

**Written Testimony of Pamela G. Bailey
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before

**House Energy and Commerce Subcommittee on Health
“Food Safety Enhancement Act of 2009 Discussion Draft Legislation”**

June 3, 2009

Good morning. My name is Pamela Bailey and I am President and CEO of the Grocery Manufacturers Association, which represents more than 300 food, beverage and consumer product companies.

Food safety and consumer confidence are top priorities for the food and beverage industry. Americans enjoy one of the safest food supplies in the world, but food and beverage companies recognize that steps can and must be taken make our food supplies even safer. We applaud Chairman Waxman, Chairman Emeritus Dingell, Congressman Stupak and Congressman Pallone for developing the discussion draft of the Food Safety Enhancement Act of 2009, which will provide the U.S. Food and Drug Administration (FDA) with the resources and authorities it needs to help make prevention the foundation of our food safety approach and bolster consumer confidence in the safety and security of the food supply. We also applaud Congresswoman DeGette, Congressman Costa, Congressman Putnam and Congresswoman DeLauro for their leadership on this important issue.

There are two important elements to our food safety system. First, because consumer confidence is the foundation of everything we do, manufacturers take food safety very seriously and invest their reputations and resources in producing safe products. Ultimately, the food industry is responsible for the safety of its products. We take that responsibility very seriously and want our consumers and policymakers to know that we are vigilant when it comes to product safety. To address the challenges posed by a complex and global food supply, GMA and its member companies have expanded their

efforts to continually improve the safety of food and to respond quickly to address contaminated food in the marketplace.

Second, strong government oversight is a critical and necessary part of our nation's food safety net, and we look forward to working with the Committee to quickly enact food safety reforms that will restore consumer confidence and will continually improve the safety of our food supply.

We strongly support in concept many of the proposals in the draft, including those that require food companies to have a food safety plan; proposals for FDA to set safety standards for fruit and vegetables; proposals to improve the safety of imported food and food ingredients; a risk-based approach to inspection that recognizes the important role played by states and competent foreign authorities; and proposals to give FDA strong enforcement powers to deal with companies that have violated food safety laws, including mandatory recall authority when needed. Together, these reforms will prevent contamination, raise the bar for the entire food industry and deter bad actors. In addition, we have also offered important modifications to the draft to committee staff and will continue to work with them on a bipartisan basis to address those provisions.

In particular, we believe that food safety plans are the cornerstone of prevention, and that they will help ensure that safety is "built in" from the very beginning. We strongly support proposals to require all food manufacturers to conduct a hazard analysis to identify potential sources of contamination, identify appropriate preventive controls, document preventive controls in a food safety plan, monitor the effectiveness of preventive controls, take corrective actions when warranted, and make records related to a food safety plan available to FDA during an inspection.

The principles of food safety hazard analysis and prevention are well established in guidance documents, including those issued by Codex, the International Organization for Standardization, and the National Advisory Committee on Microbiological Criteria for Foods, and we look forward to working with the Committee to align the discussion

draft with these nationally and internationally-recognized standards, and to ensure that every food manufacturer has a food safety system based on a scientifically and technically solid foundation. The role of FDA should be to ensure that a facility's hazard analysis is scientifically and technically sound and that a facility's preventive controls are being implemented. FDA should be given the authority to modify the requirements of a food safety plan to exempt some facilities, such as warehouses where the food itself is not exposed to the environment.

We look forward to continuing to work with the Committee and staff to address your concerns about traceability. We recognize that Section 107 of the discussion draft instructs FDA to assess the costs, benefits and feasibility of traceability technologies and gives FDA the power to exempt foods when FDA determines that a tracing system for such food is not necessary to protect public health. Furthermore, we recognize that the discussion draft instructs FDA to conduct pilot projects and public meetings. We believe these studies, public meetings, and pilot projects should be completed *before* FDA decides whether and how to assign the food industry the responsibility for tracking a food product and which coding and identification systems may be best suited for this task. Because many raw ingredients are commingled and blended to smooth out natural farm-to-farm variability, traceability will not always add value as we trace the origin of raw ingredients back to the farm, as the discussion draft implies. As you anticipate in Section 107(c)(4)(B), the cost and feasibility of requiring every manufacturer to maintain the full pedigree of every ingredient in every food may outweigh the benefits.

To address concerns raised during the peanut product recall, we propose two important improvements while FDA and the food industry work together to identify additional improvements to our traceability systems. To ensure that food manufacturers know their ingredient suppliers, we suggest that the Committee explore whether to propose that intermediate distributors and brokers include in the labeling of their bulk ingredients the identity of the ingredient supplier. Distributors and brokers can create "blind spots" in the value chain when they fail to pass the identity of an ingredient supplier to their customers. A simple change in labeling rules for bulk ingredients could

eliminate these “blind spots” by identifying ingredient suppliers on the label or sending identifying information in a form that accompanies the product, whichever is most practical. In addition, enforcement of the current “one step forward, one step back” systems created by the Bioterrorism Act can be improved in two ways: one, by working with FDA to better communicate industry responsibilities under the Act; and two, by making traceability records available during a routine inspection.

We also look forward to working with the Committee to give FDA stronger enforcement powers, including the power to order a recall when a company has been given the opportunity and has declined or refused to recall food that poses the risk of serious adverse health consequences. We believe that certain enforcement provisions of the discussion draft, such as mandatory recall and suspension of registration, should only be exercised by senior agency officials, should only be exercised when there is a risk of serious adverse health consequences, and that companies should be afforded certain due process protections, such as an administrative hearing.

As we saw during the recent recalls of tomatoes, jalapeno peppers, spinach, and other food products, recalls can have devastating financial impacts. FDA, CDC and others must be given new tools and resources to understand the source of contamination before taking action, and we applaud the Committee for expanding our existing surveillance systems and research to better determine the sources of contamination. We believe that new powers created in the discussion draft can be improved to ensure that enforcement actions, such as mandatory recalls and suspension of registration, reflect the best science and agency judgment.

We look forward to working with the Committee to ensure that the infant formula provisions of the discussion draft meet the nutritional needs of infants. As you know, infant formula is already the nation's most highly regulated food product.

We strongly support efforts to provide FDA with additional resources. In 2006, GMA helped create the Alliance for a Stronger FDA, and we have worked with other

industry and consumer groups to seek unprecedented increases in food safety spending. If Congress enacts the FY 2010 request proposed by FDA and the Obama Administration, FDA food safety spending will have increased by nearly 80 percent since FY 2006.

More funding is needed, and we look forward to working with the Committee to identify an appropriate role for industry. Our industry is significantly increasing our investments in food safety and is prepared to make additional investments to continually improve the safety of our food supply. In particular, we are expanding an electronic recall portal that facilitates rapid flow of information between manufacturers and retailers during product recalls, and we are expanding efforts to train food safety scientists and managers globally to implement new safety systems. Our industry is also prepared to make a substantial investment to comply with many of the new mandates included in the discussion draft. However, we are concerned about provisions that would increase the cost of food without improving the safety of our food supplies, such as identifying the country-of-origin for all ingredients.

We are not opposed to all fees, and I am confident that the Committee can reach a bipartisan consensus on the agency's resource needs and an appropriate role for industry. We are concerned about the size and purpose of the significant new fees proposed in the discussion draft in spite of historic increases in federal food safety spending. If enacted, the fees proposed would provide roughly 40 percent of FDA food-related spending – an unprecedented increase in industry financing of a public health agency that has been financed through general revenue for more than a century. As FDA's science advisory board has noted, a combination of fees and inspection mandates could drain critically needed resources from science and standard-setting functions. In particular, we are concerned that a broadly applied fee to finance basic FDA functions, including inspections and enforcement, creates an inherent conflict of interest that will erode, rather than improve, consumer confidence in our food supplies. Our industry is ultimately responsible for the safety of its products, but securing the safety of the food supply is a government function which should be largely financed with government resources. As

legendary consumer advocate Carol Tucker Foreman has said, food safety “inspectors should protect public health the same way police officers protect public safety.”

Let me close by saying that the food and beverage industry is committed to working with you to quickly enact food safety legislation which makes the prevention of contamination the foundation of our food safety system. We look forward to working with the Committee to enact food safety legislation that boosts consumer confidence and addresses the challenges posed by today’s 21st century food supply.

Mr. Chairman, I would like to reiterate that we are not opposed to all fees, and we have a historic opportunity to ensure the FDA has the appropriate resources and authorities it needs to provide Americans with a safe and secure food supply.

Thank you.