

November 16, 2009

The Honorable Tom Harkin, Chairman
Senate Committee on Health, Education, Labor and Pensions
United States Senate
Washington, D.C. 20510

The Honorable Michael Enzi, Ranking Member
Senate Committee on Health, Education, Labor and Pensions
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Washington, D.C. 20510

Dear Chairman Harkin and Ranking Member Enzi:

Our food system needs significant reform in order to restore the trust Americans should have in the quality, reliability and safety of the food they eat. We the undersigned organizations commend you for the serious attention you are giving this subject through your consideration of S. 510, the Food Safety Modernization Act. However, we share the concerns of many Senators about the bill's unnecessary and unintended negative impacts on family farms, value-added agricultural development, conservation and the environment, organic farming, and emerging local and regional food systems. We therefore ask that you consider the following recommendations as you refine the bill.

A thoughtful and enforceable definition of farm "facilities" will be critical to the Food Safety Modernization Act's effectiveness at decreasing food-borne illness. We propose the bill direct FDA to conduct a formal public notice and comment rulemaking process to revise regulations with respect to what constitutes on-farm manufacturing or processing. In sharp contrast to the current rule enacted to satisfy the narrower considerations of the Bioterrorism Act, this new rule should be established in the context of the pending comprehensive food safety act and should be informed by risk-based analysis of specific activities as they relate to specific foods and distribution systems.

We also propose that a two track system based on the size and type of a farm's production is the best way to assure the safety of the food system. Farms whose three-year average annual market value of agricultural production is less than \$1,000,000, do not co-mingle product, and are not involved in high risk processing activities, should not be classified as facilities but instead tracked to participation in training and technical assistance programs to assist them to develop food safety plans. We believe this two track system will result in far better real world food safety outcomes, at less cost, and with less popular opposition, than the one-size-fits-all approach in the bill as introduced.

Under current FDA regulations, which S. 510 does not propose to alter and which H R 2749 as passed would codify into law, any farm is defined as a facility if it either co-mingles products from several farms or does any one of a very wide variety of activities to prepare the product for market including washing, cooling, trimming, labeling, or packaging. These farms, regardless of size or type of production, would be subject to FDA registration, preventive controls,

inspections, and, if the House were to prevail, would also be paying special taxes. While current bioterrorism regulations and the pending House food safety bill provide an outright exemption if the farm “facility” direct markets more than 50 percent of the processed food to consumers, this is an inappropriate policy approach. We believe current rules are not only very difficult to enforce, but needlessly overreach and do not result in appreciably improving the safety of the food supply. Instead, their net result instead would be to stave off the growth of value-added agriculture serving the increasing consumer demand for high quality, fresh and local product, doing real harm to family farm survival, rural community economic development, and improved nutrition and food access.

American producers want to supply nutritious, wholesome food and be full partners in a food safety system that protects consumers. The best way to achieve that goal is to concentrate enforcement on high risk activities and concentrate on education and food safety training for farmers whose size, product type, or marketing plan do not pose significant risk. Senator Stabenow, with Senators Bingaman, Sanders, Merkley, Gillibrand, Boxer, and Leahy, has introduced the Growing Safe Food Act to establish a food safety training, education, extension, outreach, and technical assistance program and information clearinghouse for farms, with a special emphasis on small and medium-sized farms and small-scale processors. The program would be administered through USDA's National Institute for Food and Agriculture. Training would include good agricultural, handling, and manufacturing practices, produce safety standards, risk analysis and preventive control mechanisms, safe packaging and storage, record-keeping, etc. The new program would be coordinated with applied research under the existing National Integrated Food Safety Initiative.

We strongly support adding the Growing Safe Food Act to the Food Safety Modernization Act. This is a critical missing element that will keep small and mid-sized producers viable in competitive markets and increase widespread knowledge of best food safety practices. The Growing Safe Food Act should be adopted as a new section of the committee bill and integrated with its basic provisions for facility registration and produce standards.

The Food Safety and Modernization Act would be improved if Congress guided FDA on the writing of produce standards to consider points in the food supply chain documented to be most risky. FDA should be instructed to create standards for holding, sorting, packing, processing, and transporting and not just growing and harvesting of raw fruits and vegetables. To guarantee that its standards do not unwittingly result in diminishing food safety, FDA’s produce standards and Good Agricultural Practices guidance should:

- Be consistent with conservation and environmental practice standards established by other federal agencies and promote diverse cropping systems which mitigate the spread of pathogens. Conservation measure such as perennial forage, buffer strips, and grasses filter out contamination in overland water flows from livestock feedlots, loafing yards, pastures, and manure storage areas. It is imperative that new food safety standards encourage farmers to maintain and develop enhanced conservation system practices rather than penalize them for doing so. It is also imperative that the government deliver a consistent message to farmers and not force the farmer to choose between irreconcilable directives from different agencies.

- Be consistent between food safety standards and certified organic farming production methods and requirements. FDA and USDA should coordinate to establish the standards relevant to certified organic production. Special consideration for certified organic farms and ranches should be made so that new food safety standards and their enforcement are not duplicative with those already in place through the Organic Food Production Act of 1990 and do not act as a barrier to organic production and organic conversion. Again, the government needs to deliver a consistent message and not a conflicting one.
- Prioritize mixed fruits or vegetables or specific processes that have been consistently associated with food-borne illnesses. In most of the recent outbreaks of food borne illness, the main source of the problem was centralized co-mingling, processing and distribution, not growing and harvesting. For instance, fresh cut, ready-to-eat packaged fruits and vegetables pose a far greater risk than whole produce and should thus be a primary target of standards developed for raw commodities.

Farmers are understandably concerned about the prospect of multiple inspectors on their farms. USDA's National Organic Program has developed an accredited inspection system in which organic inspectors, acting as agents of the USDA, annually inspect certified organic farms. We believe these accredited inspectors should be provided the opportunity on a voluntary basis to become accredited food safety inspectors and to combine organic and food safety inspection in a single annual field visit. We urge you to direct FDA and USDA to develop such a mutually advantageous and cost-effective dual inspection system.

In the case of a food borne illness it is imperative that the cause of the contamination be easily identified. Fruits and vegetables that are produced on a farm and sold directly to a consumer or restaurant or grocery stores are quickly and easily identified and, as in the House bill, should be exempt from new traceability requirements. The Senate bill should adopt that House language and also extend the same treatment to fruits and vegetables that are farm identity-preserved through to the final consumer. The Senate bill should also provide that one up, one down traceability that is already required by the under the National Organic Program fulfill traceback requirements for certified organic fruits and vegetables that are raw agricultural commodities. We also recommend that the same standard be applied to all other farms subject to traceability requirements.

We understand the difficulty the Committee faces in crafting a bill that will tangibly improve the safety of American food within the context of limited resources, but believe that using scientific evidence of how food is most likely to become contaminated and the important role of conservation efforts to reduce air and water borne pathogens while concentrating enforcement on high risk processes will allow the legislation to be targeted to the critical points of prevention. The growth of small farms, the diversification of mid-sized farms to serve regional food systems, and the burgeoning demand for organic food are all very positive developments with substantial health and wellness benefits. Connecting consumers to the farmers who grow their food increases transparency and accountability in the system and is sparking economic development in struggling rural communities.

We look forward to working with you to ensure that these economically and environmentally important new farm and food systems are not inadvertently undermined by legislation produced by the Committee. Thank you for considering our concerns and for giving serious attention to our detailed legislative proposals.

Sincerely,

National Sustainable Agriculture Coalition

National Organic Coalition

National Farmers Union

Organic Trade Association

California Farmers Union

Carolina Farm Stewardship Association

Cascade Harvest Coalition

Center for Rural Affairs

City Seed

Community Alliance with Family Farmers

Defenders of Wildlife

Edible Santa Fe

Farm Fresh Rhode Island

Farm Aid

FamilyFarmed.org

Fay-Penn Economic Development Council

Food Alliance

Food Democracy Now!

Future Harvest - Chesapeake Alliance for Sustainable Agriculture

Georgia Organics

Institute for Agriculture and Trade Policy

Iowa Farmers Union

Izaak Walton League of America

Kansas Farmers Union

Kansas Rural Center

La Montanita Coop (New Mexico)

Land Stewardship Project
Maine Organic Farmers and Gardeners Association
Michigan Farmers Union
Midwest Organic and Sustainable Education Service (MOSES)
Minnesota Food Association
Missouri's Best Beef, Inc.
Missouri Farmers Union
Mvskoke Food Sovereignty Initiative
National Center for Appropriate Technology
Nebraska Farmers Union
New England Farmers Union
New Mexico Farmers' Marketing Association
New Mexico Farm to Table
New Mexico Food and Agriculture Policy Council
Northeast Organic Dairy Producers Alliance
NOFA- Connecticut
NOFA - Massachusetts
NOFA - New Hampshire
NOFA- New Jersey
NOFA - New York
NOFA – Vermont
NOFA Interstate Council
Northwest Coalition for Alternatives to Pesticides
Ohio Ecological Food and Farm Association
Ohio Farmers Union
Oregon Tilth
Organic Farming Research Foundation
PCC Natural Markets
Pennsylvania Association for Sustainable Agriculture
Pennsylvania Certified Organic
Pennsylvania Farmers Union

POP Campaign - Preserve Organic Power

Rocky Mountain Farmers Union

Roots of Change

Rural Action (Ohio)

Rural Advancement Foundation International - USA

SAAFON (Southeastern African American Farmers Organic Network)

Slow Food Rhode Island

Tennessee Food Policy Coalition

Washington Sustainable Food and Farming Network

Wild Farm Alliance

Wisconsin Farmers Union

Xerces Society

cc: Members of the Full Committee