United Fresh
PRODUCE ASSOCIATION

Prepared Statement

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Introduction

Good morning Chairman Pallone, Ranking Member Deal, and Members of the Subcommittee. My name is Tom Stenzel and I am President and CEO of the United Fresh Produce Association. Our organization represents more than 1,500 growers, packers, shippers, fresh-cut processors, distributors and marketers of fresh fruits and vegetables accounting for the vast majority of produce sold in the United States. We bring together companies across the produce supply chain from farm to retail, including all produce commodities, both raw agricultural products and fresh ready-to-eat fruits and vegetables, and from all regions of production.

I mention these characteristics because our organization's views on food safety are shaped by this broad and diverse membership across the entire produce industry, not any one sector or region. In the area of science and food safety, our association works to develop industrywide consensus on the best overall policies and practices to serve the consumer.

Let me begin by repeating something you've heard many times before, and will hear many times in the future. Food safety is our industry's top priority. The men and women who grow, pack, prepare and deliver fresh produce are committed to providing consumers with safe and wholesome foods.

That is what drives food safety to be a process of continuous improvement, not a static achievement. We are on a continuum, constantly striving toward perfection, while understanding scientifically that perfection – or zero risk – is not possible. Because our products are enjoyed by consumers in their fresh and natural state without cooking, we have to be right every single time – not one in a million, or even one in a billion. But as long as there is the potential of even one individual getting sick, we will do all we can to prevent that from happening.

Now, I personally am confident in my produce choices today. I know many of the people who are growing and processing fresh produce, and I trust them to be doing their very best to market safe products. I know that their results are overwhelmingly successful, with the actual incidence of illness extremely low. Just look at the numbers.

- Over a billion servings of fresh produce are eaten every day.
- More than 5 million bags of fresh salads are sold every day.
- And, out of the hundreds of fruits and vegetables offered in a typical supermarket, only a very few have been implicated in illness outbreaks, and then rarely as compared with their volume of consumption.

But, we also know that consumers today are walking into grocery stores and restaurants with concerns, doubts, and sometimes fears about produce. They don't understand those statistics; they don't know what farmers and processors are doing to protect the safety of their produce; and equally important, they do not have complete confidence that government is doing all it should to protect their health.

Most importantly, we cannot lose sight that health experts are unanimous that Americans must increase our consumption of fruits and vegetables for better health. That's the juxtaposition we face today on food safety – it is simply unacceptable for Americans to fear consuming fresh fruits and vegetables that are essential to their good health.

Principles for Produce Safety

Mr. Chairman, over the past several years, you know that the fresh produce industry has been a leading proponent of strong federal government oversight of food safety. Our organization has testified before the House or Senate some 10 times since January 2007, when our Board of Directors adopted a series of policy principles calling for mandatory, science-based regulation by the federal government. Let me repeat those principles once more:

> *To protect public health and ensure consumer confidence, produce safety standards:*
>
> - *Must allow for a commodity-specific approach, based on the best available science.*
> - *Must be consistent and applicable to the identified commodity or commodity sector, no matter where grown or packaged in the United States, or imported into the country.*
> - *Must be federally mandated with sufficient federal oversight of compliance in order to be most credible to consumers.*

We are pleased that the consensus in Congress has grown in support of these principles, which have largely been incorporated into all major food safety legislative vehicles before the House and Senate.

Let me now turn specifically to the Food Safety Enhancement Act of 2009, and discuss how these principles are addressed in the draft bill, and how we believe this legislation can be strengthened. While the bill appropriately is comprehensive over the entire food industry, my testimony today speaks specifically to a produce industry view.

First, we congratulate you and the leadership of the full committee in presenting this draft for consideration. We believe you have created a framework bill that, with certain key enhancements, has the potential to garner widespread support in the Congress.

1. Section 104 – Safety Standards for Produce

First, we strongly support the bill's intent in Sections 104 and 419A for FDA to focus on maximizing public health by implementing regulatory standards for those specific raw agricultural commodities that it believes are most critical. The FDA has estimated that only five commodities have been associated with 80% of all produce related foodborne disease outbreaks in the past 10 years, and that is where we must direct our resources. In a highly diverse industry that is more aptly described as hundreds of different commodity industries, one size clearly does not fit all. For example, the food safety requirements of products grown close to the ground in contact with soil are far different from those grown on vines or trees.

We support Congress specifying that FDA have broad authority to regulate any produce commodities it determines necessary, but with the clear mandate to develop rulemaking that focuses resources for maximum public health benefit on those types of raw agricultural commodities for which the Secretary determines such standards are necessary to minimize the risk of serious adverse health consequences.

We also recommend that Section 104 strengthen its support for eventual FDA regulatory standards, recognizing that such regulations must set the "most appropriate" standards for safety, not "minimum" standards.

Finally, we recommend that Section 104 strengthen its support for collaboration between HHS and the U.S. Department of Agriculture and state agencies in all areas of education, research and enforcement with regard to produce. It is important to bring the broadest knowledge and resource base possible to assist all stakeholders in understanding, implementing and complying with FDA-set public health standards.

2. Section 107 -- Traceability

The fresh produce industry is committed to farm-to-fork traceability of our products. As I presented in my detailed testimony before the House Committee on Appropriations Agricultural Subcommittee on March 26 of this year, our industry has underway a massive commitment to a Produce Traceability Initiative (PTI) www.producetraceability.org to provide labeling and electronic traceability for the 6 billion cases of produce that move annually within the United States. This is a massive and extremely expensive long-term undertaking, but it is a commitment made by our industry to drive standardization and efficiency of traceability systems.

However, we are greatly concerned that the prescriptive nature of Section 107 could easily derail these important efforts to bring the most efficient and cost-effective technology to bear on this challenge. As you weigh various traceability provisions, we urge that Congress set the goal for food traceability, not mandate the process. The overly prescriptive mandates in this bill from the top down are not as likely to be as effective as bottom up efficiencies and real-world systems designed for unique challenges.

We also believe this legislation should set a goal for total supply chain traceability across the food industry, not single out individual food categories or processes for traceability. With that overall goal, we believe Congress should then mandate an intensive evaluation of

technologies, systems and pilot tests that will truly lead to the end result we all desire – traceability across the entire food supply to determine the source of contamination in any food product. Let's not have Congress start inventing how the mousetrap should work, but instead set the path forward with clear direction that allows industry innovation to flourish.

3. Sections 201, 109, 113 Imports

We strongly recommend that the committee examine all imported food provisions to ensure that they comply with all legal trade responsibilities and assure equal treatment and standards for both imported and domestically produced foods. This should be a principle maintained throughout all provisions.

In Section 201, we support the bill's intent to require importers to register with FDA, and comply with good importer practices. The committee should make clear that this is the standard protocol for importing foods, and that the limitations and further restrictions contained in Section 109 provide extreme authorities to be used by FDA only when "required to minimize the risk of severe adverse health consequences." Should FDA issue blanket condemnations of entire countries or commodity groups, we are concerned that the certification procedures of Section 109 would be impossible to achieve, and thus offer no real means of meeting acceptable import status regardless of the safety of such foods. Section 109 should require a standard for implementation only when such restrictions are necessary to minimize the risk of severe adverse health consequences, and thus allow the Secretary to determine whether to refuse to admit such article.

Finally, with regard to imports, we support the concept of the Safe and Secure Food Importation Program in Section 113, and urge that the bill require FDA to implement such a program with a direction that it "shall" be implemented rather than "may" be implemented. This program is a critical component of a secure food importing system that can both assure safety while meeting the volume demands for safe foods moving quickly through well-established and rigorous channels in global commerce.

4. Section 143 – Country of Origin

The fresh produce industry is already required under the 2008 Farm Bill – the Food, Conservation, and Energy Act of 2008 – to provide mandatory country of origin information at retail point of sale for all perishable agricultural commodities. Our industry has moved rapidly to ensure compliance with this law, and urges that those products which are now required to have retail point-of-sale country of origin labeling under the Agricultural Marketing Act of 1946, as amended by the 2008 Farm Bill, be specifically exempted from any new duplicative coverage under the Food, Drug & Cosmetic Act.

While we hold specific concerns about various provisions as contained in the Food Safety Enhancement Act draft, we believe the simplest solution for fresh produce is a direct exclusion from the bill. However, should that not be the case, let us also say that country of origin is not a food safety issue and we do not believe it belongs in a food safety bill. The country of origin provision in this bill could be misleading to consumers, and is also extremely prescriptive and overly burdensome without enhancing food safety.

5. Section 105 – Risk-Based Inspections

We support the concept of risk-based inspections, including increased frequency of inspections for certain facilities. However, we believe FDA should be required to complete rulemaking to establish a science-based transparent system for determining classifications

for what facilities shall be included in different categories, rather than be left to the Secretary's discretion. In addition, we recommend that the terms "high-risk" and "low-risk" not be used to define category 1 or category 2. Any individual facility can be either a high- or low-risk facility based on how it's operated, and there should be no general pejorative terms applied to whole classes of facilities. The statute can require a science-based process for determining appropriate inspection frequency for individual facilities, which may at times vary in risk profile and inspection need.

6. Section 133 – Quarantine Authority

We oppose this section giving HHS authority to quarantine foods from vast geographic areas within the United States, based only on the modest standard that "FDA reasonably believes" such food may have originated from a particular region. First, food safety is not determined by geographical or political boundaries such as state or county lines, but by the preventive controls and practices applied by any individual producer or manufacturer. With the intensive new regulatory requirements of this bill, such a broad-based swipe against entire regions of food production is certainly regulatory overkill, and fraught with potential unintended consequences.

Consider our industry's experience last summer, in which the combined efforts of the CDC and FDA advised consumers against consuming tomatoes from vast regions of the country for suspected Salmonella contamination, only to find months later that the real source of the problem was contaminated jalapeno peppers from a farm 500 miles south of the U.S.-Mexican border.

Or, consider the spinach outbreak in 2006, when our entire industry immediately pulled all spinach from shelves nationwide, and the nation's primary spinach growing regions were under an FDA public relations cloud for weeks and weeks. In fact, we now know that the only contaminated product came from one 50-acre farm, packaged in one processing plant, and only on one production shift.

Should FDA have had the simple ability to quarantine vast geographical regions, I fear the stampede to action that could have occurred in either of these cases. We see no wisdom in providing statutory authority to magnify the damage of this type of decision-making.

We support mandatory product recall, but not mandatory "geographical recall" based on local, county, state or country boundaries.

7. Section 101 – Facility Registration Fees

We continue to advocate strongly that user fees are an inappropriate means of funding food safety inspections. Assuring a rigorous food safety inspection system is properly the responsibility of the nation at large, and thus appropriated funds, rather than a role for individual food companies. This is a long-held principle shared by many stakeholders in this debate, and one that should not be compromised for short-term budget expediency.

Should any type of fees be included in a final bill, we strongly urge that they must not be used for inspection programs; must be targeted to specific and justified needs not met through recent and potential increased appropriations; must be transparent and capped in legislation (we oppose the open-ended fee concept of Section 201); must be fair and equitable to both imports and domestically produced foods; and must not create trade barriers that are likely to result in reciprocal financial barriers established by other countries to U.S. exports.

Conclusion

In conclusion, let me thank you again for your leadership on this bill, and return to the important role fresh fruits and vegetables play in public health. The very Department of Health and Human Services that regulates our safety has the dual responsibility to promote the importance of eating more fruits and vegetables to prevent chronic diseases such as cancer, heart disease, stroke, and more. And now, our nation is faced with an obesity crisis that threatens the long-term health of our children and out-of-control escalation in health care costs unless we radically change eating habits to consume more fruits and vegetables.

With that public health imperative, fears of food safety have no place in the fresh produce department. We, as an industry, must do all we can to prevent illnesses from ever occurring, and we will.

But because science tells us there is no such thing as zero risk, government must also be able to assure the public that even if something does go horribly wrong in an isolated case, consumers can continue to have confidence in fresh produce. We must all be able to trust the overall system of government oversight and industry responsibility, working together to produce the safest possible supply of fresh, healthy and nutritious fruits and vegetables.