

This is a preliminary transcript of a Committee Hearing. It has not yet been subject to a review process to ensure that the statements within are appropriately attributed to the witness or member of Congress who made them, to determine whether there are any inconsistencies between the statements within and what was actually said at the proceeding, or to make any other corrections to ensure the accuracy of the record.

1 {York Stenographic Services, Inc.}

2 HIF168.000

3 MARKUP ON H.R. 2749, THE FOOD SAFETY ENHANCEMENT ACT OF 2009

4 WEDNESDAY, JUNE 17, 2009

5 House of Representatives,

6 Committee on Energy and Commerce

7 Washington, D.C.

8 The Committee met, pursuant to call, at 10:17 a.m., in
9 Room 2123 of the Rayburn House Office Building, Hon. Henry
10 Waxman (chairman of the committee) presiding.

11 Members present: Representatives Waxman, Dingell,
12 Markey, Pallone, Eshoo, Stupak, Engel, Green, DeGette, Doyle,
13 Schakowsky, Gonzalez, Inslee, Baldwin, Matheson, Butterfield,
14 Melancon, Barrow, Matsui, Christensen, Castor, Space,
15 McNerney, Sutton, Braley, Welch, Barton, Upton, Stearns,
16 Deal, Whitfield, Shimkus, Buyer, Radanovich, Pitts, Walden,
17 Terry, Rogers, Burgess, Blackburn, Scalise and Gingrey.

18 Staff present: Kristin Amerling, Chief Counsel; Caren

19 Auchman, Communications Associate; Alvin Banks, Special
20 Assistant; Phil Barnett, Staff Director; Jen Berenholz,
21 Deputy Clerk; Brian Cohen, Senior Investigator and Policy
22 Advisor; Allison Corr, Special Assistant; Sharon Davis, Chief
23 Legislative Clerk; Earley Green, Chief Clerk; Caitlin
24 Haberman, Staff Assistant; Elana Leventhal, Policy Advisor;
25 Karen Lightfoot, Communications Director/Senior Policy
26 Advisor; Virgil Miller, Professional Staff Member; Karen
27 Nelson, Deputy Committee Staff Director for Health; Jennifer
28 Owens, Special Assistant; David Rapallo, General Counsel;
29 Rachel Sher, Counsel; Mitchell Smiley, Special Assistant;
30 Bruce Wolpe, Senior Advisor; Clay Alspach, Counsel; Ryan
31 Long, Counsel; Lance Kotschwar, General Counsel; and Chad
32 Grant, Legislative Analyst.

|
33 H.R. 2749

34 10:17 a.m.

35 The {Chairman.} The committee will come to order.

36 Today we mark up the Food Safety Enhancement Act of
37 2009, bipartisan legislation that will fundamentally change
38 the way we protect the safety of the food supply. This is
39 the kind of legislative achievement that should give
40 Americans confidence that Congress can respond in an
41 effective bipartisan way to solve urgent problems. A series
42 of foodborne disease outbreaks in spinach, peanuts and
43 peppers, to name a few, has not only sickened and killed
44 American consumers but has shaken public confidence in the
45 industry that produces one of our most basic and important
46 commodities, and it has laid bare unacceptable gaps in our
47 food safety laws. Today the committee will act to close those
48 gaps and give the Food and Drug Administration new
49 authorities, new tools and a new source of funding to carry
50 out this vital mission.

51 Under the legislation, FDA will have clear authority to
52 issue and require manufacturers to meet strong, enforceable
53 performance standards to ensure the safety of various types
54 of food. FDA will establish a food traceback system so that
55 public health officials can easily determine the cause of

56 foodborne disease outbreaks. FDA will be required to inspect
57 all food facilities, the riskiest ones at least once per
58 year. FDA will be given new authority to ensure that
59 imported foods are safe. FDA will be given new tools,
60 recalls, records access and penalties to punish bad actors to
61 act quickly when presented with a food safety emergency, and
62 FDA will get a new dedicated source of funding from a \$500
63 annual registration fee on food facilities to help conduct
64 its vital work of keeping America safe.

65 But FDA will not be the only cop on the beat. One of
66 the most important changes that will occur under this bill is
67 a new focus on prevention and a shared responsibility between
68 FDA and food manufacturers to keep the food supply safe. The
69 bill will require manufacturers to implement preventive
70 systems to stop outbreaks before they occur. All food
71 facilities will have to conduct hazard analyses, assess
72 potential food safety risks and develop plans to keep the
73 food supply safe.

74 The most remarkable thing about the bill is the
75 consensus behind it. Consumer and public interest groups
76 support it. The Grocery Manufacturers Association and other
77 food industry groups support it, and most importantly, a
78 broad bipartisan group of Energy and Commerce Committee
79 members support it. I think it is important to acknowledge

80 those responsible. I will begin with Chairman Emeritus
81 Dingell, the dean of Congress and the dean of food safety, an
82 unrelenting public health watchdog. He takes great pride in
83 seeing his work come to fruition. Chairman Stupak has left
84 an undeniable mark on this bill through his work on the
85 Oversight and Investigation Subcommittee and tireless efforts
86 to fix the problems he has helped identify. Chairman
87 Pallone, who has worked on this issue for over a decade,
88 shepherded this bill through his subcommittee and helped get
89 us to this point today. I also want to thank the thoughtful
90 contributions of Representatives DeGette and Sutton for their
91 early stages of this process.

92 I also want to thank our Republican colleagues, Ranking
93 Member Barton and Ranking Member Deal, Representative
94 Shimkus. You and your staffs have worked incredibly hard
95 over the last few weeks to bridge gaps, find creative
96 solutions to problems and help make sure this bill works
97 better for everyone. I appreciate all the efforts and your
98 commitment to keep the food supply safe. You have helped to
99 provide beyond a shadow of a doubt that there is no partisan
100 gap when it comes to keeping the food supply safe.

101 The legislation we are marking up represents a huge
102 accomplishment for this committee. We stand on the verge of
103 passing a comprehensive, broadly supported and bipartisan

104 reform of our Nation's food safety laws. We will see a
105 strong vote out of committee today and that will send a loud
106 message about the need to move this legislation quickly. I
107 know that we still have work to do, but I am more confident
108 than ever that we will be able to take this legislation to
109 the Floor and I am hopeful that before too long we can have a
110 comprehensive food safety bill on President Obama's desk.

111 [The prepared statement of Mr. Waxman follows:]

112 ***** COMMITTEE INSERT *****

|
113 The {Chairman.} I want to yield to the ranking member
114 of the Subcommittee on Health, Mr. Deal.

115 Mr. {Deal.} Thank you, Chairman Waxman, and thank you
116 for holding the markup on this bill, the Food Safety
117 Enhancement Act of 2009. Certainly having a safe food supply
118 is something that people on both sides of the aisle have as a
119 priority and I think the markup today will indicate that we
120 have come to a very good agreement in being able to ensure
121 that Food and Drug Administration has the resources and the
122 authority to do what they need to be sure that our food
123 supply is safe for the American people, and this committee I
124 think deserves great credit for working in a bipartisan
125 fashion.

126 Last week the Subcommittee on Health did hold a markup
127 on this bill. At that time various members offered
128 amendments, most of which were withdrawn with the
129 understanding that we would work on those issues before the
130 full committee, and I am pleased to report that that has been
131 done and the product that we will have before us today is a
132 result of the cooperative efforts of both sides of the aisle
133 and the staffs that it work to make this bill a reality. I
134 am looking forward to the markup. I hope that it will be a
135 smooth markup and one in which we can all agree that this

136 bill embodies the safeguards that all of us want for the food
137 supply for our country, and thank you for your efforts and
138 your staffs' efforts and your members' efforts and thanks to
139 the people on my side of the aisle as well and to their
140 staffs for working very diligently on this undertaking. I
141 yield back my time.

142 [The prepared statement of Mr. Deal follows:]

143 ***** COMMITTEE INSERT *****

|
144 Mr. {Pallone.} [Presiding] Thank you, Mr. Deal, and I
145 will recognize myself next for an opening statement.

146 I am pleased to be here today to mark up H.R. 2749.
147 Today we take a giant step forward on food safety. For more
148 than a decade, many of us have been focused on the need that
149 has been increasing in importance to protect the health, the
150 safety and the well-being of consumers with modern food
151 safety standards. We have done tremendous work introducing
152 legislation, collaborating with interest groups to identify
153 the problems and trying to come up with feasible and
154 effective solutions.

155 We have also done a lot of work in this committee on the
156 issue, and we have had numerous hearings on food safety that
157 highlighted the flaws and shortfalls of our current system.
158 We heard heart-wrenching stories about victims of foodborne
159 illness including one of a woman who overcame cancer only to
160 succumb to a foodborne illness. We heard testimony from
161 industry experts and consumer advocates, and we heard from
162 the agency responsible for protecting our Nation's food
163 supply, the FDA. What we learned and what we believe has
164 been inserted in what has before us today, a food safety bill
165 that will modernize our antiquated food safety laws and
166 catapult the FDA into the global marketplace of the 21st

167 century.

168 This bill will require all food facilities to register
169 with the FDA on annual basis, providing the agency with an
170 up-to-date list of all the facilities that sell products in
171 the United States. It will require facilities to pay a
172 registration fee that will be used to help defray the costs
173 of food safety activities as put forth by the bill. The bill
174 emphasizes prevention and safety plans that will help ensure
175 that food is safe when it leaves the factory door and is
176 placed on our grocery store shelves. These controls are
177 crucial in preventing foodborne illness outbreaks and in
178 protecting all Americans.

179 The bill also provides the FDA with necessary
180 enforcement authorities. It creates new and updated civil
181 monetary penalties and criminal penalties. It provides the
182 FDA with recall authority so that when a food is
183 contaminated, the FDA can quickly get that food off the
184 shelves and away from American consumers and it directs the
185 agency to collect information, conduct a pilot study and
186 issue regulations on traceability for food that will allow us
187 to rapidly trace a food outbreak back to the source of the
188 contamination.

189 I think we have come a long way from where we started so
190 many years ago and what we are considering today is very

191 strong. It is a bipartisan piece of legislation that will
192 empower the FDA and improve our food safety system. But a
193 bill like this doesn't happen overnight, and I have to also
194 mention the hard work that my colleagues on both sides of the
195 aisle have put into this bill. Chairman Waxman has dedicated
196 countless hours to the legislation to seeing it to fruition.
197 Chairman Emeritus Dingell has been working on this issue and
198 this legislation in various renditions for so many years.
199 Mr. Stupak, who has done so much work on the Oversight
200 Subcommittee, held numerous hearings and conducted
201 investigations that were crucial to informing us of the food
202 safety problems. Ms. DeGette has been a champion on
203 traceability and recall and worked closely with us on these
204 key provisions. And I also want to thank my Republican
205 colleagues, Ranking Member Barton, Mr. Deal and Mr. Shimkus,
206 for their hard work. In the last few weeks we have really
207 been able to come together on many of the issues, and I would
208 like to commend the collaborative nature and the constructive
209 tone of those conversations. Thanks to all of us, we have
210 before us today a bipartisan bill that will provide the FDA
211 with the resources and authorities it needs to protect our
212 Nation's food safety, and I just want to thank everybody
213 again.

214 [The prepared statement of Mr. Pallone follows:]

215 ***** COMMITTEE INSERT *****

|
216 Mr. {Pallone.} Our next opening statement is Mr.
217 Stearns, the gentleman from Florida.

218 Mr. {Stearns.} Thank you, Mr. Chairman, and I want to
219 thank everybody for the bipartisan effort. I am sort of
220 encouraged that we can do this, particularly in light of what
221 is happening on the House Floor today. Many of us had
222 amendments we were ready to offer last night at 8:30, 9:00 at
223 night and suddenly they recessed the House and now all these
224 amendments after the rule presented is not--the rule
225 indicates that out of the 123 amendments, we are down to
226 about 20 amendments, so I am so glad we can come here and
227 have bipartisanship on this bill.

228 I notice Chairman Waxman called Mr. Dingell the dean of
229 food safety, so the dean of food safety is a brand-new title,
230 Mr. Dingell, that you can carry with you forever now.

231 Americans deserve to have a regulatory system in place
232 that does it utmost to inspect and ensure that the food they
233 purchase to feed their families obviously is safe and
234 affordable. I believe that this committee after productive
235 bipartisan negotiations has crafted legislation that will
236 enhance the FDA's food regimen and not cripple the food
237 industry with needless over-regulation which would drive up
238 the cost of food by forging a food inspection system that

239 strikes a balance between oversight and personal
240 accountability, and it is all our hope that this legislation
241 will ensure that tainted food never again slips through the
242 public-private safety net that this legislation will
243 institute.

244 I note in the summary of the bill that there is a waiver
245 that farms that sell directly to consumers have to have
246 records but at the same time open markets that sell vegetables
247 will be able to still do so pending that they do keep copious
248 records, so I think for those small towns on Saturdays where
249 all the farmers come in and sell their produce, they will not
250 be affected, and I think that is good, so I appreciate that
251 allowance which is in the bill.

252 I hope, Mr. Chairman, that the resources that are
253 required to implement this bill will be provided too, and
254 with that, I yield back.

255 [The prepared statement of Mr. Stearns follows:]

256 ***** COMMITTEE INSERT *****

|
257 Mr. {Pallone.} Thank you. You referenced the dean of
258 food safety. Was that the title he gave you, Mr. Dingell?
259 Chairman Dingell is next.

260 Mr. {Dingell.} Mr. Chairman, I want to thank you for
261 your kind words. I am not sure being the dean of anything is
262 particularly good. It seems to me that you are getting old.

263 But I want to thank you, Mr. Chairman, for this markup.
264 I thank Chairman Waxman for his efforts and leadership. We
265 will note that there are a number of members who have been
266 the sponsors of this legislation, Mr. Waxman, Mr. Pallone,
267 Mr. Stupak, Ms. DeGette and Ms. Sutton. But there are a lot
268 of others who have participated in this undertaking including
269 our good friends, Mr. Barton, Mr. Deal, Mr. Shimkus and a lot
270 of members on the Republican side, and I want them to know
271 that I am grateful for it.

272 What we are showing today is that this committee can
273 function in the great traditions not only of this committee
274 but of the House and that we can work together in a
275 bipartisan fashion to achieve important advances in the
276 public interest. We did it last year, as you will remember,
277 Mr. Chairman, on the consumer product safety legislation,
278 which turned out to be a great piece of legislation, although
279 my colleagues will remember that the Senate meddled around

280 with it just a little bit and caused some complications.

281 I do want to note that we have a considerable measure of
282 appreciation for the participation and kindness of the
283 Grocery Manufacturers Association. Their negotiations in
284 good faith have resulted in us being able to move forward
285 together on the important components of this bill, the first
286 of which are additional enforcement mechanisms and tools
287 available to Food and Drug, and the second are of course
288 mechanisms to enable us to fund the operations that have to
289 be taken by Food and Drug including a very valuable system of
290 registration and other steps which will enable Food and Drug
291 to do the things necessary to assure public safety.

292 I want to commend the staff of the minority, the staff
293 of the majority and my two staff members, Mr. Virgil Miller
294 and Ms. Katie Campbell, for their hard work on this matter
295 and for what they have done.

296 Mr. Stupak has been a great leader in this matter in
297 what he has done in the Subcommittee on Investigations and
298 Oversight, and you, Mr. Chairman, have been a significant
299 value in your efforts to lead us towards this legislation.

300 I want to quote one of the witnesses who appeared before
301 the Subcommittee on Health earlier this month in a
302 legislative hearing. ``The Food Safety Enhancement Act is a
303 well-vetted, mature bill.'' It is also, I am pleased to

304 note, bipartisan, and we have, as I indicated, worked
305 together in a remarkable, good way to achieve that purpose.
306 It dates back to the first food safety legislation I
307 introduced in 1998, the Imported Food Safety Act. The Food
308 Safety Enhancement Act has been informed by a number of
309 hearings conducted at the Health and Oversight and
310 Investigation Subcommittees and the stories of countless
311 victims of contaminated food products, news articles which
312 appear regularly in the press about unsafe imports and major
313 problems with regard to food safety that are affecting the
314 health and well-being of the American people. We have had
315 valuable technical assistance from FDA, and I would just
316 observe what a remarkable difference a new Administration
317 makes. We have had technical assistance from consumer,
318 public health and victim advocacy organizations and the
319 regulated industry, and again I want to comment on GMA's
320 participation and cooperation. We have also had the valuable
321 and valued input of members of this committee, both
322 Republicans and Democrats.

323 Amongst other things, the legislation we consider today
324 will prevent food safety problems before they occur. The
325 legislation requires foreign and domestic food facilities to
326 have safety plans in place to identify and mitigate hazards.
327 It will increase the frequency of inspections and it allows

328 FDA to adjust this frequency for low-risk products based on
329 honest and transparent risk assessment. It provides strong
330 and flexible enforcement tools including mandatory recall,
331 stronger penalties for bad actors, administrative detention,
332 quarantine and subpoena authority. It provides FDA tools to
333 ensure imported products into the United States meet our
334 safety standards and it significantly expands FDA traceback
335 capabilities in the event of an outbreak of foodborne
336 illness, something which my colleagues will note we have had
337 real problems with regard to tomatoes, jalapeno peppers,
338 peanuts and other things. And most importantly, it generates
339 the resources to support FDA food safety activities,
340 something that this committee is going to have to protect
341 from the fine Italian hands of our beloved friends over there
342 at Appropriations and in the Budget Committee.

343 I want to thank the members of this committee on both
344 sides of their aisle for their patience and their willingness
345 to work with us to address delicate matters. We have tried
346 to satisfy all of our colleagues and we will continue to work
347 with them to see to it that they are content with the
348 consequences of the legislation. The bill before us is a
349 better piece of legislation because of the collaboration of
350 both sides of the aisle, and I want my colleagues to again
351 note that I look forward to continued discussions as we

352 prepare the bill for the Floor. The Food Safety Enhancement
353 Act is a monumental piece of legislation that will go a long
354 way to comforting our consumers and boosting their confidence
355 in the safety of our Nation's food supply, particularly the
356 stuff coming in from abroad.

357 I will note that as soon as we finish this, we must
358 start on one more little chore, which will relate to the
359 safety of pharmaceuticals, and I look forward to having the
360 same kind of good work and cooperation and goodwill of all of
361 our colleagues on the development of that legislation upon
362 which I intend to start forthwith.

363 I would urge my colleagues to vote in favor of the
364 substitute which will be coming up, and I would observe that
365 it is approaching voting age and that the American people
366 deserve nothing else.

367 Thank you, Mr. Chairman.

368 [The prepared statement of Mr. Dingell follows:]

369 ***** COMMITTEE INSERT *****

|
370 Ms. {DeGette.} [Presiding] Thank you very much, Mr.
371 Dingell.

372 The gentleman from Kentucky.

373 Mr. {Whitfield.} Madam Chairlady, thank you, and I
374 simply want to express my appreciation to the members and
375 staff on both sides of the aisle in addressing some of the
376 concerns of many members on the original bill. I think, as
377 Chairman Dingell said, the bill is a better bill now and one
378 that will help ensure the food supply of our country, the
379 safety of that food supply, and I look forward to working
380 with all of us as we move the bill toward the Floor. I yield
381 back.

382 [The prepared statement of Mr. Whitfield follows:]

383 ***** COMMITTEE INSERT *****

|
384 Ms. {DeGette.} The gentleman from Michigan.

385 Mr. {Stupak.} Thank you, Madam Chair, for holding this
386 important markup today on H.R. 2749, the Food Safety
387 Enhancement Act.

388 As chairman of the Oversight and Investigation
389 Subcommittee, I along with Ranking Member Whitfield, Shimkus
390 and Walden have held 10 hearings over the last 2 years to
391 examine the safety and security of our Nation's food supply.
392 From these 10 hearings, we have learned that the FDA does not
393 have the regulatory tools or financial resources needed to
394 ensure food from domestic and foreign food producers is safe.
395 We also know that the industry has done an inadequate job of
396 regulating itself as is evident by the numerous food
397 contamination outbreaks that the American people have
398 witnessed over the past 2 years. All signs suggest our
399 government regulatory system does not ensure the safety of
400 the food industry and it is a broken system which must be
401 corrected.

402 H.R. 2749 takes various steps towards addressing the
403 gaping holes in our Nation's food supply by recognizing the
404 food industry and the FDA must share the responsibility for
405 securing our Nation's food supply. Provisions granting the
406 FDA additional authority such as quarantine, recall, subpoena

407 power and access to records are all addressed in H.R. 2749.
408 These are valuable tools that will aid the FDA when a food
409 outbreak occurs.

410 H.R. 2749 also calls on industry to do more to monitor
411 and prevent contaminated food from entering the food supply.
412 For too long we have allowed industry to adhere to voluntary
413 guidelines. H.R. 2749 instills accountability by holding
414 industry responsible for the costs associated with the
415 recalls and re-inspections.

416 I want to thank my colleagues and friends, Chairman
417 Dingell, Chairman Pallone, Chairman Waxman, for their hard
418 work on this issue. I also want to thank their staffs, who
419 have worked diligently to see this bill come before us today.
420 Their dedication has paid off with a piece of legislation
421 that will help protect and ensure all Americans have access
422 to safe food. I wish to thank Erika Smith of my personal
423 staff for all the work she has put in on this bill to make
424 this markup a reality. I also want to thank Ranking Members
425 Barton, Deal and Shimkus for their willingness to work with
426 us, not only on this legislation but also on the numerous
427 food safety hearings and investigations this committee and
428 the Oversight and Investigation Subcommittee have held over
429 the past 2 years.

430 I am proud to be part of such great legislation and I

431 urge all my colleagues to support this legislation. I yield
432 back.

433 [The prepared statement of Mr. Stupak follows:]

434 ***** COMMITTEE INSERT *****

|
435 Ms. {DeGette.} The gentleman from Illinois.

436 Mr. {Shimkus.} Thank you, Madam Chairman. This is what
437 we can do when we really work together structurally,
438 deliberately, and I do think it is a model for some even more
439 contentious issues like health care and global warming, but I
440 don't want to shock my colleagues or prejudice them but I do
441 support the Manager's Amendment. I know it is shocking.

442 It represents agreements on both sides. A particular
443 part that I am very pleased that got in was establishing a
444 risk-based system. It gives an inspection regime that gives
445 the FDA the flexibility to change the frequency and
446 inspections for low-risk facilities, allows the FDA to access
447 records and information they need to ensure food safety plans
448 are being properly implemented, giving companies the
449 flexibility of using different preventive control systems
450 that work best for their so long as they meet FDA standards,
451 and where things are working we let existing authority remain
452 with respect to USDA and the oversight of alcohol
453 manufacturers and distributors. Those are just a few details
454 on what this bill does to give FDA the necessary tools and
455 authority to do its job when it comes to the safety of our
456 food supply.

457 Again, Madam Chairman, I support the Manager's Amendment

458 and I am glad that we were all able to work together. I too
459 want to thank Chairman Emeritus Dingell, Chairman Pallone,
460 Chairman Waxman, Chairman Stupak, Ranking Members Barton and
461 Deal and all our staffs. I particularly want to highlight my
462 staff, Chris Sarley, who spent a lot of time with members of
463 your staff, sometimes in good mood, sometimes in bad mood,
464 but I do think we got to a better product, as a lot of people
465 are saying. I look forward to continuing the process in this
466 bipartisan manner as this bill moves out of this committee
467 and also on equally important legislation should we look to
468 address needs the FDA may have with respect to its authority
469 over drugs, devices and cosmetics, and with that, I yield
470 back my time.

471 [The prepared statement of Mr. Shimkus follows:]

472 ***** COMMITTEE INSERT *****

|
473 Ms. {DeGette.} The gentleman yields back. The
474 gentleman from New York.

475 Mr. {Engel.} Thank you, Madam Chairwoman, for holding
476 this important markup today. As a cosponsor of the Food and
477 Drug Globalization Act of 2009, I am pleased to see this
478 important food safety measure moving forward. I look forward
479 to addressing drugs and devices later this year as well.

480 I want to commend the work that you have done, Mr.
481 Dingell, Mr. Pallone and Mr. Stupak, along with our
482 Republican colleagues on the bipartisan bill before we have
483 before us. I am hopeful that the Senate will work swiftly to
484 complement our efforts so that we may enact this bill into
485 law. If there is any good that came out of the Peanut
486 Corporation of America's salmonella crisis and the series of
487 outbreaks linked to spinach, lettuce, tomatoes and peppers,
488 it is now clearer than ever that our food safety system is
489 broken and in need of critical reforms. Today with this
490 legislation, we begin to right those wrongs.

491 An AP poll last year found that 46 percent of people
492 were scared that they would get sick from tainted food, and
493 there is a reason for this fear. U.S. foodborne illnesses
494 result in 76 million illnesses, hundreds of thousands of
495 hospitalizations and up to 5,000 deaths each year. As one of

496 the witnesses astutely pointed out in a prior hearing the
497 Health Subcommittee held on food safety, our Nation is
498 sustaining deaths equivalent to those that perished in the
499 World Trade Center attack in New York every six months. When
500 you think about it in those terms, it just takes your breath
501 away. And yet historically we have set up the FDA to fail.
502 We expect the FDA to ensure the safety of our Nation's food
503 supply but we haven't given it the resources or authority to
504 get the job done, and while there are many food companies and
505 facilities that are employing best practices to preserve
506 their own food products, unfortunately it is those that don't
507 that cause crippling problems for our public health and
508 economy. That is why it is so important that we pass this
509 bill.

510 By granting FDA the ability to mandate clear
511 preventative controls, stronger traceability and mandatory
512 recalls within their food safety authority, we may finally
513 target the spots along the farm-to-store chain where
514 contamination can occur. This along with continued and
515 necessary appropriated funds, and I want to emphasize that,
516 continued and necessary appropriated funds, will enable the
517 FDA to finally shore up our food safety system.

518 Madam Chairwoman, the costs of inaction are too great.
519 I am pleased to support the Food Safety Enhancement Act today

520 and urge all my colleagues to do the same, and I yield back
521 the balance of my time.

522 [The prepared statement of Mr. Engel follows:]

523 ***** COMMITTEE INSERT *****

|
524 Ms. {DeGette.} The gentleman from California is
525 recognized.

526 Mr. {Radanovich.} Thank you, Madam Chair. I want to
527 thank you and Chairman Waxman and Ranking Member Barton for
528 all the work that has been done to bring this important issue
529 of food safety before the committee for consideration today.

530 As a representative of the San Joaquin Valley, one of
531 the most productive agricultural regions in the world, I
532 understand the need to provide safe and nutritious food. The
533 growers and producers I represent are dedicated to supplying
534 only the safest fresh fruits and vegetables possible for
535 consumption worldwide.

536 As we have seen with different food safety outbreaks and
537 the salmonella outbreak last year, a single scare can shut
538 down an entire industry. The salmonella outbreak in 2008
539 sickened over 1,400 people and initially focused on tomatoes
540 as the source. However, federal investigators later traced
541 the salmonella back to peppers from Mexico and not tomatoes,
542 leaving consumers confused and costing the tomato industry
543 hundreds of millions of dollars and calling our food safety
544 standards into question. Given this, I believe that just as
545 each of the various commodities grown in the Central Valley
546 are unique, so should any food safety requirements be

547 commodity specific and tailored to the different levels of
548 risk presented by each commodity.

549 I am pleased to see the compromises made in this
550 legislation though there are still areas that need
551 improvement. The geographic quarantine section provides the
552 FDA with large authority to restrict the movement of foods if
553 it prevents a threat. With the traceability requirements
554 mandated, quarantine language that would shut down an entire
555 region should be unnecessary. The unsafe food could be
556 traced back to the producer without punishing other innocent
557 producers, packers and distributors in the region with the
558 stigma of a quarantine. Additionally, the FDA already has
559 the tools needed such as public health advisories that would
560 stop the movement of unsafe food without disrupting the
561 industries, devaluing production or eroding public confidence
562 to the extent that a quarantine would. Adjusting the
563 provision to require an imminent threat before the quarantine
564 authority can be exercised raises the threshold and protects
565 geographical regions from the negative impacts of unnecessary
566 quarantines. I thank the committee for this addition into
567 the geographic quarantine section.

568 As this bill proceeds, I encourage my colleagues to
569 reach out to the farmers and ranchers whose very livelihoods
570 depend on producing the safest food in the world. Keeping

571 them engaged in an open and outgoing dialog as Congress moves
572 forward is critical to ensure that the law that we create is
573 effective and that compliance is obtainable. We must
574 remember that they want safe food just as much as consumers
575 do.

576 As a committee, we have a responsibility to develop the
577 policy that provides Americans with the confidence that they
578 have the safest possible food on their table. I look forward
579 to this markup and again want to thank members for their
580 contribution to this bill.

581 Thank you, and I yield back.

582 [The prepared statement of Mr. Radanovich follows:]

583 ***** COMMITTEE INSERT *****

|
584 Ms. {DeGette.} The gentleman yields back. The
585 gentleman from Texas is recognized.

586 Mr. {Green.} Thank you, Madam Chairman, and I want to
587 thank you for holding this markup on H.R. 2749, the Food
588 Safety Enhancement Act of 2009.

589 As a member of both the Health Subcommittee and the
590 Oversight and Investigation Committee, I have been involved
591 in the numerous hearings we have had on food safety issues.
592 We have investigated food contamination incidents in the
593 United States involving spinach, cantaloupes, peanut butter
594 and tomatoes. Each time Energy and Commerce held a hearing,
595 we found the FDA did not have the resources, funding,
596 manpower or technology it needs to protect the American food
597 supply and fulfill its mission. In fact, the FDA does not
598 even have the ability to require mandatory recalls, and we
599 have been relying on the voluntary efforts of food
600 manufacturers to ensure safety of their products. There have
601 been several examples of how our food safety system has
602 failed us and for years we have simply said the FDA is
603 underfunded and we should allocate them more resources. The
604 FDA clearly does need increased funding and this bill
605 provides some of those funds, and we will have to appropriate
606 more but I am happy the Food Safety Enhancement Act finally

607 gives the FDA the authority to improve the systems to protect
608 our food supply.

609 I am pleased today we will finally be moving a
610 comprehensive food safety bill out of the committee to full
611 House consideration, and thank you again. I yield back my
612 time.

613 [The prepared statement of Mr. Green follows:]

614 ***** COMMITTEE INSERT *****

|
615 Ms. {DeGette.} The gentleman from Michigan, Mr. Upton,
616 is recognized.

617 Mr. {Upton.} I yield back. I am ready to get started.

618 [The prepared statement of Mr. Upton follows:]

619 ***** COMMITTEE INSERT *****

620 Ms. {DeGette.} The gentleman from Oregon is recognized.

621 Mr. {Walden.} Thank you, Madam Chairman, and I
622 congratulate you and others who have worked so hard and
623 diligently on this issue. As you know, our Oversight and
624 Investigation Subcommittee heard testimony on February 11 of
625 this year, probably the eleven thousandth hearing we have had
626 on this subject, so I am glad to see legislation moving.

627 Our hearing on the PCA salmonella outbreak included
628 testimony from Peter Hurley of Wilsonville, Oregon. Peter's
629 son, 3-year-old Jacob, became sick in early January as did a
630 lot of Americans. For about 2 weeks Peter and his wife
631 watched as their son suffered stomach pain resulting in
632 vomiting and diarrhea. They took him to the doctor. The
633 doctors couldn't figure out what was wrong with him, so they
634 suggested that he needed to keep some food down, give him the
635 food types that he enjoyed the most. Well, Jacob's favorite
636 food was Austin brand peanut butter crackers, which turned
637 out tragically to be the very thing that was poisoning him.
638 Oregon State officials tested six packages of the crackers
639 that the Hurleys still had in their home and three of the six
640 packages contained salmonella, peanut butter that was
641 contaminated and shipped by PCA.

642 Madam Chair, I think our hearings over the years have

643 shown us that we needed a new and modern and updated FDA. I
644 think this legislation accomplishes that. I know that with
645 any sweeping legislation that adds new inspection regimes and
646 record requirements, we should be diligent in our duty of
647 following it through the process and after it is implemented
648 and make corrections and adjustments where necessary.

649 I want to thank the majority for their work in making
650 this a sound and bipartisan product, and if you are looking
651 for a sexier title for the bill, I suggest we call it Jacob's
652 Law after Jake, who survived this horrible ordeal, and
653 hopefully no child and no parents will have to suffer this
654 again. Thank you, Madam Chair.

655 [The prepared statement of Mr. Walden follows:]

656 ***** COMMITTEE INSERT *****

|
657 Ms. {DeGette.} The Chair thanks the gentleman. The
658 Chair now recognizes herself for 3 minutes.

659 I am glad to hear that my colleague from Oregon
660 mentioned the Hurley family because as he will recall, at the
661 end of the last Oversight and Investigations hearing we had
662 this spring, the last of a series that lasted over a number
663 of years, I told Peter Hurley, Jacob's dad, that we would
664 make a commitment to him and his family that we would pass
665 comprehensive food safety legislation this year, and we are,
666 and you know, today this is the way legislation should go
667 because we are doing it on a bipartisan basis. We have
668 worked together. We have explored the issues. Everybody has
669 pulled together to make this happen.

670 It almost looks easy but everybody, particularly on the
671 Oversight and Investigation Subcommittee, Mr. Stupak and
672 everybody else, we will attest that it was difficult because
673 when we started this effort 7 years ago, we had a food safety
674 system in disarray and it had been in disarray for many years
675 and it continued in disarray, story after story, recall after
676 recall, and in those days it was difficult for us to even
677 convince people that we needed mandatory recall authority for
678 the Food and Drug Administration, much less traceability and
679 some of the other components that are here in this

680 comprehensive bill today and so it really has been an
681 extraordinary team effort and that team effort has been
682 directed at one goal: protecting the safety and health of
683 our constituents.

684 We hope that this bill today will give the resources and
685 the power to the Food and Drug Administration to be able to
686 protect that health and safety, and if there are problems
687 with our food system to make sure that we can address those
688 problems quickly. That is why I am particularly pleased that
689 the chairman had worked with me and others to include
690 mandatory recall authority by the FDA in the bill. We hope
691 that we will be able to catch contamination and avoid
692 contamination before it happens, but if there is contaminated
693 food found, we will be able to have recall authority.

694 And secondly, I am so delighted that the FDA will be
695 implementing traceability systems for the entire food agency.
696 We saw this last year with the tomato and then jalapeno
697 recall where we never really could figure out what was wrong
698 with the salsa, but what we did know was people across the
699 country were being sickened and what we also knew was that
700 the entire tomato industry was devastated for that year. So
701 traceability is going to help us identify quickly and remove
702 the foods in a targeted way that are causing sickness.

703 I just want to say one last thing, and that is, I have a

704 staff member to thank who is here today, Steve Plevniak.
705 Steve is my food safety maven on my staff. He has been with
706 me for 7 years, just about as long as we have been studying
707 these issues, and he is leaving us to go elsewhere, so this
708 is a fine end for his Congressional career and I just really
709 want to thank Steve and all the staff of the whole committee
710 who have worked so hard on this legislation.

711 [The prepared statement of Ms. DeGette follows:]

712 ***** COMMITTEE INSERT *****

|
713 Ms. {DeGette.} With that, I will now recognize the
714 gentleman from Nebraska.

715 Mr. {Terry.} Thank you. Very quickly, I want to thank
716 everybody involved in this. Like Mr. Pallone, I have a
717 constituent who died of the E. coli in spinach, California
718 spinach, and we have had several other E. coli outbreaks.
719 Amazingly, even though people think of E. coli in meat, it
720 has been salads and sprouts in our district, and it is a
721 delicate balance for Nebraska because we do have agribusiness
722 with lots of facilities and they will bear some of the cost
723 burdens for modernizing the FDA. But I think this does
724 strike a balance. We need a couple of improvements here and
725 I will offer an amendment later on that I hope the leadership
726 will work with me on.

727 So I just want to congratulate everybody who has been
728 working on this bill and particularly the majority for
729 actually accepting some of our recommendations and really
730 working in earnest. Thank you, and I yield back.

731 [The prepared statement of Mr. Terry follows:]

732 ***** COMMITTEE INSERT *****

|
733 Ms. {DeGette.} The gentleman yields back. The Chair
734 now recognizes the gentlelady from Illinois.

735 Ms. {Schakowsky.} Thank you, Madam Chairman, for this
736 markup, and I want to thank Mr. Waxman, Mr. Dingell, Mr.
737 Pallone, Mr. Stupak, you, Madam Chairman, Ms. Sutton and
738 those on the minority side who worked with us to craft a
739 really good bill. This is the way that Congress should work.

740 As I mentioned before, this issue is very personal to
741 me. I began my public career working to ensure that food on
742 our store shelves had clear expiration dates at a time when
743 every single thing was secretly coded, and I also have a very
744 dear friend, Nancy Donnelly, who lost her only child, her
745 son, Alex, in 1993 after he ate ground beef contaminated with
746 E. coli. My thoughts and my gratitude today go out to her
747 because she turned her tragedy in to tireless advocacy for
748 food safety.

749 So we have as a result of all this work a strong bill
750 that will strengthen the Food and Drug Administration's
751 ability to keep our food system safe and help prevent some
752 tragedies in the future. It establishes mandatory recall for
753 the FDA but the real strengths of the bill, I think, are in
754 its prevention components, stopping an outbreak before
755 tainted food can reach our kitchen tables, requiring all food

756 facilities to implement hazard control plans, to analyze,
757 anticipate and preempt any point at which a potentially
758 dangerous contaminant could affect a food product. It also
759 increases inspections. Studies have shown that Americans
760 support thorough and frequent inspections of the places where
761 their food comes from.

762 We must maintain if not strengthen the timetables for
763 inspections contained in the Manager's Amendment. The
764 Manager's Amendment also will implement a requirement that
765 positive test results are reported to the FDA. I think this
766 is a great addition. The agency has to have enough
767 information to know where the problems are. I am also
768 pleased that at my urging the Manager's Amendment includes
769 stronger language on data gathering, sharing and research
770 into the public health effects of foodborne illness.

771 There is also new language from Mr. Markey calling for
772 reevaluation of the presence of BPA in food and beverage
773 containers. Research indicates that BPA is not safe and I
774 think Chicago's effort to limit its presence in children's
775 food and beverage containers should be replicated and
776 strengthened at the national level. I think we have made
777 improvement since the health committee last week. I think we
778 should continue to examine whether the bill's language is
779 strong enough. I am going to introduce and offer an

780 amendment that I will later withdraw that deals with the
781 relationship between non-therapeutic antibiotic use in
782 livestock and resistant bacterial infections. I hope that I
783 can work with the committee to deal with this issue in the
784 near future.

785 So I thank you and yield back.

786 [The prepared statement of Ms. Schakowsky follows:]

787 ***** COMMITTEE INSERT *****

|
788 Ms. {DeGette.} The gentleman from Michigan, Mr. Rogers.

789 Mr. {Rogers.} Thank you, Madam Chair. I am pleased
790 that we have been able to work together today to address most
791 of the concerns that we had on this side of the aisle during
792 the hearing and subcommittee markup. As I have said many
793 times, I believe food safety should be a bipartisan issue and
794 I am glad to see we have made considerable bipartisan
795 progress on this bill. While the bill is not perfect, I
796 believe it will improve FDA's ability to protect our Nation's
797 food supply and it is something I can support.

798 The Manager's Amendment includes many important changes
799 in the bill including a more practical inspection schedule.
800 Exemptions for farms regulated by USDA, an exemption for
801 alcohol manufacturers already regulated by Treasury and a
802 more reasonable approach to recall authority and civil
803 monetary penalties, and I hope this experience will be a
804 great guide for this committee on health care reform.
805 Through regular order and bipartisan collaboration, we have
806 reached a very sensible compromise that incorporates good
807 ideas from both sides of the aisle.

808 If we can do this for food legislation, we certainly
809 must be able to do on a massive overhaul of our health care
810 system. Unfortunately, Republicans haven't even been able to

811 see one word of the health care bill being written by a very
812 few members. Supposedly we will see the bill just a few days
813 before we begin a series of hearings, and CBO won't even be
814 given a chance to score the bill before those hearings. We
815 have also been told that the Health Subcommittee won't even
816 be given a chance to mark up health care reform legislation
817 due to its artificially rushed timeline. I think certainly
818 the American people and members of this committee deserve
819 better, Madam Chair, and on this issue that will affect every
820 constituent and every family and every business across the
821 United States, I hope that we can find some time to work in a
822 bipartisan manner to get to the same kind of place we did on
823 FDA food legislation, and I would again hope and encourage
824 that we could use this as our template how we move forward
825 and how this body is supposed to operate.

826 With that, Madam Chair, I congratulate all those
827 involved in today's bill's efforts and would yield back the
828 remainder of my time.

829 [The prepared statement of Mr. Rogers follows:]

830 ***** COMMITTEE INSERT *****

|
831 Ms. {DeGette.} The gentleman yields back. The
832 gentleman from Pennsylvania.

833 Mr. {Doyle.} I will waive.

834 [The prepared statement of Mr. Doyle follows:]

835 ***** COMMITTEE INSERT *****

|

836 Ms. {DeGette.} The gentleman from Texas, Mr. Gonzalez.

837 Mr. {Gonzalez.} Waive opening.

838 [The prepared statement of Mr. Gonzalez follows:]

839 ***** COMMITTEE INSERT *****

|
840 Ms. {DeGette.} The gentlelady from Wisconsin.

841 Ms. {Baldwin.} Thank you, Madam Chairwoman, for
842 bringing this bill before our committee for markup this
843 morning. I also want to commend Chairman Waxman, Chairman
844 Pallone, Chairman Stupak and Chairman Emeritus Dingell for
845 their work in putting this legislation together and to our
846 friends across the aisle for working with us on key issues of
847 concern. I appreciate the fact that this has been a
848 bipartisan process.

849 In the past few weeks I have mentioned that I would
850 really like to see increased coordination between the federal
851 government and the States in the area of food safety, and I
852 am pleased to say that I think that Congress and the FDA
853 agree that in order to meet this rigorous new set of food
854 safety requirements, which I strongly support, we need to
855 work together as much as possible. Once again, I urge the
856 FDA to rely on our extensive network of State-based
857 inspectors and regulators to avoid duplication wherever
858 possible.

859 Another way the FDA can maximize its resources is to
860 utilize experienced third parties, and I am happy to say that
861 with this new draft I am confident that laboratories that
862 currently provide the FDA with much-needed support and

863 testing and analysis will be able to continue their very
864 productive partnership moving forward.

865 Like many of my colleagues, I have been inspired by the
866 families that have turned tragedy into action around this
867 issue. When I first entered Congress, I had the opportunity
868 to meet with a remarkable young family. When she was living
869 in Wisconsin, Barbara Kowalchek lost her young son, Kevin, to
870 food poisoning from meat contaminated with E. coli. She has
871 since founded the Center for Foodborne Illness and has been a
872 tireless advocate for a stronger food safety system. Her
873 mission in life has been to ensure that the same tragedy
874 experienced by her family never happens again. I am so proud
875 of her work and I hope that this legislation can be a
876 testament to her son's legacy and her tremendous advocacy.

877 Again, thank you to all of my colleagues here who worked
878 so hard on this legislation. I look forward to seeing it
879 pass into law soon, and Mr. Chairman, I yield back.

880 [The prepared statement of Ms. Baldwin follows:]

881 ***** COMMITTEE INSERT *****

|
882 The {Chairman.} The gentlelady yields back her time.

883 Mr. Barton.

884 Mr. {Barton.} Thank you, Mr. Chairman. I am going to
885 submit my formal statement for the record, but just to
886 summarize it, we appreciate the bipartisan effort that has
887 been made on this bill. We appreciate the compromises that
888 have been made. We had concerns at subcommittee about
889 flexibility. The Manager's Amendment is going to provide
890 some flexibility. We had concerns about the open-endedness
891 of the civil monetary penalty, which we are giving the FDA
892 for the first time. We have reached a compromise on those
893 penalties that I think is fair and reasonable, and while
894 there are some issues that we want to continue to discuss
895 between now and the Floor action, this is a good product. I
896 want to commend you, Chairman Pallone and Chairman Dingell
897 for your efforts, and I want to thank Nathan Deal and the
898 Republicans on my side that have worked to make this day
899 possible. This does show the committee can work together,
900 and we are very supportive of the final product and look
901 forward to taking this spirit of cooperation a step further
902 as we go to the larger issue of health care reform in the
903 next several weeks.

904 [The prepared statement of Mr. Barton follows:]

905 ***** COMMITTEE INSERT *****

|
906 The {Chairman.} Thank you very much, Mr. Barton.

907 Mr. Matheson.

908 Mr. {Matheson.} Well, thank you, Mr. Chairman, and
909 while a lot of people have commended the process and where we
910 are right now, I think it is important for all of us to do
911 that because this is a complicated set of issues and I think
912 that the fact that this committee has worked hard and worked
913 collectively to come up with some consensus, I think that is
914 noteworthy and I commend the chairman for doing that and all
915 the other folks. There are so many to thank, I won't name
916 everyone, but I commend the chairman for his leadership on
917 this issue and I am pleased that this bipartisan agreement
918 has been worked out.

919 I know there are a few issues still to be talked about
920 as it goes to the Floor. I have one, and while I am
921 disappointed we weren't able to work out language to deal
922 with providing a label requirement for lead content on
923 ceramicware, I am hopeful that we will be able to find some
924 solution to this issue as we go to the Floor. It is an issue
925 I have been talking about since 2006, and I am hoping we can
926 resolve it in this bill but we seem to have exhausted good
927 options prior to this markup. But I do believe there is an
928 opportunity that we can figure this out. I think the science

929 already tells us what constitutes trace amounts of lead in
930 products and I think we can work as a committee to direct the
931 FDA to address this issue and issue appropriate guidance
932 because at the end of the day my motivation is consumers
933 should know if they have products that have a lead glaze put
934 on their ceramicware.

935 So again, I look forward to continuing to work with the
936 committee, and again, Mr. Chairman, congratulations on moving
937 this bill forward and I encourage all members of the
938 committee to support the bill. I will yield back my time.

939 [The prepared statement of Mr. Matheson follows:]

940 ***** COMMITTEE INSERT *****

|
941 The {Chairman.} Thank you, Mr. Matheson.

942 Mr. Buyer.

943 Mr. {Buyer.} Thank you, Mr. Chairman. Specifically, I
944 would like to thank you for accepting an amendment, several
945 amendments, in particular to clarify the bill to ensure that
946 fisheries are included in the definition of farms which are
947 exempt under the tracking and trace requirements under
948 section 107. I had offered the fisheries amendment on behalf
949 of Congress Gresham Barrett of South Carolina, who is very
950 concerned with regard to those of whom seek clams, oysters,
951 the shrimpers and the fishermen in the low country of South
952 Carolina. As he thought about that, he also then thought
953 about the coastal plains all around the boundaries of our
954 country, and I want to thank Mr. Pallone, who also has a
955 Congressional district and so he understands the sea and the
956 importance of this amendment to the fishing industry and
957 agreeing that they should be treated in the same regard as
958 the farmers when it comes to direct sales from farms. I
959 think this amendment will help ensure that they are not
960 subject to unnecessary regulatory burdens and will save many
961 of the small businesses in our Nation's coastal communities.

962 Additionally, I want to thank you and also Mr. Dingell
963 for working with us on an amendment to ensure that the

964 primary responsibility of regulating the alcohol industry
965 remains in the hands of the Tax and Trade Bureau. I hope we
966 have arrived at an agreement that is acceptable to the
967 alcohol and beverage industry and ensures that the stringent
968 oversight of TTB remains in place. I believe that TTB has
969 done a good job ensuring the safety of alcoholic beverages in
970 our country and I do not think it is in the best interest of
971 this committee to interfere with a memorandum of
972 understanding struck between FDA and TTB which has operated
973 very well for many years.

974 I am also pleased that the user fees have dropped to
975 \$500 per facility. These users fees can significantly impact
976 small businesses and so I want to extend my appreciation for
977 that.

978 I am also encouraged by the movement to address the
979 concerns about FDA regulations on our farms and specifically
980 for their impact on livestock and poultry producers. The
981 livestock and poultry operations already carry many of the
982 requirements of this food safety bill such as recordkeeping
983 and inspection activities. While the language is not
984 perfect, I would agree that we have worked hard to reach a
985 consensus and we should also as we work with our friends in
986 the Senate make sure that we are not duplicative, especially
987 with regard to regulations, and we should also remember, let

988 us not make the exception the rule. A vast majority of food
989 processing companies in America are operating above and
990 beyond many of the food safety requirements and their hazard
991 risk assessment plans go further and we should recognize that
992 and be careful, as I said, about making the exception the
993 rule.

994 The last comment I would make, Mr. Chairman, is, when we
995 finish this it is off to the drug safety bill, and I am
996 pleased to work with Chairman Dingell and I think that the
997 Buyer-Matheson bill on electronic pedigree for drugs, if you
998 like what has happened here on the tracing requirements for
999 food, you are going to love what Mr. Matheson and I have been
1000 able to come up with with drug pedigree, and Chairman Dingell
1001 and Chairman Waxman, I want to thank you and I look forward
1002 to working with you on the drug safety bill.

1003 [The prepared statement of Mr. Buyer follows:]

1004 ***** COMMITTEE INSERT *****

|
1005 The {Chairman.} Thank you very much, Mr. Buyer.

1006 Mr. Markey.

1007 Mr. {Markey.} Thank you, Mr. Chairman, very much. I
1008 rise in support of this bill and I want to commend you and
1009 Mr. Pallone along with Mr. Barton and Mr. Deal for the
1010 bipartisan way and the extensive work which has been done on
1011 this important legislation.

1012 I also want to thank each of you and others for working
1013 with me to include language related to the safety of BPA in
1014 food and beverage containers. The language that is included
1015 in the bill calls on FDA to evaluate the approved uses of BPA
1016 in food and beverage containers and to tell the committee
1017 whether each use is safe by the end of the year. If FDA
1018 finds that BPA isn't safe, it is additionally directed to
1019 tell us how it plans to protect public health, which could
1020 include banning the chemical as well as efforts such as
1021 placing warning labels on products that contain it. As you
1022 know, BPA is a ubiquitous chemical found in most food and
1023 beverage cans and many reusable plastic containers. It was
1024 also found in most baby bottles until recently when major
1025 baby bottle manufacturers agreed to voluntarily stop using it
1026 because of concerns about its effect on health, which are
1027 many. BPA can be linked to increases in breast and prostate

1028 cancer risk, heart disease, liver abnormalities and diabetes.
1029 BPA can result in adverse impacts to reproductive health.
1030 BPA can be linked to increase in obesity, attention deficit
1031 and hyperactivity disorder, brain damage, altered immune
1032 function and other problems. BPA can be found at
1033 dramatically higher levels in infants than in the rest of the
1034 population and is also found in placental tissue and
1035 umbilical cord blood and BPA has been found at higher levels
1036 in women with a history of repeated spontaneous miscarriages.
1037 Not all industries are as receptive to addressing health
1038 concerns as the baby bottle manufacturers were. In fact,
1039 just recently the food and packaging industry convened a
1040 meeting in Washington at which they devised an extensive
1041 public relations campaign to claim that there is not really a
1042 problem.

1043 So I am glad that we have been able to work together in
1044 order to construct something which I think is a very good way
1045 to approach the issue. I once again thank all concerned and
1046 I yield back the balance of my time.

1047 [The prepared statement of Mr. Markey follows:]

1048 ***** COMMITTEE INSERT *****

|

1049 The {Chairman.} Thank you, Mr. Markey.

1050 Mr. Pitts.

1051 Mr. {Pitts.} I will waive.

1052 [The prepared statement of Mr. Pitts follows:]

1053 ***** COMMITTEE INSERT *****

|
1054 The {Chairman.} Mr. Pitts waives. Mr. Burgess.

1055 Mr. {Burgess.} Thank you, Mr. Chairman, and this is an
1056 important subject that is before us this morning. It does
1057 appear that the cake has already been baked irrespective of
1058 substance, style or practicality, and I understand and
1059 appreciate the political calculations which have been made in
1060 order to produce in less than 2 weeks a discussion draft, a
1061 bill, convene a subcommittee mark and now a full committee
1062 mark, all in the interest of food safety. But much like the
1063 idea of health care reform where the concept of health care
1064 is universally agreed upon, giving our constituents safe food
1065 is also non-controversial. Food should be safe. But the
1066 devil still is in the details and not all the details here
1067 are completely agreeable.

1068 While there has been considerable conversation about the
1069 substance of the bill, there are aspects that are of concern.
1070 In the past I have spoken about the need to have a way to
1071 halt imports so that when a foodborne illness issue arises on
1072 the border on Friday afternoon at 4 p.m., we don't have to
1073 wait until Monday morning for someone to make the decision to
1074 stop the importation of said food. To deal with this
1075 problem, I have introduced legislation dealing with the
1076 Imported Food Safety Improvement Act and I hope to see that

1077 language added to this bill as an amendment.

1078 Also, while I note improvements have been made to the
1079 civil monetary penalties for violations of this Act and we
1080 heard Ranking Member Barton speak to this, right now there is
1081 no differentiation made for those are neither considered an
1082 individual or a company. Most food manufacturers are either
1083 a small business or a very small business and yet whether the
1084 intent was intentional or unintentional, because they are not
1085 a single-man operation, these very small businesses could
1086 potentially be hit with a fine as large as \$1 million, even
1087 though their annual earnings may only be a fraction of that.
1088 Just as this committee has recognized the need for scale in
1089 the amount of penalties for the individual versus the
1090 company, we need to recognize the need for scale in the
1091 amount of penalties for these very small businesses and the
1092 companies.

1093 Furthermore, the timeline for inspection is problematic.
1094 The Food and Drug Administration has repeatedly stated that
1095 they do not have the inspectors and in fact they have just
1096 recently delivered to us data that underscores that fact, nor
1097 do they even have all the contracts with third-party
1098 inspectors to meet the expectations of this bill. Now, that
1099 is not an excuse for non-performance. We all know that they
1100 have been underfunded and underresourced. I think this is a

1101 very real and calculated analysis of their assets and the
1102 Food and Drug Administration simply does not have the human
1103 capital to do what we are going to ask them to do. We must
1104 give them a reasonable amount of time to ramp up inspections
1105 and it strikes me that 18 months does not meet the standard
1106 of reasonableness in this situation. I do not want the Food
1107 and Drug Administration to be back at yet another Oversight
1108 and Investigation hearing to discuss how they did not meet
1109 the expectation demands of the bill. I want us to fix the
1110 inspection problems this time and not continue to deal with
1111 it as an ongoing problem.

1112 I support the inspection requirements of Senator
1113 Kennedy's Food Safety Modernization Act as well as those put
1114 forward by Mr. Costa. Reasonable schedule and rationale for
1115 inspections is needed.

1116 And then just finally, as probably been mentioned
1117 several times this morning, we got an amendment in the nature
1118 of a substitute of 133 pages just before this markup started.
1119 It is not identical to the language of the bill and is the
1120 result of negotiations going on between the two sides.
1121 However appreciative I may be of the consideration of the
1122 conversation, I am troubled members are not given enough time
1123 to read these 133 pages and ensure that all of the
1124 contingencies have been met. I am sure the substance of this

1125 food safety conversation should allow ample opportunity for
1126 members to make their review and we should expect nothing
1127 less.

1128 Thank you, Mr. Chairman, for the consideration. I will
1129 yield back the balance of my time.

1130 [The prepared statement of Mr. Burgess follows:]

1131 ***** COMMITTEE INSERT *****

|
1132 The {Chairman.} Thank you, Mr. Burgess.

1133 Ms. Matsui, do you wish to make an opening statement?

1134 Ms. {Matsui.} Thank you, Mr. Chairman. I want to
1135 commend you for your hard work on this essential legislation.
1136 I would also like to compliment my colleagues, Mr. Dingell,
1137 Mr. Pallone and Mr. Stupak, on their contributions to this
1138 critical bill and also the hard work by Ms. DeGette and Ms.
1139 Sutton.

1140 Mr. Chairman, my hometown of Sacramento has had a rich
1141 heritage of agriculture. Although Sacramento is now an urban
1142 area, there are rural areas surrounding it that produce rice,
1143 walnuts, almonds, tomatoes and grapes, and as Mr. Radanovich,
1144 my colleague on the other side of the aisle, knows, I was
1145 raised on a farm in central California, which he now
1146 represents. My family raised grapes, plums, peaches and
1147 nectarines. I am now mostly a consumer but I really do have
1148 a fine appreciation about the challenges facing agriculture,
1149 and I also have two toddler grandchildren who just love to
1150 eat. So I am well aware of how critical it is for our food
1151 supply to be safe. If people get sick from food on their
1152 table, they lose confidence in entire aspects of our economy.
1153 When E. coli was found in California spinach 3 years ago, the
1154 spinach industry lost hundreds of millions of dollars. Not

1155 the spinach industry, not the restaurant industry, not the
1156 American consumer and certainly not this committee want to
1157 see this happen again.

1158 Agriculture made my home State of California what it is
1159 today but it did so because people had confidence that food
1160 and produce in California is safe to eat. We must restore
1161 confidence in our food safety system, Mr. Chairman, and that
1162 is why I support today's legislation so strongly.

1163 The bill before us today strikes a good balance. It
1164 protects the consumers who sit down to dinner with their
1165 families tonight and eat a meal that they have a right to
1166 know is safe. It also acknowledges that the agriculture and
1167 food industries are essential to our economic health. I am
1168 pleased that the legislation dramatically increases the
1169 resources available for the FDA to carry out its critical
1170 mission of protecting our food supply. We have known that
1171 the FDA has had a resources problem for a long time, and
1172 today's bill resolves that issue.

1173 Mr. Chairman, I commend you for all that you have done
1174 to ensure that the food my constituents eat is safe and
1175 healthy. I urge my colleagues to support the Food Safety
1176 Enhancement Act, and I yield back the balance of my time.

1177 [The prepared statement of Ms. Matsui follows:]

1178 ***** COMMITTEE INSERT *****

|
1179 The {Chairman.} Thank you very much, Ms. Matsui.

1180 Mr. Scalise.

1181 Mr. {Scalise.} Thank you, Mr. Chairman. I appreciate
1182 the bipartisan approach that has been taken on the food
1183 safety bill. Obviously this is an issue I think we can all
1184 find agreement on. It was unfortunate we weren't able to
1185 achieve that level of bipartisanship during the cap-and-trade
1186 energy tax debate but hopefully as we go forward in the days
1187 ahead and begin debating the important issue of health care,
1188 this same bipartisan approach could be taken as we on this
1189 side present our solutions to reforming our Nation's health
1190 care system. I look forward to those debates and look
1191 forward to completing this markup today. I yield back.

1192 [The prepared statement of Mr. Scalise follows:]

1193 ***** COMMITTEE INSERT *****

|

1194 The {Chairman.} Thank you very much.

1195 Ms. Christensen.

1196 Ms. {Christensen.} Thank you, Mr. Chairman. Just

1197 briefly, I am glad to see that this important bill is before

1198 us today. It is a good day for public health and for the

1199 health promotion and protection of the American people. I

1200 just want to take this opportunity to applaud you, Mr.

1201 Chairman, Ranking Member Barton and the subcommittee chairs

1202 and ranking members, many of our colleagues, especially our

1203 chair emeritus, Mr. Dingell, for the work that has gone into

1204 creating this bipartisan bill and I look forward to passing

1205 it today and soon on the Floor. Thank you, Mr. Chairman. I

1206 yield back.

1207 [The prepared statement of Ms. Christensen follows:]

1208 ***** COMMITTEE INSERT *****

|
1209 The {Chairman.} Thank you very much.

1210 Mr. Space.

1211 Mr. {Space.} Thank you, Mr. Chairman. I want to begin
1212 by commending the important work that you and Chairman
1213 Dingell, Chairman Pallone, Chairman Stupak, Representatives
1214 DeGette and of course my colleague from the State of Ohio,
1215 Representative Sutton, have done on this legislation. This
1216 bill is the product of extensive hearings and negotiations
1217 that predate my time on the committee, and I truly appreciate
1218 the work that you have done.

1219 I also want to thank the bill's authors for taking into
1220 consideration the perspective of affected industries in
1221 crafting this legislation. I represent an extensive
1222 agricultural sector, and the changes made to the original
1223 discussion draft are very much appreciated. In particular, I
1224 want to thank the chairman for working with the livestock
1225 industry to ensure that this legislation works in a logical
1226 fashion with their interests. I commend your work as well as
1227 the work of that industry to reach consensus on a challenging
1228 issue.

1229 What is at stake in today's discussion is the safety of
1230 the food available to consumers. Earlier this year, a bad
1231 actor in the market knowingly distributed a flawed product to

1232 American consumers leading to well-publicized health
1233 consequences. While this particular actor is not
1234 representative of an industry that is generally both safe and
1235 responsible, the incident highlighted areas of our Nation's
1236 system of food safety that needed improvement. I applaud the
1237 authors of the bill for making these improvements and making
1238 the food available to our consumers safe.

1239 In particular, I applaud the chairman for working to
1240 establish systems that encourage individual actors to be both
1241 accountable and responsible. By requiring individual
1242 facilities to develop their own more thorough safety plans, I
1243 believe we have moved toward a system that will effectively
1244 protect American consumers. And I also would like to commend
1245 the leadership of both the chairman and the ranking member in
1246 working toward a bipartisan compromise. I believe that the
1247 work done on this issue can be a model for this committee in
1248 working towards a bipartisan consensus on challenging issues.
1249 I am hopeful we can continue to work in a similar fashion on
1250 other issues in this committee.

1251 Thank you, Mr. Chairman, and I yield back the balance of
1252 my time.

1253 [The prepared statement of Mr. Space follows:]

1254 ***** COMMITTEE INSERT *****

|
1255 The {Chairman.} Thank you very much, Mr. Space.

1256 Mr. Barrow.

1257 Mr. {Barrow.} I thank the Chair. I want to commend all
1258 the good work of Chairmen Waxman, Pallone, Dingell and Stupak
1259 and all of the staff members that have contributed to this.

1260 As we all know, some bad actors in my State are a big
1261 part of the reason why we are sitting here today working on
1262 this legislation. The worst of it is that these folks hurt
1263 and killed a lot of Americans as a result of their willful
1264 misconduct, but that wasn't the extent of it. A lot of
1265 perfectly innocent bystanders got hurt too. The economic
1266 impact wasn't confined. It affected a lot of people,
1267 processors and farmers, who are doing the right thing by the
1268 American consumer.

1269 I am pleased to call attention to the fact that the
1270 Manager's Amendment essentially amends the underlying Act in
1271 a way that I think makes a big step towards addressing the
1272 problems we found out about in that instance. One of the
1273 things we found out is that these folks had positive results
1274 of tainted food that they were putting into the marketplace.
1275 They knew that they had tainted goods they were putting in
1276 the marketplace. They kept on sampling until they found a
1277 clean batch and kept on testing until they got a negative

1278 test result. What they were doing was, they were shopping
1279 around and continuing to look for a negative test result,
1280 false negatives that would cover up the evidence they had of
1281 the true positives of tainted food they were putting in the
1282 food supply. That really gets my goat, and there is
1283 something we can and ought to do about it. One of the things
1284 I put on the table from the beginning about this process is
1285 to explore ways and means of putting a mandate to report
1286 positive test results in real time so that folks don't have
1287 the option of shopping around for false positives and the
1288 option of sitting on the true positives that they have but
1289 they have to divulge the information so that we know what
1290 they know when they know it.

1291 I am pleased that the bill has been amended essentially
1292 in ways that can address this problem. What it does
1293 essentially is, it requires that the food safety plan that is
1294 a new mandate describe the testing regime that all the
1295 registrants are going to have and also it mandates the FDA to
1296 conduct a pilot program to see how a mandatory reporting
1297 regime might actually work because one of the things we
1298 brought out in the hearing is that it is a whole lot easier
1299 said than done. You can have a whole lot of unintended
1300 consequences and cause folks who basically want to dumb down
1301 their testing not to know the things that they need to know,

1302 and that is something we don't want to have happen. So I am
1303 very pleased that these two approaches are going to reflect
1304 what I think is the first step in the direction of mandatory
1305 positive test results. I want to see how it works.

1306 I want to commend again all the staff and the folks who
1307 had a hand in it. What I think this will allow us to do is
1308 to pick the bad actors out of the pack before they can do
1309 harm and help us spot problems real early on before they get
1310 out of control.

1311 With that, Mr. Chairman, I thank you again for your
1312 leadership on this. I want to thank the stakeholders for
1313 working with us on this to understand all aspects of this
1314 approach, and with that, I yield back.

1315 [The prepared statement of Mr. Barrow follows:]

1316 ***** COMMITTEE INSERT *****

|
1317 The {Chairman.} Thank you, Mr. Barrow.

1318 Mr. Gingrey.

1319 Mr. {Gingrey.} Mr. Chairman, thank you, and I want to
1320 thank you for holding this markup today on H.R. 2749, the
1321 Food Safety Enhancement Act of 2009.

1322 I also want to take the time to commend you, Ranking
1323 Member Barton, Health Subcommittee Chairman and Ranking
1324 Member Deal for moving this legislation through regular order
1325 and for working in a bipartisan way to bring critically
1326 important food safety legislation before the committee.

1327 Unfortunately, there have been a number of failures in
1328 our food safety system over the past several years that range
1329 from the E. coli contamination of the California spinach to
1330 that incidence of salmonella-tainted peanuts from the Peanut
1331 Corporation of America, unfortunately, some of that in my
1332 home State of Georgia. Clearly, we need to take proactive
1333 steps to better protect the health and welfare of all of our
1334 citizens when it comes to the food that they eat on a daily
1335 basis.

1336 Mr. Chairman, during the subcommittee markup on this
1337 legislation last week, we discussed and debated a number of
1338 concerns that were raised by members, not for the sake of
1339 political gain but for the sake of creating sound policy that

1340 will help improve the legislation. To that end, I commend my
1341 colleagues in the majority for working with me and accepting
1342 an amendment that I think will greatly improve this
1343 legislation by recognizing the balance that the Food and Drug
1344 Administration has with U.S. Department of Agriculture, when
1345 it comes to food safety.

1346 Mr. Chairman, the language that has been accepted, and I
1347 thank you, provides a clear distinction through statutory
1348 language that allows both the USDA to continue using its
1349 expertise in inspecting facilities, especially when it comes
1350 to livestock, and the FDA to focus on the areas of food
1351 safety where that agency can excel. This language mirrors
1352 the companion legislation that is being considered in the
1353 Senate and it codifies the collaboration between FDA and USDA
1354 that should exist for our farmers and our livestock
1355 producers. So I am pleased that this provision was able to
1356 be included in the bill and I am encouraged that this was one
1357 of the many items where partisan politics were able to be put
1358 aside for the benefit of the American people.

1359 In the coming weeks, we will be debating comprehensive
1360 health care reform and it is my ultimate hope that we can
1361 come together much like we have done on food safety today and
1362 work in the best interests of the American people on that
1363 issue like we are doing this morning.

1364 Again, Mr. Chairman, I commend you for working
1365 diligently with me and with my Republican colleagues to
1366 improve this important legislation. I look forward to our
1367 continued spirit of comity on H.R. 2749 as it moves to the
1368 House Floor, and I yield back the balance of my 16 seconds.

1369 [The prepared statement of Mr. Gingrey follows:]

1370 ***** COMMITTEE INSERT *****

|
1371 The {Chairman.} Thank you, Mr. Gingrey.

1372 Ms. Eshoo.

1373 Ms. {Eshoo.} Thank you, Mr. Chairman. I will just be
1374 brief.

1375 I want to start out I think the way everyone has to
1376 congratulate the members that have worked so hard on this and
1377 made this markup possible, certainly yourself, Mr. Pallone,
1378 the chairman emeritus, Mr. Stupak, members from the other
1379 side of the aisle working to work this out because it is so
1380 critical to people in our country. I also want to salute the
1381 consumer organizations who have been obviously the conscience
1382 in this and you are essential, you have been essential, you
1383 will continue to be, and I want to salute you on this.

1384 As I mentioned in a previous hearing, this issue had to
1385 mature in order to have us all arrive at this point today, to
1386 do a food safety bill. Unfortunately, there had to be
1387 catastrophic happenings in the country, and as I said, I had
1388 introduced legislation going back to 1997 with the new
1389 Senator who had just left the House, Dick Durbin. But
1390 nonetheless, today is an important date and I think this
1391 bipartisan consensus speaks very well about our seriousness
1392 to address the huge shortfalls in our food system. I am
1393 still an advocate for separate food and drug agencies. I

1394 think today obviously is a very, very important step that we
1395 are taking, and I think that this committee should monitor
1396 the impact of the legislation and FDA's capacity to carry out
1397 these reforms. If in fact they don't have the resources that
1398 we are counting on, then this legislation will not be able to
1399 be carried out. It is too serious to let it fall among those
1400 rocks, but today is important. I congratulate and I thank
1401 everyone that has been a part of it, and I yield back, Mr.
1402 Chairman.

1403 [The prepared statement of Ms. Eshoo follows:]

1404 ***** COMMITTEE INSERT *****

|

1405 The {Chairman.} Thank you very much.

1406 Mr. Melancon.

1407 Mr. {Melancon.} Thank you, Mr. Chairman. I will waive

1408 my opening.

1409 [The prepared statement of Mr. Melancon follows:]

1410 ***** COMMITTEE INSERT *****

|
1411 The {Chairman.} Then the Chair would call on Ms.
1412 Sutton, or Mr. McNerney, you are ahead in seniority. Excuse
1413 me.

1414 Mr. {McNerney.} Thank you, Mr. Chairman. I want to
1415 thank you for bringing this legislation forward. This is a
1416 personal issue to me. I had a daughter that suffered an E.
1417 coli infection, and as a parent, it was very difficult to
1418 watch my daughter suffer possible kidney failure and even
1419 death. It was 5 days before we even knew what caused the
1420 infection. So this is incredibly important. I understand
1421 the pain that families go through that suffer these kinds of
1422 infections.

1423 I also represent San Joaquin Valley, which has a
1424 tremendous number of producers and food processors, and I
1425 understand the need to have regulations in place that aren't
1426 overburdensome and protect the legitimate producers from the
1427 bad actors. It seems that this bill manages to balance those
1428 two needs of protecting the consumers and not overburdening
1429 the suppliers. It is a good bipartisan effort. I am proud
1430 that we have been able to accomplish this and I urge my
1431 colleagues to support the bill. With that, I yield back my
1432 time.

1433 [The prepared statement of Mr. McNerney follows:]

1434 ***** COMMITTEE INSERT *****

|

1435 The {Chairman.} Thank you, Mr. McNerney.

1436 Ms. Blackburn.

1437 Ms. {Blackburn.} Thank you, Mr. Chairman. I will waive

1438 my opening and look forward to continuing to work on the

1439 bill. Thank you.

1440 [The prepared statement of Ms. Blackburn follows:]

1441 ***** COMMITTEE INSERT *****

|
1442 The {Chairman.} Thank you.

1443 Mr. Inslee.

1444 Mr. {Inslee.} Thank you. Mr. Chairman, I want to thank
1445 you for including my amendment to clarify the intent behind
1446 the authority given to the Secretary to quarantine geographic
1447 regions of the country. Limiting the authority of the
1448 Secretary to quarantine any geographic area no greater than
1449 is appropriate to protect public health will not only protect
1450 the American people but will help safeguard the industry that
1451 the American people rely on for safe food. I think it was an
1452 appropriate thing to do.

1453 I also want to just express relief that we are finally
1454 adopting measures on leafy green vegetables that have been
1455 successful in the meat industry. I believe they are going to
1456 have great effect. Thank you.

1457 [The prepared statement of Mr. Inslee follows:]

1458 ***** COMMITTEE INSERT *****

|
1459 The {Chairman.} Thank you very much.

1460 Ms. Sutton.

1461 Ms. {Sutton.} Thank you, Mr. Chairman, and I want to
1462 thank you for holding this markup on this critical
1463 legislation and I am proud to be a sponsor.

1464 I want to thank all on both sides of the aisle who have
1465 been working on this bill and specifically, Mr. Chairman, you
1466 and Chairman Pallone, Chairman Emeritus Dingell, Chairman
1467 Stupak and Congresswoman DeGette for all of their hard work
1468 and long dedication along with representative Schakowsky to
1469 this issue, and I am delighted that we are one step close to
1470 passage of this bill. And I do want to especially thank Mr.
1471 Dingell for his leadership on this legislation and for the
1472 inclusion of the mandatory recall provision that I introduced
1473 as the Protect Consumers Act for having been included in this
1474 bill. I am very grateful for that.

1475 I join all of you, Chairman Waxman and others who have
1476 spoken in our eagerness to see this bill reach the Floor for
1477 passage. We have seen the headlines over foodborne illnesses
1478 repeated in our national press and we have seen too many
1479 outbreaks of these illnesses and they have highlighted the
1480 vulnerability of our food supply and the need for safety
1481 reform. The issue of food safety and foodborne illness, as I

1482 have repeated here in this committee, has taken a
1483 disproportionate toll on the State of Ohio, and over the past
1484 year there have been 105 cases of salmonella infection
1485 reported in Ohio, and sadly, three deaths from the most
1486 recent peanut-based strain. Among the three who sadly lost
1487 their lives was Nellie Napier, who was a constituent of mine,
1488 and she died from salmonella poisoning which she contracted
1489 in a nursing facility, and I had the opportunity to meet with
1490 Nellie's sons and talk to them about the devastating loss of
1491 their mother, and of course it would be devastating in any
1492 way to lose one's mother but the fact that she died from
1493 eating peanut butter was excruciating for them. You know, it
1494 is our obligation to protect our most vulnerable populations,
1495 and as I mentioned in Ohio, just in April of this year in
1496 Cuyahoga County there were three incidences of illness from
1497 E. coli and we had another death, this time a 7-year-old
1498 girl.

1499 So it is critical that we are taking these steps today
1500 to ensure that the FDA is doing all that it can to protect
1501 our families and ensure our food safety. It is why I
1502 introduced the mandatory recall legislation for the FDA in
1503 the first place because Americans need to know that the food
1504 on their family's table and in their children's lunchboxes is
1505 safe to eat and whether it is grown here or it is imported

1506 from abroad, there must be strict regulation of the supply
1507 line that feeds our Nation, and in this bill we have also
1508 taken aim at the safety of imports, and from our hearings we
1509 learned that close to 13 percent of the food that we eat
1510 comes from abroad, and yet the FDA inspects less than 1
1511 percent of the food shipments arriving at our ports, and this
1512 dynamic needs to change. And so the certification provisions
1513 in this bill we are marking up today will help with the
1514 safety of food imports and this is something that we need to
1515 continue to work on.

1516 Mr. Chairman, I look forward to working with you and all
1517 of my colleagues to pass this legislation out of the full
1518 committee and move it to the House Floor, and I yield back.

1519 [The prepared statement of Ms. Sutton follows:]

1520 ***** COMMITTEE INSERT *****

|
1521 The {Chairman.} Thank you, Ms. Sutton.

1522 Mr. Braley.

1523 Mr. {Braley.} Thank you, Mr. Chairman.

1524 Food safety is something that affects every American and
1525 that is why it is so important that today you are
1526 demonstrating leadership by leading us forward on markup of
1527 this bill. I am supportive of the bill because I know it is
1528 going to address many of FDA's shortcomings and I have had
1529 the opportunity to follow this through a number of hearings
1530 both in the Health and the Oversight and Investigation
1531 Subcommittees. I am confident that this bill will take steps
1532 to prevent future illness and death due to unsafe food
1533 products, and I also want to thank the committee for its hard
1534 work to address my concerns relating to the treatment of
1535 carbon monoxide in food packaging and I am pleased to see a
1536 positive resolution of that issue.

1537 In addition, the committee has been very responsive to
1538 my concerns over the treatment of farms in this bill. I have
1539 maintained that we need to ensure coordination among all
1540 government agencies involved in food tracing and farm
1541 inspections and we don't want to create duplicative
1542 requirements on farmers. I worked closely with
1543 Representatives Butterfield, Space and others to come up with

1544 compromise language which will ensure that the food and
1545 facilities are exempt from this Act if they have already
1546 similar regulation under USDA. The committee has worked with
1547 us and I am glad to see that the Manager's Amendment today
1548 exempts USDA-related farms and facilities. I support strong
1549 oversight of food products and facilities and I am glad we
1550 are making sure that our government agencies are coordinating
1551 and avoiding duplicative regulations.

1552 So thank you again, Mr. Chairman, and I am confident
1553 this Food Safety Enhancement Act will take significant steps
1554 to ensure the safety of the food we eat.

1555 [The prepared statement of Mr. Braley follows:]

1556 ***** COMMITTEE INSERT *****

|
1557 The {Chairman.} Any other member wish to make an
1558 opening statement? If not, the Chair would like to recognize
1559 Mr. Dingell.

1560 Mr. {Dingell.} Mr. Chairman, I thank you for your
1561 courtesy.

1562 Today, Mr. Chairman, this committee is losing a very
1563 valuable servant. Today is the last day and the last day
1564 before retirement of our good friend, Ray Kent, who has
1565 served as deputy clerk of this committee since August of
1566 1979. Almost everybody on the committee and on the staff
1567 knows Ray and knows what a wonderful, valuable, faithful
1568 servant he has been to the public, to the public interest and
1569 to the members of the committee. We are going to miss him.
1570 He is going to be hard to replace, but on behalf of all of my
1571 colleagues here and on behalf of the committee, I would like
1572 to first thank Ray Kent for his extraordinary public service,
1573 both in terms of length and in terms of quality, but also to
1574 wish him well on behalf of the committee, to congratulate him
1575 and to hope that his retirement is long, successful and
1576 happy, and I thank you for that, Mr. Chairman.

1577 The {Chairman.} Thank you, Mr. Dingell. I want to join
1578 with you in paying tribute and thanking Ray Kent for his
1579 service, and I would like to ask the member to join with me

1580 in giving him a round of applause.

1581 We have completed the opening statements on H.R. 2749,
1582 the Food Safety Enhancement Act of 2009. I would like to ask
1583 unanimous consent that the bill be considered as read and
1584 open to amendment at any point, and without objection, that
1585 will be the order.

1586 [The information follows:]

1587 ***** INSERTS 1, 2 *****

|
1588 The {Chairman.} I have an amendment at the desk in the
1589 nature of a substitute, and without objection, this amendment
1590 will be considered as read and open to amendment at any point
1591 as well.

1592 [The amendment follows:]

1593 ***** INSERT 3 *****

|
1594 The {Chairman.} This amendment reflects the extensive
1595 bipartisan negotiations we have had on this bill over the
1596 last couple of weeks. It also makes several important
1597 changes to respond to the various concerns stakeholders have
1598 raised about the bill. I will just mention a few of the
1599 major changes.

1600 The language now makes clear that the bill applies to
1601 FDA-regulated farms and facilities. The amendment clarifies
1602 the ways in which the bill applies and does not apply to
1603 facilities, manufacturing alcoholic beverages. Those
1604 facilities must register but do not have to pay a fee. It
1605 also clarifies that the ways in which the Secretary of the
1606 Treasury currently regulates alcoholic beverages will not be
1607 impacted by this bill.

1608 In the area of preventive food safety plans, the
1609 amendment clarifies that FDA must permit the use of
1610 alternative preventive controls that are demonstrated to
1611 effectively address the hazards. The amendment clarifies
1612 that FDA has the authority to require finished-product
1613 testing at high-risk facilities if FDA finds that such
1614 testing or reporting would bring about useful risk
1615 information. Before doing so, FDA must complete two or more
1616 pilot projects and a feasibility study. The amendment makes

1617 some important clarifications related to FDA's access to
1618 records by describing the situations in which FDA may access
1619 such records remotely.

1620 Among other changes, the amendment also strengthens the
1621 provisions related to the surveillance for foodborne
1622 illnesses and includes a bipartisan compromise regarding
1623 civil monetary penalties. The amendment clarifies that
1624 importers must pay a \$500 annual registration fee just like
1625 the other registered facilities are required to do in the
1626 bill. The amendment responds to concerns we have heard about
1627 duplicative regulation of customs brokers by the U.S. Customs
1628 and Border Protection. Under the revised version, customers
1629 brokers would only be required to register with FDA but will
1630 not have to pay a fee nor will they be subject to any good
1631 importer practices.

1632 In response to the need for new inspectors, the
1633 amendment adds a new section that would require the Secretary
1634 to support and provide assistance to establish and maintain
1635 one more university-affiliated protection training institutes
1636 that conduct training related to food protection activities
1637 for federal, State, local, territorial and tribal officials.

1638 And finally, I want to acknowledge the work by Mr.
1639 Markey in addressing public health concerns about BPA in
1640 bottles and food packaging. FDA told the committee in

1641 legislative hearings that they are working to assess the
1642 risks of BPA. The amendment includes language by Mr. Markey
1643 that will require FDA to report back to the committee on
1644 their findings, and if they find a risk, take appropriate
1645 actions to address it.

1646 I would like to now call on members who seek recognition
1647 for purposes of offering any amendments. The gentleman from
1648 Nebraska, Mr. Terry.

1649 Mr. {Terry.} Thank you, Mr. Chairman. I have an
1650 amendment at the desk. It is Terry only, not 1, 2, 3 or 10.
1651 Waive the reading.

1652 [The amendment follows:]

1653 ***** INSERT 4 *****

|
1654 The {Chairman.} The clerk reports the amendment. The
1655 gentleman asks unanimous consent to waive the reading, and he
1656 is now recognized.

1657 Mr. {Terry.} Thank you, Mr. Chairman.

1658 I first want to apologize for my tardiness. This didn't
1659 come to my attention until just the last few days. But
1660 working with agribusiness in Nebraska and food manufacturers
1661 in Nebraska, I have learned that on page 12, line 9, where we
1662 exempt the storage of the grain or commodities on the farm
1663 from the FDA inspection, but what agribusiness typically
1664 does, if you a cereal maker or whatever you are buying the
1665 grain, you will contract for the grain that is on the bin on
1666 the farm for delivery at a certain time in the future. What
1667 happens and needs clarifying then because of that contract,
1668 the ownership technically by contract is changed from the
1669 farmer to whoever contracted for it for a future delivery and
1670 now under this bill when you read it as it is written, then
1671 whoever contracted that grain, even though it is still in the
1672 bin on the farm, they have to go through the licensing or
1673 permitting and \$500, and there is a lot of bins with grain
1674 stored on it in Nebraska. That could lead to hundreds of
1675 thousands and millions of dollars, and I think that was kind
1676 of an unintended consequence of the language so this fixes

1677 that problem.

1678 And with that, I would like to yield my time to the
1679 chairman to ask if I withdraw, could I count on being able to
1680 continue to work with this and see if we can fix what I
1681 perceive as more of a technical issue? I yield to the good
1682 chairman.

1683 The {Chairman.} Thank you very much for yielding to me.
1684 I appreciate your drawing this issue to our attention. I can
1685 see how it may seem unfair that because a farm is acting as a
1686 storage facility for raw agricultural commodities other than
1687 that from its own farm, it is no longer exempt from the
1688 registration requirements of the bill. But we have to look
1689 to see whether this is in effect having the farm act as a
1690 warehouse or silo. I appreciate your concerns and I
1691 certainly want to pledge to you that we will continue to talk
1692 to you and see if we can work out these issues.

1693 Mr. {Terry.} With that assurance that we can continue
1694 to talk and hopefully work this out, I will respectfully
1695 withdraw my amendment.

1696 The {Chairman.} The gentleman withdraws his amendment.
1697 Are there further amendments to the amendment in the nature
1698 of a substitute? Mr. Matheson.

1699 [The amendments follow:]

1700 ***** INSERT 5 *****

|
1701 The {Chairman.} Without objection, the Matheson
1702 amendment will be considered as read and the gentleman is
1703 recognized.

1704 Mr. {Matheson.} Thank you, Mr. Chairman. I will be
1705 brief.

1706 I mentioned in my opening statement this issue about
1707 trying to somehow get more information to consumers so they
1708 are aware that there may be lead in the glazing on
1709 ceramicware. There is a problem that first manifested, that
1710 I learned about in my district of a mother whose baby was
1711 ill. They discovered it was lead poisoning. It was because
1712 she was eating food off of a plate that she used in her
1713 microwave and then through nursing the baby, the baby was
1714 exposed to lead. This is a more complicated issue than I
1715 originally thought.

1716 I will withdraw this amendment in the interest of trying
1717 to move towards where we can build consensus on how to
1718 perhaps address this issue, and Mr. Chairman, with that I
1719 will just yield back my time or yield to you. I hope we can
1720 find some way to get around this issue.

1721 The {Chairman.} I thank you for bringing up the
1722 amendment and for withdrawing it. I want to work with you on
1723 it. You have raised a serious matter.

1724 Mr. {Matheson.} I yield back.

1725 The {Chairman.} The amendment is withdrawn. Further
1726 amendments?

1727 Mr. {Dingell.} Mr. Chairman.

1728 The {Chairman.} Yes, Mr. Dingell.

1729 Mr. {Dingell.} I seek recognition to strike the
1730 requisite number of words.

1731 The {Chairman.} The gentleman is recognized.

1732 Mr. {Dingell.} This is just really to engage in, and I
1733 thank you, Mr. Chairman, to engage in a colloquy. The
1734 gentleman from Utah has been more than gracious on this
1735 matter. This is not a new problem and he is absolutely right
1736 in catching it. It has been around here since I had hair.
1737 It has been a terrible problem, and I am going to suggest to
1738 the gentleman that I would like to work with him on it, and I
1739 am also going to suggest to him that we probably ought to
1740 begin by a letter to both Food and Drug and CPSC asking their
1741 technical assistance on how this matter should be addressed.

1742 Very frankly, the problem that the gentleman wisely
1743 points to is a serious one and it relates to leaching of lead
1744 from ceramics into food products. I am not quite sure how
1745 Food and Drug addresses this, but if they can't, maybe CPSC
1746 can. So I want to thank the gentleman for his kindness in
1747 withdrawing and I want him to know I intend to work with him,

1748 and I will be in touch with him about necessary
1749 communications to the two agencies.

1750 Mr. {Matheson.} Thank you.

1751 Mr. {Dingell.} And I thank you and yield back the
1752 balance of my time.

1753 The {Chairman.} Further amendments to the legislation?

1754 Ms. Schakowsky.

1755 Ms. {Schakowsky.} Yes, Mr. Chairman, I have an
1756 amendment at the desk.

1757 [The amendment follows:]

1758 ***** INSERT 6 *****

|
1759 The {Chairman.} Without objection, the amendment will
1760 be considered as read and the gentlelady is recognized to
1761 explain her amendment.

1762 Ms. {Schakowsky.} This amendment would require the FDA
1763 to end the non-therapeutic use of antibiotics in livestock
1764 that are contributing to increasing prevalence of antibiotic-
1765 resistant diseases. Foodborne illnesses are now becoming
1766 more difficult to treat due to the increase in antibiotic-
1767 resistant strains and the decreased effectiveness of
1768 antibiotics routinely used as a first-line defense. Two
1769 million Americans acquire bacterial infections during their
1770 hospital stay every year and 70 percent of their infections
1771 will be resistant to the drugs commonly used to treat them.
1772 In fact, resistant bacterial infections increase health care
1773 costs by \$4 billion to \$5 billion each year.

1774 A contributing factor to this rise in antibiotic
1775 resistance is the routine feeding of important human
1776 antibiotics like penicillin, tetracycline and ciprofloxacin
1777 to food animals. Seven classes of antibiotics certified by
1778 the Food and Drug Administration as highly or critically
1779 important in human medicine are used in agriculture as animal
1780 feed additives. Many factory farms give these antibiotics in
1781 the daily feeds to cows, chickens and pigs, not to treat

1782 disease but to promote growth, improve feed efficiency and to
1783 compensate for overcrowding and bad sanitation. These
1784 classes of antibiotics are among the most critically
1785 important in our arsenal of defense against potentially fatal
1786 human diseases. Approximately 70 percent of antibiotics and
1787 related drugs produced in the United States are given to
1788 cattle, pigs and chickens to promote growth and compensate
1789 for crowded, unsanitary, stressful conditions. This kind of
1790 habitual non-therapeutic use of antibiotics has been
1791 conclusively linked to a growing number of incidents of
1792 antimicrobial-resistant infections in humans and may be
1793 contaminating groundwater with resistant bacteria in rural
1794 areas.

1795 University of Illinois researchers found in 2001 and
1796 2007 that routine tetracycline use at hog farms was
1797 contaminating groundwater with tetracycline-resistant
1798 bacteria which through gene transfer were sharing resistance
1799 with other bacteria. The researchers concluded,
1800 ``Groundwater may be a potential source of antibiotic
1801 resistance in the food chain.'' The Illinois Department of
1802 Health calculates that the incidence of one type of resistant
1803 bacteria, methicillin-resistant *Staphylococcus aureus*, or
1804 MRSA, has risen nearly 57 percent to over 10,000 cases in
1805 just 4 years.

1806 We should be addressing food safety from farm to fork
1807 including practices in food animal production like routine
1808 antibiotic use that can make our food less safe to eat.
1809 Reducing antibiotic resistance could save billions of dollars
1810 each year in health care costs.

1811 Mr. Chairman, I will be withdrawing my amendment but I
1812 hope this committee will examine this very important issue in
1813 the near future. I yield back.

1814 The {Chairman.} If the gentlelady will yield to me, I
1815 share your concern and we are not able to work out this issue
1816 in this bill because it is contentious and we can't reach a
1817 consensus on it before this markup, but I want to emphasize,
1818 however, that addressing antibiotic resistance remains a
1819 priority for me. Antibiotic resistance poses a real and
1820 growing threat to our Nation's ability to fight life-
1821 threatening diseases and I want to tell you that we will
1822 continue to work toward a solution in this committee.

1823 Ms. {Schakowsky.} I thank you, Mr. Chairman. I yield
1824 back.

1825 The {Chairman.} Are there further amendments to the
1826 legislation? Yes, Mr. Space.

1827 Mr. {Space.} Mr. Chairman, I have an amendment at the
1828 desk.

1829 [The amendment follows:]

1830 ***** INSERT 7 *****

|
1831 The {Chairman.} Without objection, the amendment will
1832 be considered as read and the gentleman is recognized.

1833 Mr. {Space.} Thank you, Mr. Chairman, and I would like
1834 to first state that I do plan to withdraw this amendment.
1835 However, I believe it is important to raise an issue that
1836 concerns many of the farmers that I represent, and that is
1837 the safety of their proprietary information. I would again
1838 reiterate my thanks and commendation for the work of the
1839 authors of this legislation and for working to address the
1840 concerns of the agricultural industry in the draft. I
1841 understand it is not the intent of the authors to make the
1842 proprietary information of America's farmers widely available
1843 to the public under this legislation and I am hopeful that
1844 the authors of the legislation will be willing to work with
1845 me to place safeguards in the legislation to ensure that the
1846 information is not made available widespread to the public.
1847 I yield back.

1848 The {Chairman.} If the gentleman would permit, I will
1849 be certainly be pleased to talk to you further about it. I
1850 think the bill went a long way to deal with this issue but we
1851 should be open to further discussions.

1852 Mr. {Space.} Thank you, Mr. Chairman.

1853 The {Chairman.} The gentleman withdraws his amendment.

1854 Are there further amendments to the legislation? If not, the
1855 vote now comes on the amendment in the nature of a
1856 substitute. All those in favor of the amendment in the
1857 nature of a substitute, say aye. Opposed, no. The ayes have
1858 it and the amendment is agreed to.

1859 Now the vote will come on H.R. 2749 as forwarded by the
1860 subcommittee as amended by the amendment in the nature of a
1861 substitute. All those in favor of reporting out H.R. 2749 as
1862 amended, please say aye. Opposed, no. The ayes have it and
1863 the motion is agreed. The bill is reported out of committee.

1864 That concludes our business. I thank the members for
1865 their participation and their willingness to work together.
1866 We stand adjourned.

1867 [Whereupon, at 11:55 a.m., the subcommittee was
1868 adjourned.]