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Statement of Rep. Henry A. Waxman Chairman, Committee on Energy and Commerce Discussion Draft of the "Food Safety Enhancement Act of 2009" Subcommittee on Health June 3, 2009

Today we begin the process of passing critically important legislation designed to revamp our nation's food safety system: the Food Safety Enhancement Act of 2009. This hearing marks a key milestone.

Over the past few years, a series of food borne disease outbreaks — in spinach, peanuts, and peppers, just to name a few — have laid bare some major gaps in our antiquated food safety laws. Oversight work by GAO and by this Committee has helped us understand where we need to focus our efforts to bring our food safety laws into the 21st century.

The draft legislation that is the subject of today's hearing is based on the FDA Globalization Act of 2009 introduced by Chairman Emeritus Dingell, Chairman Pallone, and Chairman Stupak. I commend them for their work on that bill and their continued efforts in shaping this new bill.

I also want to recognize the assistance we have received from the Obama Administration. We've worked closely with FDA to identify problems with the current food safety law and to find workable solutions. We will not be passing legislation that sets up the Agency to fail. The bill requires that the Agency sets tough standards. But we have given them the flexibility to prioritize and address the most important risks first.

The draft also incorporates helpful suggestions from Ranking Members Barton and Deal, and Representative Shimkus. I believe we can reach a bipartisan agreement and look forward to continuing to work with the other members of this Committee.

In working with FDA on this legislation, one thing was abundantly clear: President Obama's FDA is absolutely committed to overhauling FDA's food safety program. I think we will all see that commitment today when we hear from Commissioner Hamburg.

The recent food outbreaks have exposed glaring holes in FDA's basic food safety authorities. FDA does not have routine access to any records kept by food manufacturers. FDA cannot require companies to conduct a recall of unsafe foods — the Agency can only ask, and hope the company complies. FDA also lacks basic modern enforcement tools, like administrative civil monetary penalties. The Food Safety Enhancement Act will give FDA these, and other, critical authorities.

One of the most important changes that will occur under this bill is a focus on prevention. The legislation does not anticipate that FDA alone will protect us from unsafe food. The hallmark of any effective food safety bill must be a shared responsibility for food safety oversight between FDA and industry.

The Food Safety Enhancement Act strikes the right balance in this shared responsibility.

The bill will require manufacturers to implement preventive systems to stop outbreaks before they occur — and will give FDA the tools it needs to hold them accountable if they fail. Under the bill, FDA will also have clear authority to issue and require manufacturers to meet strong, enforceable performance standards to ensure the safety of various types of food.

I commend many of those in industry for recognizing the importance of this prevention model and coming to the table to support it.

Let me turn briefly to one of the more contentious issues in the bill: the registration fees. I wish we did not have to resort to industry fees to supplement funding for FDA's work. However, when it comes to FDA's food program, the shortfall in resources is extreme. The FDA's own Science Board told us that the FDA is so starved of resources that American lives are at risk. We cannot realistically expect appropriations alone to provide sufficient resources to close the gap.

The recent outbreaks have also taken a major toll on the food industry. In the recent peanut outbreak, Kellogg's alone lost \$70 million. Faced with such a dire situation, I think it is reasonable to ask the food industry to chip in. A robust food safety oversight system will provide a great benefit to industry by preventing future outbreaks and rebuilding consumer confidence.

Let me be clear: we are not asking industry to cover the entire cost of the bill — or any single part of the bill, like the cost of inspections. The bill establishes a set fee of \$1,000 per year per facility. FDA is prohibited from increasing that fee in future years, except to cover the cost of inflation.

The bill simply asks industry to chip in its fair share.

I also want to address another concern I have heard: the presence of FDA on farms. FDA has always had authority over foods on farms. FDA has generally relied on state and local authorities for food safety oversight on farms, because they have a strong on-farm presence.

However, the large number of recent outbreaks that have originated from food contamination on farms has shown us that more oversight is needed. FDA must develop national science-based safety standards, to reduce incidents of on-farm food contamination.

I am confident that farmers have nothing to fear from this bill. The bill calls for FDA to set its standards through regulation, which means that FDA will go through a public notice and comment process. Thus, stakeholders will be able to work with FDA to ensure that the best possible standards and practices are adopted.

Our Committee is in the middle of a busy three month period. Last month we passed comprehensive energy and climate change legislation. Soon we will take up health care reform. But food safety is so critical that I've carved out time to pass this legislation. Over the next few weeks, I intend to work with all our Committee members, Democratic and Republican; with the FDA; and with affected industries, to achieve consensus on a food safety bill that we can pass out of Committee. We can't afford to wait any longer.

I look forward to hearing from our witnesses today.