

Prepared Statement

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**Before the
U.S. House of Representatives
Committee on Energy and Commerce**

Subcommittee on Health

March 11, 2009

Introduction

Good morning Chairman Pallone, Ranking Member Deal, and Members of the Committee. 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 American 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 new concerns, new 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.

How We Got Here

Let me first state that our industry has worked to address food safety for many, many years. In fact, our association published the first *Food Safety Guidelines for the Fresh-Cut Produce Industry* 17 years ago, and we are now on our 4th edition. We developed the first industry guidelines in the mid 1990s to minimize on-farm microbiological food safety risks for fruits and vegetables, and worked closely with the U.S. Food and Drug Administration to publish federal guidelines soon thereafter. Food safety has been at the forefront of our mission to serve the American public for many years.

When the spinach outbreak occurred in 2006, our entire industry immediately pulled all spinach from shelves nationwide, and cooperated fully with FDA in tracking this problem back to its source. That total industrywide shutdown was an unprecedented response, but FDA felt it necessary until they were certain any contaminated product was removed from the market.

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. That's out of more than 300,000 acres of lettuce, spinach and leafy greens being grown, with salads being prepared in dozens of processing plants around the country. Yet today, two and half-years later with no further outbreaks, spinach consumption is still down with many consumers shying away from one of the healthiest vegetables they could be eating.

Our mission following this outbreak was twofold –

- 1) First, we undertook a comprehensive reevaluation of leafy greens production, handling and processing to enhance every possible step we could take in assuring safety. Even though the problem was isolated to one small farm, the entire leafy greens industry has adopted the most rigorous scientific principles to minimize risk, and developed compliance

protocols and audits that are now conducted by the California Department of Food and Agriculture.

2) Second, our broad industry had to address the role of federal government oversight of food safety. In January of 2007, six months after the spinach outbreak, our Board of Directors adopted a series of policy principles calling for mandatory, science-based regulation by the federal government.

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.*

Put simply, we concluded that we had to work to rebuild public confidence in our system of food safety government oversight, such that when another outbreak occurs, the public can have confidence that it is the result of an isolated breakdown in one situation, not an endemic problem causing them to question the safety of all the produce they eat. With an analogy of the airline industry, we must have rigorous government oversight and strong industry compliance with the clear, scientifically vetted safety practices. But, when an isolated tragedy occurs, we must get back on the an airplane knowing that next flight is inordinately safe – just as spinach from thousands of farms was safe on the day of the tragedy in our industry, and the next day, and the next day.

Let me explain each of these principles.

- Must allow for a commodity-specific approach, based on the best available science. We believe produce safety standards must allow for commodity-specific food safety practices based on the best available science. 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. And, the large majority of produce commodities have never been linked to a foodborne disease. In fact, a recent FDA federal register notice in 2007 confirmed that five produce commodities have been associated with 80% of all foodborne disease outbreaks in the past 10 years, and that is where we must direct our resources.

In addition, government and industry alike must be careful that broad strokes do not result in requirements that should not apply to specific commodities, and do nothing to enhance safety. Taking a general approach would be far too easy to add regulatory costs and burdens to sectors where those requirements are unneeded, without doing anything to enhance safety where most critical. Finally, as part of this commodity specific approach, FDA must develop a rule-making procedure that establish risk and science-based regulations for the production, handling and distribution of those types of fruits and vegetables for which the Secretary determines such standards are necessary to minimize the risk of microbial illness.

- 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. We believe produce safety standards must be consistent for an individual produce commodity grown anywhere in the United States, or imported into this country. Consumers must have the confidence that safety standards are met no matter where the commodity is grown or processed. Because of the variation in our industry's growing and harvesting practices in different climates and regions, flexibility is very appropriate and necessary. For example, some production areas use deep wells for irrigation while others use river water supplied from dams. Some farms use sprinkler irrigation, others use a drip system laid along the ground, and still others use water in the furrows between rows of produce. But the common factor must be that all uses of water for irrigation must meet safety standards that protect the product. That must be true whether the produce is grown in California, Florida, Wisconsin or Mexico.
- Must be federally mandated with sufficient federal oversight of compliance in order to be most credible to consumers. We believe achieving consistent produce safety standards across the industry requires strong federal government oversight and responsibility in order to be most credible to consumers and equitable to producers. We believe that the U.S. Food and Drug Administration, which is the public health agency charged by law with ensuring the safety of the nation's produce supply, must determine appropriate nationwide safety standards in an open and transparent process, with full input from the states, industry, academia, consumers and all stakeholders. We are strong advocates for food safety standards based on sound science and a clear consensus of expert stakeholders.

Together, these three policy principles provide a direction for food safety regulatory policy that we believe would most help our industry enhance produce safety, concurrent with establishing the highest level of public trust in our industry and in our fresh produce offerings. It is our goal to support a U.S. regulatory framework for the fresh produce industry that incorporates these principles.

With this hearing and others conducted over the last several years, it is clear that Congress and the Administration will be looking closely to overhaul of our food safety laws. We support that effort and want to work closely with this committee and others in the design of strong and credible laws that would help rebuild public confidence in food safety.

In this context, our Board of Directors has expanded on the policy principles above to adopt a *Food Safety Policy White Paper* to provide specific policy recommendations for food safety legislation. I have attached this policy paper to my written statement (see Appendix 1) as it reinforces my comments here.

Outbreak Investigations

While most of my testimony today is rightly focused on what we can do to prevent illness associated with our products, I must also include comments about the current management of outbreak investigations by federal, state and local government.

In testimony I presented last summer to the House Energy and Commerce Oversight and Investigation subcommittee (July 31, 2008) on the *Salmonella* Saintpaul outbreak associated with jalapeño peppers, I called on Congress to develop policy that will address the then current failures and lack of leadership in managing outbreak investigations. Since then, the peanut paste fiasco has only provided more fuel to my comments, unfortunately this time affecting thousands more consumers and tearing down another whole industry.

In that testimony, I highlight five fundamental flaws that I believe must also be addressed in reform of food safety laws.

1. There's No One in Charge

The diffuse responsibility for public health in outbreak investigations is something that Congress must look at intensely. It was clear in last summer's *Salmonella* outbreaks that no one was in charge, leaving local, state, and federal officials vying for leadership; various agencies pursuing different priorities; and well-meaning individuals reacting independently to events rather than as part of a coordinated investigation moving forward in a logical and expeditious direction.

Recommendation: We suggest Congress consider how to put in place a command-and-control structure with a clear chain of command. Take guesswork out of who's in charge, and drive real authority and accountability into the process. Whether this can be achieved in a multi-agency cooperative agreement, or requires new government structures, is something that Congress must ask. We suggest looking at other agencies for insights, such as National Transportation and Safety Board investigations. From afar, such a system seems designed for a 24-7 immediate response, with clear authority and command leadership, supported by a team of well-prepared experts.

2. We Need Better Crisis Preparedness and Transparency

Crisis planning should be done in advance of a crisis, not learned on the job.

Recommendation: Whatever command-and-control structure is put in place for outbreak investigations, plan it, implement it, and test it before a crisis. Take the recommendations from all stakeholders and build a system – in advance – that government and industry alike will follow in the future.

3. The Current System Doesn't Use the Expertise Available

The government's failure to use industry's expertise in outbreak investigations is one of our most important lessons. Let me first say that this needs to be transparent, supported by consumer groups, and squeaky clean. But there is an abundance of knowledge in the industry about specific commodities, growing regions and handling practices, and specific distribution systems that can be used to protect public health in an outbreak.

Recommendation: Congress and the agencies should find a proper and transparent way to bring industry and other outside expertise into its outbreak investigations. We specifically recommend that a group of experts in major produce commodities be selected and vetted by government well ahead of time, perhaps through a process similar to gaining a security clearance. Then, at a moment's notice, these pre-cleared experts could be assembled with government investigators to provide counsel in their areas of expertise.

4. Government Is Ill-Prepared To Make Complex Risk-Benefit Decisions

Every health or safety regulatory decision requires an assessment of risks and benefits. Agencies make risk management decisions every day that attempt to balance risks and benefits broadly to society, whether in automobile design, toy manufacturing, airline safety, or even FDA approval of food additives. Yet in the case of foodborne disease, FDA and CDC seem ill-prepared to grapple with any risk management approach other than "all or nothing."

Recommendation: Congress needs to empower FDA and CDC to look at risk management decision-making in advance of an outbreak, and develop transparent guidelines for when to take specific action. The broad brush approach taken with tomatoes, then jalapeños, is not an appropriate risk management strategy to best protect public health, either in the short- or long-term.

5. Today's Risk Communication Is Unacceptable

These are complex issues indeed, and tough to explain. The principle of timely and candid communication with the press and public cannot be compromised. Yet, any risk communications expert would also advise precision and care in communicating exactly what you want to say, and not speculating beyond what is known. Consider again the example of a National Transportation and Safety Board press conference investigating an airline accident. There's no speculation about whether a crash might have been caused by pilot error, or bad hydraulics, or a flaw in wing design. Those are precisely the things under investigation and are NOT discussed until there's a conclusion by the experts.

Recommendation: Risk communication must be a central part of any crisis management structure, and well planned in advance. As the agencies develop overall management plans, one single office must have authority and accountability for public communications, with one single officer designated as the media spokesperson for the investigation.

Conclusion

In conclusion, let me return to the important role fresh fruits and vegetables play in public health. Of course any reasonable person in the food industry would want to produce only the safest possible product. But for us, somehow it seems even more important because of the healthfulness of fresh produce. 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.