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Opening Statement of Rep. Henry A. Waxman Chairman, Committee on Energy and Commerce Hearing on “The Role and Performance of FDA in Ensuring Food Safety” Subcommittee on Oversight and Investigations May 6, 2010

Thank you, Chairman Stupak. I want to commend you for calling this important hearing to examine the role of FDA in protecting the nation’s food supply.

Today, we will hear from the Government Accountability Office and Health and Human Services Office of Inspector General about two important reports they released assessing FDA’s performance. We will also hear FDA’s perspective on its performance and the statutory tools that it requires to effectively protect the safety of food in the United States.

These two reports tell a story of an agency that is trying to keep the food supply safe, but needs new authorities, more effective tools, and increased funding to meet its obligation.

In GAO’s report on the safety of imported food, it found that FDA needs to coordinate its enforcement efforts better with other agencies. For example, FDA and Customs and Border Protection should be able to work together to assign a unique identification number to firms that import our food. That is not currently the case. On average, each importing firm that ships food into this country has three identifiers instead of one, and GAO found one firm that had 75 different identifiers. These multiple identifiers may make it more difficult for FDA to track foods that were imported by firms that have violated FDA requirements in the past.

GAO also questioned whether FDA’s current penalties are sufficient to keep an importer from violating FDA requirements. One problem is that FDA relies on a monetary bond that the importer forfeits if it releases the goods prior to FDA approval. But GAO found that the required bond amount is too small to create an effective deterrent, and some importing firms just view it as a cost of doing business.

The OIG report focused on FDA’s inspections of domestic food facilities. The Inspector General found that FDA inspected only 24% of food facilities each year between 2004 and 2008.

The number of FDA inspections declined during that time, even as the number of facilities increased.

Over the course of five years, FDA failed to inspect 56% of facilities that were subject to its authority and only inspected an additional 14% once.

I am disturbed by the Inspector General's observation that five food facilities refused to provide FDA inspectors with records when requested. Inspectors recommended that FDA take regulatory action against all five food facilities because of their unsafe and unsanitary conditions. Yet agency officials could not access company records that included lists of customers, consumer complaints, and summaries of sanitation procedures.

We heard a similar story last year. The Subcommittee held two hearings on a *Salmonella* outbreak in peanut butter that sickened over 700 people. Our investigation revealed that executives at the Peanut Corporation of America knew their products were testing positive for *Salmonella*, but they chose to ship the tainted food anyway.

State officials acting on behalf of FDA inspected the Peanut Corporation plant prior to the outbreak and asked to examine their corporate records. Company officials refused to turn them over. In that case, FDA only received access to the records after the outbreak occurred and hundreds of people were seriously ill.

Many of the concerns raised in these two reports and in the wake of the *Salmonella* outbreak are addressed by the Food Safety Enhancement Act of 2009, which the House passed. The legislation contains critical fixes like providing routine access to corporate records, increased civil penalties against companies that violate the law, and registration fees to help fund many important food safety initiatives.

I'm pleased that we are holding this important oversight hearing today, and I hope we will see comprehensive food safety legislation signed into law this year.