

Congress of the United States  
Washington, DC 20515

July 23, 2009

The Honorable Henry Waxman  
Chairman  
Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Joe Barton  
Ranking Member  
Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Waxman and Ranking Member Barton:

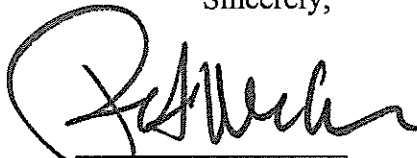
Our food safety system needs significant overhaul to restore the American consumer's confidence in the quality, reliability and safety of the food we eat. While the legislation reported out of the Committee on Energy & Commerce makes important changes to this system, we urge the committee to consider some important updates to protect small producers in this overhaul. In this letter, we recommend changes to the Food Safety Enhancement Act of 2009, H.R. 2749 to remove unintended negative impacts on family farms, local and regional food systems, conservation and the environment. We are particularly concerned about the impact of the bill on the growing numbers of farms across the country that combine agricultural production with on-farm, value-added processing. Such operations not only add to the viability of family farms but they immeasurably enhance the economic vitality of rural communities everywhere.

We understand that in order for this legislation to be considered before the House breaks for the August recess, it must be considered under suspension of the rules. While we do not flatly oppose bringing up this legislation under this legislative vehicle, we urge the adoption of changes that incorporate the attached recommendations. The changes proposed below would help family farmers continue to build connections with consumers, providing high quality food while continuing to build a stronger food safety system, as the bill envisions. As this legislation moves forward, we look forward to perfecting H.R. 2749 to protect the interests of the voiceless small producers that must be considered in this type of reform.

Sincerely,



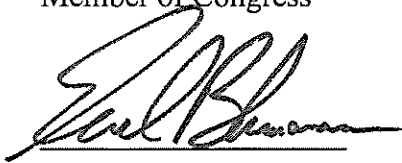
MARCY KAPTUR  
Member of Congress



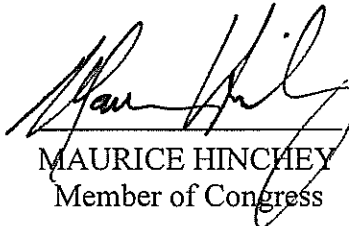
PETER WELCH  
Member of Congress



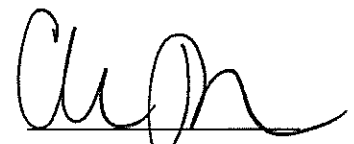
SAM FARR  
Member of Congress



EARL BLUMENAUER  
Member of Congress



MAURICE HINCHEY  
Member of Congress



CHELLIE PINGREE  
Member of Congress



JESSE JACKSON  
Member of Congress

X Enclosure, proposed amendments

The amendments that we are supporting (see attached) would:

**I. Amend the Produce Safety Standards (Sec. 419A) to:**

***A. Focus on documented high-risk problems, such as fresh-cut vs. whole produce.***

Food safety controls are important at every level of production and distribution, but new food safety regulations should target the highest-risk problems. *E. coli* 0157:H7 illnesses originating from leafy greens have been traced to processed, bagged salad mixes, not to crops harvested as whole heads, bunched greens, or greens that are cooked. Fresh cut, ready-to-eat fruits and vegetables pose a far greater risk than whole produce and should therefore be the primary target of standards developed for raw commodities.

***B. Require coordination with the Secretary of Agriculture on the establishment of these standards.***

It is imperative that USDA and FDA work together as seamlessly as possible to make the best use of the combined expertise and to eliminate to the maximum extent possible any confusion that would result from lack of coordination. The consultative and coordination role of USDA on produce standards should be mandatory rather than discretionary.

***C. Require consultation between FDA and USDA's National Organic Program on the development and enforcement of standards with respect to organic farming.***

New food safety regulations must be consistent with the federal organic standard administered by the USDA National Organic Program (NOP) which has long had food safety measures in place, such as requiring traceability via a documented audit trail as well as stringent manure use and composting regulations. In no way, should the new standards promulgated in this statute impede or create duplicative fees or requirements for certified organic producers.

***D. Protect wildlife and biodiversity by emphasizing animals of significant risk as the FDA develops produce standards.***

As FDA develops standards, it should not seek to control or eliminate the presence of all animals or wildlife on or near farms. In general, wild animals do not present a significant contamination risk for produce. Preliminary results released in April from a two-year study by the CA wildlife agency, UC Davis, and USDA found that less than one-half of 1 percent of 866 wild animals tested positive for *E. coli* O157:H7 in Central California. Meanwhile, existing evidence overwhelming shows that cattle are the primary sources of *E. coli* O157:H7, especially grain-fed cattle. Food safety standards should recognize the relative risk of cattle and should encourage the conservation measures such as perennial forage, buffer strips, and grasses to filter out contamination in overland water flows from livestock.

***E. Focus safety standards on uncomposted manure and biosolids (b)(4);***

Properly composted manure is an effective and safe fertilizer. A great volume of research has shown that judicious use of composted or aged manure is essential for maintaining the high soil microbial diversity and biological activity that is vital to soil quality and that has also been shown to shorten the half-life of human and plant pathogens in the soil.

## **II. Amend the Traceability Standards (Sec. 107) to:**

***A. Extend the direct marketing exemption to “other prepared venues”, which incorporates cafeterias, catering facilities, and related businesses.***

There is tremendous consumer demand for locally and regionally produced foods. Interest in farmers markets and Community Supported Agriculture has expanded to increased demand for locally-produced agricultural products in school cafeterias and other institutional settings. Local food systems are already traceable due to the more direct relationship with the farmer and a narrower geographic distribution. Nothing in this statute should prohibit the growth of this area that provides a win-win situation for farmers and consumers.

***B. Exempt identity-preserved marketing when the identity and location of the farm or fishery is preserved all the way to the ultimate consumer through appropriate communications to the public.***

“Identity-preserved” marketing ensures that the identity of the farm is clearly indicated on the product. In the case of a farmer who turns his own strawberries into jam, a clear product label listing the ingredients and the farms’ names will preserve the product’s identity whether it is sold directly to a consumer or to a food store. HR 2749 already exempts direct farmer-to-consumer sales from traceability requirements, but it should go a step further and apply the same exemption to other marketing systems in which the identity of the specific farm is known to the end-consumer.

***C. Allow farms who sell only their own products and do not engage in on-farm processing to maintain paper records of their immediate sources and recipients.***

Farmers that sell their own products and that do not process their products on the farm, and who already keep one-up one-down paper records of their immediate product or input sources and their immediate consumer or recipient, should not be burdened with the time and expense of keeping electronic records of these transactions.

***D. Require coordination with the Secretary of Agriculture on the development of these systems and standards.***

A consultative role for USDA with respect to traceability requirements should be provided for in the statute. Currently, HR 2749 does not contain any USDA consultation on traceability requirements.

## **III. Amend the Registration Fee (Sec. 743) to:**

***A. Establish a sliding scale for facility registration fees for farms that qualify by virtue of their processing activities.***

A flat fee in the proposed regulations would have a disproportionate impact on producers that grow a diversity of crops or who have limited resources. Subjecting all producers to the same registration fees as multinational corporations will limit market entry of smaller producers or those that produce a more diverse cropping system.

More and more, farms are adding value to their products on the farm as a way to survive economically in an inherently volatile sector. Additionally, value-added products like jams, chutneys, breads, cheeses, are increasingly popular with consumers at farmers markets and other similar venues. If small or diversified farmers know that they had to pay an annual fee of \$500 to process their products on their farm, many would opt not to explore such market innovations.

It is simply inequitable to make farmers who are doing this on a much smaller scale, regardless of whether their markets are wholesale or retail, pay the same fee as the large agricultural companies and processing plants.

#### **IV. Amend the Research Section (Sec. 123) to:**

***A. Require additional consideration of: conservation & biodiversity (11); wildlife that may cause significant risk of contamination (12); and the impact, including environmental and social impact, of this Act on farming (13).***

FDA's food safety activities and produce safety standards must be based on the best possible scientific information. In addition, its research directives must be expanded to cover conservation and biodiversity, animals of significant risk, and the socio-economic and environmental impacts of the new food safety legislation. In order to continually improve the information used to inform its programs, FDA must conduct ongoing research studies on these important topics.