail shelves as quickly as possible. A new resource developed by the food industry to improve the speed and accuracy of recall notifications is the recently introduced FMI Product Recall Portal. This electronic notification system allows suppliers to send a secure, automated alert directly to retailers and wholesalers about products that must be recalled, providing information about the recalled product in a standardized form 24 hours a day, seven days a week.

The final link in the supply chain is the consumer. Wakefern has long provided consumers with practical, science-based guidance on safe food handling at home through the Partnership for Food Safety Education. The Partnership brings together consumer advocacy groups, the FDA, U.S. Department of Agriculture, Centers for Disease Control and Prevention, national industry associations and health and scientific groups.
The Partnership created the award-winning "Fight BAC!" education program to teach children about food safety as part of their school curriculum. The Partnership's "BAC Down!" program urges consumers to use thermometers to ensure their refrigerators remain at safe temperature levels – no higher than 40 F. Most recently, the Partnership launched the "Be Food Safe" campaign in cooperation with USDA to provide retailers with a wide range of resources to educate their customers about safe food practices. The campaign encourages the use of colorful, modular icons and photography to illustrate the basic and most important safe food-handling practices:

- Clean — Wash hands and surfaces often.
- Separate — Do not cross-contaminate foods.
- Cook — Heat foods to proper temperatures.
- Chill — Refrigerate foods promptly.

All of these food safety initiatives at the retail level cannot ensure that we deliver safe food to our customers if the food coming into our stores isn't already produced and processed to the highest standards. While the entire food industry continues to work together in developing stronger and innovative food safety programs, FMI and its members recognize the crucial and evolving role for government to play in assuring the safety of our food supply.

Mr. Chairman, I applaud you, Mr. Dingell, Chairman Waxman and all the members of the Committee for your efforts to address changes that are needed to improve our food safety system in the latest draft legislation. We support many of the proposals in the discussion draft by emphasizing the need have preventive measures be the foundation on which any food safety system should be built. The draft also recognizes that we need to focus the majority of our resources on facilities and products that pose the greatest risk of

contamination that could result in food-borne illness or injury. We must continue to be sure that any changes meet certain criteria:

- Be supported by science;
- Have measurable benefits;
- Be affordable;
- Be realistic; and
- Be implemented without unintended consequences.

Preventing food safety problems from occurring by mitigating risk must be the guiding principle for changes. Our focus must be on actions that will have the greatest impact on improving food safety. We support many policy initiatives in the draft legislation because they are clearly intended to prevent the presence of adulterants in the food supply.

Prevention:

First, we applaud you for not only designating an entire section of the bill solely to prevention, but also putting this first and the most extensive section of the bill. From our perspective, this is the appropriate emphasis. In addition I would like to specifically comment on certain sections in the draft.

Changes in registration of food facilities (Sec. 101):

FMI recognizes that a strong public-private partnership is needed to help ensure the safety of the food supply. Although every penny counts in these tough economic times, there is nothing more important than improving and ensuring the safety of our food supply. We are willing to support a fair registration or user fee provided that it is utilized by FDA in a transparent and accountable manner to improve the safety of our food supply through means such as conducting research and consumer education programs. We look forward to working with the Committee to address our concerns about how the FDA may utilize any fees collected.

Food Safety Plans (Sec. 102):

We support the requirement that every registered food facility conduct a risk assessment, and implement and maintain a validated food safety plan that identifies potential sources of contamination and appropriate food safety controls, and documents those controls that will prevent, eliminate or reduce potential hazards. Adherence to a food safety plan goes a long way toward developing a culture within the company that is critical to ensuring food safety.

Risk-Based Inspection Schedule (Sec. 105):

We are pleased to see that Section 105 directs FDA to target its inspection resources based on the risks associated with different types of facilities. For prevention to have the greatest chance of success, particularly with limited resources, resources should be deployed using a risk-based model. In terms of factors to consider for assessing the risk presented by the facility, we are pleased to see that the FDA will be considering whether a facility importing food has been certified in accordance with Section 801 (p). Certification by a qualified certification body can also be used as a factor to assess the

risk of domestic food producers and would further assist FDA in targeting its resources based on risk.

Traceability (Sec. 107):
We recognize that collaboration with FDA is necessary to ensure that industry initiatives will better assist in the event of a foodborne illness outbreak. We support the draft's provisions requiring the Secretary to gather information to identify technologies for tracing and to assess the costs and benefits associated with the adoption of such systems, hold public meetings for input and conduct pilot projects when writing regulations. However, we would recommend that the Secretary be allowed to design systems based on the information gathered and not be mandated to develop a specific type of system prior to those efforts.

Current traceability systems do not uniformly meet the needs of industry, the consumer, or government. Enhancing systems that will help minimize the time required to identify, isolate and remove product that may cause injury, illness or adverse health consequences is the most important goal of a traceability system. Development of a stronger food traceability system is not a static process. Technology improvements are being made everyday that improve both information transfer and food processing. Improving traceability is a long term commitment. A number of strong pilot projects addressing the unique needs of a particular product or industry are ongoing and are already resulting in improvements in best practices. One challenge that has been identified that we are working to alleviate is the need to develop consistent industry standards for messaging of data related to product that ensures interoperability among data capture and transfer systems, so that all elements of the supply chain can receive information about the product or commodity in a consistent, timely manner

We also recommend including retailers in the section allowing direct sales by farms to be exempt from the requirements of the section. Wakefern and many other retailers support local farms in their communities by featuring locally grown produce in their stores in the same manner a local restaurant would make it available to its customers. We would like to be able to continue supporting our local economies and small farmers while also giving the consumer the opportunity to purchase fresh produce grown locally.

Certification (Sec. 109):
FMI supports the draft's recognition that certain qualified third parties can provide valuable support to FDA by helping to ensure that the food being imported into our country is meeting all U.S. food safety requirements. We look forward to working with the Committee to provide FDA with further guidance on the definition of a "qualified certified entity" and incorporate the added oversight of accreditation to help ensure that certifications are administered only by recognized certification programs and audits are being performed by third party certification companies that have demonstrated that the processes and standards used in the auditing and certification program are sufficient to verify compliance of food producers and processors with federal food safety standards.

Safe and Secure Food Import Program (Sec. 113):
We are also pleased to see that the discussion draft includes provision for a "fast lane" for imported foods that meet certain standards. We believe that this will encourage more producers abroad to utilize heightened food safety programs. The bill's "Guidelines" section provides factors that FDA should consider in developing the program. We strongly recommend that you add certification by a "qualified certified entity" in accordance with the standard set forth for certification.

Reportable Food Registry (Sec. 112):
The bill would significantly revise the standards for the reportable food registry that FDA was required to develop under the Food and Drug Administration Amendments Act of 2007, but that has not yet been finalized. Since the agency has been delayed in implementing the reportable food registry, we are concerned that the additional provisions in this bill may further delay development of the registry. We look forward to working with the Committee on this issue.

New Recall Authority (Sec. 111):
We believe that FDA should be given the authority to mandate a recall in only those cases where a company responsible for adulterated food does not act promptly to recall a food that presents a reasonable probability of causing serious health problems or death. This authority would allow FDA to act when a firm refuses to recall product or when a company is no longer in business and is not able to conduct the recall. Penalties and other punitive measures should also be limited to those responsible for the adulteration.

We are however concerned with the proposal to give FDA the authority to issue a "cease distribution" order as a result of its impact on retail operations. Stores have very little room to hold foods for an extended period of time, particularly frozen or perishable foods. If FDA issues a "cease distribution" order for a product, retailers will treat that order as if the product had been recalled. Stores would immediately remove the product from the shelf and implement other measures to ensure the consumer could not purchase the specific item. We need to be able to transport these items out of the store both for space reasons and because we would not want to hold food subject to a "cease distribution" order near food that will be sold to the consumer.

New Enforcement Measures (Secs. 131-136):
The draft bill grants FDA extraordinary new powers to suspend or halt the production and distribution process of food products for a variety of reasons while also increasing the ability of FDA to assess fines for all infractions. New powers and penalties must be complemented by a hearing and appeals process that is fair, reasonable and quick. Penalties and enforcement measures should be available to deter and punish those that knowingly violate our food safety laws.

Although we certainly want the government to have all tools necessary to pull adulterated product out of the market, unless FDA has some degree of certainty regarding the cause or location of the adulterated foods, we could well end up in another situation like the one we all experienced when tomatoes from Florida were believed to be the cause of an

outbreak but ultimately FDA determined that the cause was jalapeno peppers. New enforcement measures must appropriately balance the need for the agency to act quickly in a public health emergency, but to act accurately with respect to the cause or element of concern. Inaccurate response will erode the confidence of consumers.

Country of Origin Labeling for Ingredients (Sec. 143):
Retail food stores are already required by statute to identify the country of origin of certain food products including produce, seafood and meat. This provision was never intended to improve food safety. Focusing on prevention systems that help ensure the safety of imports is a far better utilization of resources than attempting to put in place a system that will only attempt to identify all of the countries associated with any final food product.

Whistleblower Protections (Sec. 208):
The discussion draft includes "whistleblower protections" that have not previously been part of the Federal Food, Drug & Cosmetic Act. We are concerned about how alleged violations of whistleblower protections would be investigated by the Secretary of Labor, specifically the Occupational Safety and Health Administration (OSHA) and OSHA's ability to investigate alleged violations of the FD&C Act.

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Mr. Chairman, thank you for the opportunity to testify. We appreciate the work that has gone into the development of the Food Safety Enhancement Act discussion draft with the goal of improving the safety of the food supply and to helping to restore consumer confidence in our food safety system. I look forward to your questions and remain available to the subcommittee for further discussion and information should you need it.