SUBCOMMITTEE ON REGULATIONS AND HEALTHCARE HEARING ON IMPACT OF FOOD RECALLS ON SMALL BUSINESSES

HEARING

BEFORE THE

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SUBCOMMITTEE ON REGULATIONS AND HEALTHCARE HEARING ON

IMPACT OF FOOD RECALLS ON SMALL BUSINESSES

Wednesday, March 11, 2009

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 2360 Rayburn House Office Building, Hon. Kathy Dahlkemper [chairwoman of the Subcommittee] presiding.

Present: Representatives Dahlkemper, Westmoreland, King, Buchanan, and Thompson.

Also Present: Representative Graves.

Chairwoman DAHLKEMPER. This hearing of the impact of food recalls on small businesses is now called to order. From the dinner table to the grocery store, most Americans take the safety of their food for granted. But what happens when that food is jeopardized?

Recent outbreaks of Salmonella and E. Coli have shown that, as much as we would like to believe otherwise, we cannot always assume the food our families are eating is safe. This past January, a Salmonella outbreak in peanut butter tainted a wide range of products, from crackers to candy bars. The epidemic killed 9 people, sickened hundreds, and kicked off one of the largest food recalls in U.S. history.

The men and women on the front lines getting products off the shelves and educating consumers about which foods are safe to eat were small business owners. They did this not because they had to--after all, they weren't the ones who created the problem--but because they felt the responsibility towards their customers. But for all the good that these entrepreneurs did for customers, there is a very real economic side to this stepping in to do the right thing.

Now that the Peanut Corporation of America has declared bankruptcy, small businesses are the ones left holding the bag. In today's hearing, we will examine the effects of a food safety crisis on entrepreneurs. More importantly, we will look for solutions moving forward.

For small firms, managing a food safety crisis is an enormous financial burden. They not only have the responsibility of tracking down and destroying tainted products, but they often have to dispatch costly damage control campaigns; whereas, large firms can often afford to retain public relations firms. Most entrepreneurs

cannot. This can be especially damaging considering the stigma attached to tainted products.

Even foods not directly affected have been stigmatized. In the case of the Salmonella outbreak, jarred peanut butter sales plummeted 22 percent. Peanut butter cookies also stayed on the shelves, with purchases own 14.6 percent. These drop-offs have been devastating for the broad range of small businesses that sell peanut butter products, from 7-11 franchises to boutique bakeries.

Food safety crises are particularly hard on small businesses. Because many of these firms operate on tight profit margins, generally between 2 and 5 percent, large recalls can mean bankruptcy. This is especially true for small firms that cannot afford recall insurance.

Even companies that do have these policies are struggling to recoup their costs. Many insurance providers are now refusing to fill peanut butter-related claims, arguing that they are the PCA's responsibility.

Perhaps the most frustrating aspect of the Salmonella epidemic is the fact that it could have been avoided. To begin, the regulatory process is fragmented with different foodstuffs falling under different agency jurisdictions. These divisions prevent authority from properly responding to outbreaks. On top of that, agencies like the FDA are often understaffed and overwhelmed.

In response to the spotty inspection system, many large businesses have taken food safety into their own hands. In fact, some large firms have gone so far as to hire their own private inspectors. Yet, this is not likely the best response to this issue.

From the fields to the processing plant to the grocery store to the dinner table, small businesses are an integral part of our food supply chain. But recent recalls have made us question the safety of our food. And they have not only jeopardized the health of our families. They have put an important part of the small business community at risk.

I would like to thank all of today's witnesses in advance for their testimony and, with that, yield to the Ranking Member for his opening statement.

Mr. WESTMORELAND. Thank you, Madam Chairwoman, for holding this hearing today and for your comments. I would also like to thank all of the witnesses for their participation today in coming up to D.C. to inform us of some of the situations and some of the solutions that our government is looking at.

I would also like to thank you for having such a great topic as our first hearing. And so I know that we will have many more that are going to give us an opportunity to work together on some of the problems that small business faces today in our country.

We are here today to discuss the impact food recalls have on small businesses, but I want to start off by saying how sorry I am to those who are harmed by the recent string of food contamination. It is a frightening situation. And I can't imagine what it would have been like if it had happened to me or someone, one of my loved ones.

Unfortunately, the origin of the contaminated peanuts happened in my home State. Madam Chairwoman, I am here to tell you today that I am very disappointed that one bad actor could have

caused such a devastating effect on so many others, but I am also here to tell you that we have some of the greatest, best, most dedicated farmers in the United States, if not the world. And so it was certainly not the intention of any crop that they had grown to get into the situation that we are in today.

The Peanut Corporation of America's lack of integrity has punished small businesses in Georgia and nationwide. Georgia's peanut industry has taken a huge blow. And farmers and small businesses have felt the serious economic impact of this recall.

Let me remind you farmers do business with other small businesses. And because of this, I believe we have yet to see the worst of the food recall.

In these tough economic times, our small businesses cannot afford the domino effect that occurred because of bad players or because of burdensome regulation. I hope we can all learn from this situation and maybe reach some solutions to the problems we face.

The safety of our nation's food supply is a pressing issue, but it is important to address how government agencies work to assist those indirectly affected by food recalls. Government's bureaucratic web, combined with the lack of resources, can often contribute to the regulatory burdens working against small businesses. And, as I have experienced in my 5 years in Congress, sometimes this is a knee-jerk reaction group up here, rather than proactive.

I do not agree that placing more regulatory Band-Aids on a wound is the right answer. Rather, having a reactive government that should rely on science-based information and utilize the resources that we have for prevention.

If Congress decides to authorize more power and money to our agencies, I hope to see the measures that streamline policies and encourage agencies to work closely with the state and local entities when recalls occur.

The FDA and the USDA have an obligation to the public to address a food recall situation, reveal the source, and inform the public as quickly and as accurately as possible. I am looking forward to examining the ways that USDA and the FDA can assist small businesses who are adversely affected by these food recalls.

Our country has been a worldwide leader in food safety measures imposed by a strict regulatory structure leading to the safest food supply in the world. However, accidents do occur. And our job on this Committee is to examine how these situations affect our nation's small businesses and the public.

I hope this hearing provides insight on the serious impact food recalls have on some of these small businesses and especially the farmers that grow the product.

This Congress faces a great challenge as it tries to help small businesses survive in this recession. The timing of this recall could have not been worse, but I am hopeful that the work of this Subcommittee will do its part in answering this challenge. I welcome this distinguished panel and thank you all for your willingness to testify.

With that, Madam Chair, I yield back.

Chairwoman DAHLKEMPER. Thank you, Mr. Westmoreland.

We will now move to the testimony from our first panel of witnesses. Witnesses will have 5 minutes to deliver their prepared

statements. The timer begins when the green light is illuminated. When one minute of time remains, the light will turn yellow. And the red light will come on when your time is up.

Our first witness is Dr. Ken Petersen. Dr. Petersen is the Assistant Administrator of the Office of Field Operations for the Food Safety and Inspection Service of the Department of Agriculture. FSIS is the public health agency within USDA responsible for ensuring that the nation's commercial supply of meet, poultry, and egg products are safe.

Thank you, Dr. Petersen.

STATEMENT OF KEN PETERSEN

Mr. PETERSEN. Good morning, Madam Chairwoman and members of the Committee. I want to thank you for inviting me to appear before you today to address the Food Safety and Inspection Service's recall procedures and outreach to small businesses.

I am Dr. Kenneth Petersen, Assistant Administrator for the Office of Field Operations with the Food Safety and Inspection Service, U.S. Department of Agriculture.

FSIS is the public health regulatory agency within the USDA. We are responsible for ensuring that the nation's commercial supply of meat, poultry, and processed egg products is safe, secure, wholesome, accurately labeled and packaged, whether the products are domestic or imported.

Industry is responsible for the production of safe food while FSIS continuously inspects each livestock and poultry carcass at slaughter and visits processing establishments at least once per shift per day.

Regarding recalls, the purpose of a recall is to remove meat and poultry from commerce as quickly as possible when FSIS has reason to believe it is adulterated or misbranded. Recalls are voluntary actions taken by industry at the request of the Agency. This is a rapid and efficient way to determine where affected product has been distributed because companies are familiar with who their customers are and can notify them much more quickly than the Federal government could. Should a firm deny FSIS' request for voluntary recall, the Agency has the authority to detain and, if necessary, seize product in commerce.

FSIS may become aware of adulterated or misbranded product in commerce in several ways. We may be alerted to a potential recall situation by the company that manufactures or distributes the product, by test results from our own sampling programs, observations or information gathered by our inspectors, consumer complaints, or epidemiological or laboratory data submitted by State or local departments, other USDA or Federal agencies.

FSIS is able to convene a recall committee in a matter of hours 24/7. After recall occurs, FSIS conducts effectiveness checks to ensure that the consignees have received notice of the recall and are making appropriate efforts to retrieve and destroy the product or return it to the recalling firm.

This past August 18th, 2008, in order to improve the effectiveness of a recall, FSIS began making available to the public a list of retail customers that are likely to have received products subject to a recall. We believe this information helps consumers lower their

risk of foodborne illness by providing more information that may assist them in identifying recalled products.

FSIS' food safety system is preventative. It is our goal to eliminate the need for recalls altogether. One way we do this is through education and outreach. By educating producers and manufacturers of FSIS-regulated products, we continually seek to protect public health and, accordingly, the need for recalls at all.

Some of the most important groups that FSIS works with are the small and very small plants. The businesses that fall into this category have a particular need for current and frequent food safety information because they often lack the resources to monitor food safety developments from the Agency, academia, or trade associations. To address the challenges that these companies face and to further the Agency goals of minimizing the need for recalls, FSIS has initiated several efforts to work with small and very small plants.

We have an action plan to deliver outreach assistance to promote food safety and food defense systems for small and very small plants. Last year, as part of that plan, FSIS established a new program office, the Office of Outreach, Employee Education and Training, to provide comprehensive one-stop assistance to owners and operators of small and very small plants.

This office provides consolidated access, resources, and technical support for small and very small plants. Over the past two years, FSIS has held a series of regulatory education sessions around the country to deliver various topics of interest to small business. We intend to continue this successful effort.

In January 2009, FSIS began holding a series of "how to" workshops to provide practical tools and methods for the proper application of and compliance with various regulatory requirements. These workshops are designed so that the small and very small plant operators can walk away from the workshop with a plan that they can immediately implement, such as a recall plan.

FSIS has a variety of resources available through the FSIS Web site, including podcasts and access to educational Web seminars. It also includes access to FSIS compliance guidance that helps small and very small plants apply public health regulations in their working environment.

In conclusion, FSIS' system for achieving food safety is strong. We continually seek to protect public health. And we take this responsibility very seriously. We focus on preventing recalls at the plant level through inspection and outreach to producers and manufacturers of FSIS-regulated product. FSIS will work to ensure that small and very small businesses continue to meet their food safety requirements.

Thank you for this opportunity to appear before you today. I am happy to take any questions at the appropriate time.[The prepared statement of Ken Petersen is included in the appendix at page 40.]

Chairwoman DAHLKEMPER. Thank you, Dr. Petersen.

We would like now to hear from Dr. Steven Solomon from the FDA. Dr. Steven Solomon is the Deputy Associate Commissioner for Compliance Policy at the Food and Drug Administration.

The FDA regulates almost 124,000 business establishments that annually produce, warehouse, import, and transport $1 trillion

worth of consumer goods. Among other things, the FDA is responsible for protecting the public health by assuring the safety of our nation's food supply.

Thank you, Dr. Solomon.

STATEMENT OF STEVEN SOLOMON

Mr. SOLOMON. Good morning, Madam Chairman and members of the Subcommittee. I am Dr. Steven Solomon, Assistant Commissioner for Compliance Policy in the Office of Regulatory Affairs at the U.S. Food and Drug Administration, which is part of the Department of Health and Human Services.

We appreciate the opportunity to provide you with information about how we manage the recall of FDA-regulated products that can harm consumers, including the ongoing recalls related to peanut products made by the Peanut Corporation of America, or PCA. As you know, these products have been the source of a foodborne illness outbreak caused by Salmonella Typhimurium, which as of March 8th has infected 683 people in 46 states and may have contributed to 9 deaths.

One of the key messages that FDA has been emphasizing over the last few years is that all food companies, both large and small, should establish strong food safety programs. It is critically important for these companies to understand the supply chain for the ingredients they use in their products and to have accurate information about the safety and quality of their ingredients. In a complex, global market, this may require close interaction with many critical components throughout the food supply chain, including growers, manufacturers, distributors, retailers, food service providers, and importers.

When a marketed product presents a public health hazard, promptly recalling that product is the most effective means of protecting the public. For food products, with the exception of infant formula, FDA does not have the authority to order the recall of a food or dietary supplement. In most cases, companies recall their products voluntarily. FDA believes that the prompt removal of volatile products from the marketplace is in the industry's and the public's best interest.

As illustrated by the recent events, a recall initiated by one company can sometimes have repercussions for a very large number of businesses that receive those products or ingredients.

In most cases, the recalling firm and FDA work collaboratively to develop a recall strategy. Early communication helps to ensure that violative products are removed from the market quickly, which can help to minimize the adverse impact on affected businesses. It also allows FDA to determine the steps needed to address specific circumstances, which may include making certain that all products that need to be recalled are, in fact, recalled; locating the product subject to the recall; identifying the cause of the problem; and checking similar firms or products to determine if the problem is more widespread. Rest assured that FDA is sensitive to the impact on small businesses caught in a recall scenario.

FDA is committed to working recalling firms to effectively and promptly remove volatile products from the marketplace. And we have a variety of mechanisms in place to achieve this goal. For ex-

ample, FDA has field recall coordinators located throughout the country who act as the point of contact for recalling firms and works closely with them throughout the process.

Recall coordinators help firms develop an effective recall strategy, review a firm's letter to customers affected by the recall, and coordinate the destruction, reconditioning, and disposition of recalled product.

FDA has also developed model press releases that firms can use to inform the public about a recall. These model press releases help ensure that critical information about the recalled product is accurately and appropriately conveyed to the public.

For recalls of widely distributed products, FDA recently developed a searchable database for its Web site to help the public and recalling firms identify recalled products. The database can be updated daily with important information, including brand name, recalling firm, UPC code, size, and product description.

In the recent peanut outbreak, there have been over 3 million hits to date on the site. In this outbreak, we learned of at least one small business that used the searchable database to identify a recalled peanut ingredient product that the business had used in its finished product. The firm initiated a recall of its own products, even before receiving notification from its supplier.

As discussed in more detail in my written testimony, the agency's investigation of the Salmonella Typhimurium outbreak associated with PCA's peanut products resulted in a series of recalls that began on January 20th with products made in the Blakely, Georgia facility. Since then the scope has expanded as we identify companies that use PCA's products as ingredients in their own products.

On February 12th, the State of Texas issued an emergency order directing PCA to cease the manufacture and distribution of all food products at the Plainview, Texas facility and issued a mandatory recall order for all products manufactured at that plant.

On February 20th, PCA issued a statement that it had filed for chapter 7 bankruptcy and would no longer able to communicate with their customers about recalled product. As a result, FDA is coordinating with Texas officials to notify customers that received product from the Texas facility and follow up with these companies as needed.

Many companies that received recalled product from PCA have, in turn, conducted voluntary recalls themselves. These companies use recalled PCA products as ingredients in their own products, exponentially increasing the scope of the recall.

FDA continues to work to identify products that may be affected and to track the ingredient supply chain of these products. The facts of this outbreak as well as our experience with other outbreaks highlights the need to enhance FDA's statutory authority to protect consumers from foodborne outbreaks.

We are currently reviewing with the Department of Health and Human Services the agency's prior legislative requests to strengthen our ability to protect Americans from foodborne illness.

Food safety is a priority for the new administration. One of the areas under discussion is mandatory recall authority, which would be a useful tool in some circumstances to effectuate removal of implicated product from Commerce. We are also discussing the need

for new or enhanced authority for FDA to require preventative controls, exercise enhanced access to food records during routine inspections, and require food facilities to renew their registrations more frequently and modify the registration categories.

Thank you for the opportunity to discuss FDA's recall process. And I would be happy to answer any questions you may have.[The prepared statement of Steven Solomon is included in the appendix at page 50.]

Chairwoman DAHLKEMPER. Thank you, Dr. Solomon.

I would like to stay on the subject that you just finished discussing, the actual recent contaminated peanut product recall. Let's go back to the beginning because I think we all know that if we can stop a contaminated product from even leaving or even being produced, we're going to save a lot of money and we're going to save a lot of small businesses a lot of financial burden, a lot of headaches.

So as we look at this entire scenario of what happened at the Peanut Corporation of America, what regulatory failures led to this incident? Can you give me some specifics about exactly what could have been done to prevent the scenario from happening?

Mr. SOLOMON. Thank you for the question. So this facility at PCA we have now uncovered through the subsequent inspections that they knew about some problems associated with Salmonella in this facility.

FDA does not have routine access to those type records. In fact, we had to issue some authorities we have under the Bioterrorism Act that Congress passed previously a request to actually get all of the records from the firm. In order for us to get those type records, we need to be in a situation where there is a significant consequence or adverse health effects, so a very severe outbreak situation in order for FDA to have access to those type records. So that is one of the requests when I just mentioned some of the authorities we are looking at is routine access to such records is one of the aspects that we think would be important.

The other issues relate to our request. FDA issued a food protection plan last year and is looking for greater preventative controls. We all recognize that recalls are a reactive piece. And we all want to get into the preventive controls aspect.

So right now there are GMPs that apply, but trying to analyze what the hazards are in different type facilities and then how you control those hazards is not one of the controls that are currently done in this type facility. We do do those types of controls in the area of seafood and juice controls. So one of the other areas is greater preventive controls we are looking for.

Chairwoman DAHLKEMPER. So no physical? A lot of the inspection is visual when you go into these plants at this point?

Mr. SOLOMON. It is records. It is a visual examination. And it is a sampling.

Chairwoman DAHLKEMPER. Okay. So you do do sampling?

Mr. SOLOMON. We do do sampling. What we have learned from these is that traditionally a product like a peanut butter manufacturer is a plant that has a very dry environment. And dry environments don't allow, really, for the growth of bacteria, like Salmonella, traditionally.

We have learned through the previous ConAgra and this recent one that the introduction of moisture into a dry plant allows for the opportunity of these bacteria to grow. So that has changed our inspectional approach.

And what we would like firms to be doing is doing a lot of environmental testing because testing finished product does not give you the entire answer because the bacteria only periodically develops into finished products. So extensive controlling of your environment, making sure that it stays in a dry environment in the case of a plant like this, are critical to try and control those hazards. That is part of the kind of preventive controls we are looking for.

Chairwoman DAHLKEMPER. Because I am just trying to understand. You know, I have a background. I was a dietician for over 25 years. So I have been in lots of facilities where food has been produced or food has been served. And knowing that visually you have to do physical testing to be able to really see if there is some--you can look at a doorknob and it looks fine, but we all know what could be on a doorknob.

So that is what I guess I am getting at. You know, what kind of physical testing is being--there is really no mandatory physical testing at this point or--

Mr. SOLOMON. There are no controls required on the farms to do that type testing. That would be part of a more elaborate preventive control program.

FDA's inspectional approaches do include environmental testing. So when you go into such facility--and we did it during the recent inspection of PCA--taking several hundred environmental samples to try and understand what type of bacteria pathogens may be in such a facility, in addition to looking at testing some of the finished products, but to--

Chairwoman DAHLKEMPER. And that was after the fact?

Mr. SOLOMON. That was after the fact.

Chairwoman DAHLKEMPER. Okay. So prior to that, I am just trying to get down to the basics on any food production company. It is all really up to them in terms of what they do in terms of physical testing. And FDA comes in and does mostly visual testing, looks at records?

Mr. SOLOMON. We have changed our procedures into doing more and more environmental testing when we learn the unique conditions, such as a plant. So we are now going through all other plants similar to PCA and having an inspectional approach to do fairly extensive environmental testing, finished product testing, in addition to records and the observations.

Chairwoman DAHLKEMPER. Okay. Thank you.

Dr. Petersen, last year we had the contaminated beef recall, which also had a crippling effect, I think, on many small firms. In this particular case, it was the humane society, not FSIS, that alerted the public to the violations, which led to the recall.

How did FSIS miss these violations? And what specific steps have you taken to ensure that this does not happen again?

Mr. PETERSEN. Okay. Thank you.

Well, the situation that you mentioned is at the Hallmark facility in Chino, California, where we saw a video of just outrageous treatment of cattle at a slaughter plant. It was quite troubling, certainly

for me, that that occurred at a federally inspected slaughter plant, certainly was troubling to Congress, and obviously the public.

And you asked the right question, how did this happen? I thought you were there every single day. We have done some investigation. The Office of Inspector General actually did a follow-up investigation. And they had a couple of observations.

One was that there were deliberate actions by that firm to bypass inspection. And that is still the subject of some investigation. They also found that there was some noncompliance by my inspectors with them executing their required inspection procedures.

We thought at the time and we had no reason to believe at the time that that was anything other than an isolated event. And the OIG report from this past November did say and basically quoting, that the events at the Hallmark facility were not evidence of a systematic failure of the inspection procedures. It was a constellation of very, very bad events that occurred in that particular facility.

We have implemented several things, actually, quite a few things, some of which from OIG and some of which we initiated in advance of their report.

We looked at, how did my supervisory structure allow some of my inspection behaviors to occur? They should have been tracking these employees on a more close basis, particularly my veterinarian in that particular plant. That veterinarian supervisor should have had a better understanding of what they were doing.

So we introduced a new layer of--not a new layer but a new level of structure, organization, to how they assess the performance of those veterinarians and inspectors on an ongoing basis, structure where it is documented and other people in the supervisory chain, including myself, can follow up and see what is happening. That is all populated in a management control system.

Then we looked at training, training of the workforce. Had we really trained the workforce to identify some of the low-level behaviors at the Chino plant, I think if they had identified some of those behaviors by the plant early on, then they would not have gotten to this egregious activity, you know.

And if we introduce the regulatory sanctions earlier, then obviously the point of that is to deter behavior. And so we have reinforced our training, pushed that out, as well as reinforced the accountability for enforcing inhumane activity at slaughter plants. And last year we did quite rigorously enforce inhumane handling at a variety of slaughter plants across the country.

That plant I think is not typical of the industry. And we recognize that. But it is typical of a very, very significant problem.

The recall was massive, as you suggested. It is the largest recall we have ever had. It was really not a safety-related recall. It was that, as I mentioned, proper inspections were not done because the plant had found a way to bypass those inspections. So the food was recalled because of a regulatory violation. The product has to be inspected. And in that case, on certain days, it was not.

That recall went all the way down the food chain, including to a variety of school lunch programs. And many small businesses were affected. It is surprising how product coming out of one plant can touch many, many businesses. But it was important, we felt.

And obviously we looked at the scope of the recall and looked at, were there ways to mitigate it. We, at the end of the day, did feel that the scope of that recall, as massive as it was, was the right thing to do for the public, in spite of the consequences.

And so we did get a lot of that product back, but it did have a significant impact on a variety of retailers, small firms, school lunch programs. And my goal is, with these new measures we put in place, that we will not see anything nearly as sweeping as that in the future.

Chairwoman DAHLKEMPER. Any idea what the cost of that recall was?

Mr. PETERSEN. Well, the cause--

Chairwoman DAHLKEMPER. No. Cost.

Mr. PETERSEN. Oh, the cost. No. But it is 143 million pounds. That dwarfs any other recall we have ever done. Well over 10,000 businesses and stores were affected. I don't have a cost on it, no.

Chairwoman DAHLKEMPER. I don't think any of us ever will, but I think the issue we are trying to look at here today is how can we prevent these massive recalls from happening. I think we are always going to have some incidence of a recall, but how can we prevent these massive recalls.

So what you have in place right now you think will help to prevent this kind of a massive recall?

Mr. PETERSEN. Well, we are not going to stand still. We think what we put in place mitigates and goes a little bit beyond what occurred. And obviously we are transposing that to all of the other facilities that we regulate and then following up in a more timely manner with folks to make sure that they are doing what you and others expect them to be doing.

Chairwoman DAHLKEMPER. Okay. Thank you.

I wanted to ask you both a little bit about private inspections versus government inspections because there has been kind of a movement towards industry hiring their own inspectors. And, as we look at that, maybe if you could address that and what you see as the role of a private inspector versus a government inspector.

Mr. SOLOMON. During my testimony, I talked about trying to understand the supply chain. That is really critical. And as the globalization of our food is changed, it is important for firms to be able to try and understand that supply chain. I think a response is many of them do hire various private auditors to go help them inspect that.

I don't see that as a substitute for government oversight and regulation. I think that needs to happen, too. But I think some companies put in additional requirements. And some of these auditors are looking at those.

FDA is conducting a pilot right now of looking at third party inspections and the value of that. We are actually looking at it more for imported products. But it needs to be very closely structured. There need to be very clear standards established for any third parties that we need to be controls for conflict of interest. There needs to be auditing of it.

So we are very carefully running a pilot right now to evaluate the value of third parties, particularly in the import environment.

Chairwoman DAHLKEMPER. Dr. Petersen?

Mr. PETERSEN. For the laws that USDA implements, here basically the Federal Meat Inspection Act, Poultry Products Inspection Act, and the Egg Products Inspection Act, inspection shall be done by government employees. And so our role, in fact, our legal obligation, which is a little different than FDA's, is to find the product acceptable before it leaves the plant. And so that is a big resource issue.

Now, private businesses have a variety of third party auditors, as Dr. Solomon mentioned, that can assess quality factors, food safety factors. And sometimes, of course, a lot of the times, they assess customer specifications.

If those third party audits involve food safety decisions, then we can have access to those records. And we do that. We do assess some of their findings and, if necessary, marry them up with our findings.

But for us the Federal role to find a product safe in the meat, poultry, and egg product sector, that is our primary role. And I don't see a role without some legislative change, which we are not pursuing for other inspection people.

Now, certainly we partner with our State partners, local partners, who are authorized to do some of these inspections, but a private entity we don't see that on the board.

Chairwoman DAHLKEMPER. Thank you.

Dr. Solomon and Dr. Petersen, the Regulatory Flexibility Act requires Federal agencies to consider the impact of regulations on small firms. In crafting effective policies, it is critical that we do not forget the needs of entrepreneurs.

How do your agencies collaborate with small businesses? And can you give me an example of a specific rule that was influenced by the input of entrepreneurs?

Mr. SOLOMON. As you note, on every regulation, there needs to be a regulatory assessment that takes place, economic analysis of what that is. I can't give you off--many of these regulations have had various input from--when we go through the notice and comment rulemaking process, we accept a lot of input from small businesses as well as large businesses. And that influences how those final rules come out.

And there are a number of rules--we can come back to you with specifics--where there have been various exceptions, either an implementation of the regulations or some exceptions for small businesses on some of those regulations.

Mr. PETERSEN. Of course, our key interest is food safety, and so if there are food safety lapses in a very small plant, those lapses can obviously make a consumer as sick as any lapse in a large plant. So our starting point is food safety, making sure that they meet the regulatory obligations.

But we recognize the impact of regulations can certainly disproportionately impact small and very small firms. And, as I indicated in my testimony, we have a rather aggressive outreach to really communicate with our small and very small plants that we regulate, find ways to get them the information that they need but get it in a way that is useful to them. But at the end of the day, they do have to meet their food safety obligations.

We have and, as Dr. Solomon mentioned, any regulation that is proposed and finalized under the Administrative Procedures Act would require us to consider the economic impacts of that rule.

The best example I think I could give was about 10 years ago we implemented one of our most significant regulatory changes, what is called HACCP, Hazard Analysis Critical Control Points, a preventive approach to food safety. That had a 3-year implementation plan, where the largest plants started first; then small plants, which we consider 10 to 500 employees; and the very small plants, which are less than 10 employees, plant employees, implemented last. And so there was a kind of sequential way so they could get the information, make any adjustments they needed, but then at the end of the day, they did have to implement their responsibilities.

Chairwoman DAHLKEMPER. Thank you.

I will now yield to Mr. Westmoreland, but before that, I would like to recognize that we have been joined by Representative Buchanan and Representative Thompson. Thank you.

Mr. WESTMORELAND. Thank you, Madam Chair.

I would like to ask Dr. Petersen, have you ever had an inspector in the PCA plant in Blakely?

Mr. PETERSEN. The Department has, but it is important, I think, to kind of distinguish inspectors, which, of course, is what we think of in the Food Safety and Inspection Service, with contracting procurement verification. So I wouldn't say there was so much an inspector from the Department, but there was somebody in the plant yearly.

The last time was in September of 2007, really verifying their contractual specifications, a more systems assessment, rather than being on the floor and looking for whatever was going on in that plant.

Mr. WESTMORELAND. Was everything in order while your inspector or compliance officer or whatever you want to call them at the plant, was everything in order then?

Mr. PETERSEN. In the September '07 visit, yes. There were no aberrant findings that we are aware of. Earlier in the 2001, I think, 2002, there were some minor findings. And they were shared with the appropriate regulatory bodies.

But in the recent past, there was nothing. This is folks involved with what is called our Farm Services Agency, who is the procurement body, did not find anything as of September 2007, which is the last time they were in there.

Mr. WESTMORELAND. So they don't really get there once a year if that was the last time they were there, of course. So it's not a yearly visit. How often is it?

Mr. PETERSEN. Well, their obligations for their frequencies I am not personally aware of. We can certainly get you that. I do know that going back to 2001, they were in the plant about 10 times and a handful of times, certainly less than half of those times, did they find minor sanctions, such as some insects that had to be controlled and that kind of thing.

Mr. WESTMORELAND. We are trying to get a little comfort here from the Food Safety and Inspection Service about the reliability.

I mean, listening to your testimony, we are supposed to think that you are providing us some type of protection.

If you are telling me that they were there in '07, nothing was wrong, and now we have had this major recall and you weren't there in over a year, how comfortable are we to fill this number of employees that you have and evidently this small plant program that you were touting, I guess? I mean, is this something that we are working on?

I mean, this plant and the plants of PCA, all 3 plants, provide less than 2 and a half percent of the peanut butter or products that are used in this country. So to me, it is a relatively small thing. So how much protection are we getting there?

Mr. PETERSEN. I will say for the commodities that we are directly responsible for regulating through our statutory authorities, meat, poultry, and egg products, you should have and you should expect a very high level of comfort with the mission that we are executing with the resources that we have in those facilities.

We do not have jurisdiction. We have no legislative authority--that is an FDA responsibility, and I know they embrace it--for other commodities, such as in this case peanuts.

Now, we are looking at--I mentioned the procurement people. Some government person is going in there. Should they have other training or whatnot to--

Mr. WESTMORELAND. Who would that have been from the government that should have been in that plant?

Mr. PETERSEN. Well, for us, for USDA, as I indicated, it would be our contracting official who was looking at the contract obligations. And through the investigation, of course, they found some of the attestations by that firm were not what they were claimed to be.

Mr. WESTMORELAND. When was the last time a USDA inspector was in there or somebody stationed there?

Mr. PETERSEN. Nobody was stationed there. Again, the last time a contracting person would have been there--but they are obligated to make sure they are following their contract. The last time a USDA person was in there looking at their contract was in September of 2007.

Mr. WESTMORELAND. So do they look at what is going on there through mail that they receive in their office, wherever that might be?

Mr. PETERSEN. The details of how they verify the contract I don't know, but we will certainly get you--

Mr. WESTMORELAND. I will certainly look into it because it sounds like somebody may have missed something. The other thing I wanted to ask you about, the recall and how it goes about, well, I will ask Dr. Solomon this because you were talking about the recall and I guess you have a Web page and you put something out on the recall.

Rite Aid just had a recall, I think, last week of some of these peanut products. Rite Aid is a pharmacy that I do business with in Hogansville, Georgia. Why would they have waited so long to do a recall?

And I think that either you or Dr. Petersen mentioned that you know who has bought these products and who is using it and who

is using it in their food processing, I guess. Why would it take so long to do the recall? Because as these recalls are stretched out, it makes it more severe to small business, I mean, if it was a one-time operation.

Second point is from the FDA, I think you all had issued a statement that it was very unlikely or not likely at all that this was in I guess Jif or Peter Pan or the jarred peanut butter. Now, is that true or not true?

And you can answer in any other you want.

Mr. SOLOMON. Thank you for the questions. I will take the second one first. The name brand peanut butters, there has been no contamination. They didn't purchase any of the products from PCA. And so we have made that statement, put that out on the Web.

Mr. WESTMORELAND. Okay. Let me point this out. Madam Chair, I think this is important from a small business standpoint especially. You spend as much time and effort putting that out as you do the other stuff because I think that is important because some people just see that there is peanut butter contaminated and they quit buying peanut butter. I think if you would spend as much time and effort saying, "Look, these products did not buy any of the stuff. These are okay," you know, especially with some of your major brands, that would be something that you might want to look at.

But go ahead. I am sorry to interrupt you.

Mr. SOLOMON. Well, we did do many, many media calls and post on our Web information. And we do agree our responsibility is to make sure that contaminated product is taken off, but we also know that peanut butter and other products we regulate are nutritious and valuable commodities. So we also do try and assure people in the safety of products where we know they are safe.

Related to--your first question again--I'm sorry--related to?

Mr. WESTMORELAND. Well, I guess when did you have an inspector out there? I mean, does the FDA have any type of inspection into some of this food safety that goes on in the plants?

Mr. SOLOMON. We do. FDA had an inspector in this plant back in 2001. And then we have had contract arrangements with the State of Georgia that does work on our behalf. And they had inspectors in that plant in 2006 and 2007 doing the work for FDA.

And then the State of Georgia also conducts inspections in this plant. And I believe they have had an inspector in this plant around 7 times in the last 2 years or so.

Mr. WESTMORELAND. So who you are contracting with is not necessarily an independent or a private contractor but could be a state or a local agency?

Mr. SOLOMON. That is correct. We have contracts with 43 states. We provide training to those states. And they follow the same protocols and procedures that FDA uses. And the State of Georgia did conduct inspections for us in this PCA facility.

Mr. WESTMORELAND. And one last question, Madam Chair, to Dr. Solomon. These testing facilities because, if I understand it correctly, some of this paste was sent to different testing facilities and that some of it had come back with a Salmonella as positive. But the test kept going forward until somebody said, "No. There's no Salmonella."

Now, what type of oversight do you all have over these testing facilities? And what type of responsibility do you have or safeguard to make sure that those tests are correct? And what type of authority do you have to punish some of these people that may give some false tests or evidently in this case a bad test?

Mr. SOLOMON. FDA doesn't have authority over private laboratories. These laboratories had a contractual relationship with PCA. They sent them samples. We have no information that any of the tests done by the private laboratories had any problems with it. We have reviewed those tests and their testing assessment, testing protocols seem to be valid that we are using.

That information goes back to PCA. And, as I mentioned before, the issue there becomes we are requesting additional access to records so that when we did an inspection, we could actually have access to those records of test results they got back from these laboratories.

Mr. WESTMORELAND. Thank you.

Madam Chair, that is all I have.

Chairwoman DAHLKEMPER. The Chair now recognizes Mr. Buchanan for 5 minutes of questioning.

Mr. BUCHANAN. Thank you, Madam Chair.

I wanted to switch from peanut butter to tomatoes. I represent a part of Florida, Manatee County, which has 40 percent of the tomatoes grown in that county. Dr. Solomon, let me ask you. Last year the FDA devastated our growers in my district by issuing an alert only to find out later that the problem was associated with peppers, not tomatoes.

What guidelines are in place to alert the public regarding legitimate safety concerns without needlessly hurting growers?

Mr. SOLOMON. Thank you for that question. The outbreak that you are talking about, we need to understand how the current safety system works. When people get sick, they generally go to a doctor. That information then, they may get cultured that they have a Salmonella. In this case I think it was Salmonella St. Paul was the outbreak.

Mr. BUCHANAN. Yes.

Mr. SOLOMON. That information goes to a state public health laboratory. That information then goes to the CDC and is put into a database called PulseNet. Then CDC when they see a cluster of these, that there seems to be something unique going on in the nation, works with the state and local public health agencies to try and get a food history, to try and determine what product may have caused this outbreak.

The assessment from CDC and the states from the initial part of this outbreak is that the implicated products were tomatoes. And so they alerted FDA to that concern that appears to be a rise in the Salmonella St. Paul, several different states, an outbreak. These are all matching. And the people all report a common source as tomatoes as one of the source.

Now, when you think about it, obviously going through that process of several weeks of testing, going to the doctor, having those tests analyzed, getting into a system, and then going back and having CDC or the state try and determine the product is a difficult recollection issue for folks. So they try and add additional case con-

trol studies to try and match up and get statistical evidence about what product was implicated.

The initial case control studies also showed that tomatoes appeared to be the most likely vehicle. At that point in time, the decision was made to issue alerts from areas that we knew that tomatoes were being harvested at that period in time.

Mr. BUCHANAN. Just in our case, it cost our growers millions of dollars and a lot of jobs in our local economy, which leads me to the next question, Dr. Petersen. Under what circumstance is it appropriate for the Federal government to reimburse growers for losses associated with false alerts?

Mr. PETERSEN. At least on the meat, poultry, and egg side, if we execute a recall, meaning the plant agrees to do a voluntary recall in lieu of me containing and seizing their product, on the meat and poultry side, there is no provision for reimbursing them for executing that recall.

Our focus is on at that point there is problematic product in the marketplace. It could be product that can make people sick. And we need to get it back.

This did come up in the Hallmark situation. And we looked at any provisions or other reimbursement provisions. And for the packers, for the processors, there are no provisions.

For farmers, at least on the livestock side, there could be provisions. And we looked at this several years ago in what was then the melamine issue.

Mr. BUCHANAN. I am looking for tomato growers.

Mr. PETERSEN. Yes. As far as reimbursing tomato growers, I would have to ask Dr. Solomon. That is under his purview.

Mr. BUCHANAN. Okay.

Mr. SOLOMON. FDA does not have any authorities in relation to reimbursement for products.

Mr. BUCHANAN. But it does appear if it's something that egregious there should be some consideration because in our case, I know personally. I have been through these packing facilities and talked to these farmers. And they're talking millions of dollars because of these early alerts basically lost most of their crop an opportunity for that reason, which, you know, many of them live from week to week or month to month. So it was a huge economic impact in our area.

And I think there should be some consideration. I don't know if this crosses a line. I think it does but in a case where the federal government makes a mistake or potentially a mistake.

Mr. SOLOMON. We have understood that. And Congress has held previous hearings on that subject before.

Mr. BUCHANAN. Thank you, gentlemen.

Chairwoman DAHLKEMPER. The Chair now recognizes Mr. Thompson for 5 minutes.

Mr. THOMPSON. Thank you, Madam Chairwoman.

This maybe was answered at some point, but in terms of the trend line, just from food recall incidents, are we on a level play, decreased, increased level of incidence?

Mr. SOLOMON. For FDA, it has been probably relatively level for what we call a class I recall. We have been running around 350

class I recalls for the past several years. Obviously this recall when we look at '09 statistics will have a tremendous increase.

Mr. PETERSEN. On the meat and poultry side, they have really leveled off the last couple of years. Our high-water mark, which is really a low-water mark, was back in 2002. We were at about 120 recalls. There were some major E. coli-related recalls, Listeria-related recalls that year.

Through working with plants, having them understand what happens when we take a test, that they have the opportunity to hold the product when we do that so there is not a recall, the numbers now have been flat for the last couple of years, in the mid 50s, 55 or so, every year.

Mr. THOMPSON. Okay. Dr. Petersen, you mentioned with the meat and meat-processing facilities, the FSIS, have they taken steps to update the requirements for the meat-processing facilities, specific hazards analysis, critical control point plans?

Mr. PETERSEN. They raise, well, several things. As I mentioned in the opening, the plans are required for meeting their regulatory obligations. But for the small and very small plants, we think we are a good vehicle for them to provide them some information, provide them avenues for information. And so we have a lot of outreach activity where we go to them, provide them materials that we think can help them update their plans.

Sometimes when there are true changes in the system, such as a spike in E. coli that has happened in the last, really, beginning of 2007, the plants are obligated to reassess what they are doing. Do they still have the right controls? Are they working? And are they tracking them correctly?

And they do that, but we work with particularly the small and very small plants because of their resource limitations, give them the information to be successful, but at the end of the day, it is their obligation to be successful.

Mr. THOMPSON. Thank you.

Madam Chair, I yield back my time.

Chairwoman DAHLKEMPER. I just have one other question for you before we finish up this panel. And that is regarding looking at all of our federal agencies which administer at least 30 different laws related to food safety, 15 agencies.

Often people refer to this as a very fragmented, inconsistent, ineffective, and inefficient way to look at food safety. And I truly believe that this is one role of government: to ensure the safety of the citizens.

So would it ultimately be more effective--and you can both answer this--to create a single food safety agency?

Mr. SOLOMON. Obviously the new administration has not had an opportunity to weigh into that discussion. I will say we work very closely with the other agencies. Dr. Petersen and I have worked together for many, many years. We have MOUs with each other. We have notified each other, for example, in this particular incident, about recalls, about peanut products that may have affected USDA-regulated products.

We exchange information. When we go into a facility that may have a USDA-regulated product that we have sampled, we notify

them. Similarly, they do the same. We conduct some joint operations. We work closely on food defense issues.

So I know the administration has got this under consideration.

Mr. PETERSEN. I will echo the information sharing, the collaboration. Now much of that is on a personal level. I know Steve and I have talked over holidays and when there is something that needs to be resolved. And so those discussions do occur.

There is a variety of, as you are no doubt aware, some legislative proposals. We are certainly interested in those. Our new Secretary Vilsack has expressed an interest in looking at that very issue. And so we are going to certainly give him the information he needs.

But as far as a recommendation, a position, frankly, for us, it would be a little preliminary. But I understand the concern, where the way it is implemented, does it make sense to have all of these different players, particularly to the extent that there are any overlapping authorities in today's climate? That may not make the most sense.

Chairwoman DAHLKEMPER. You two have known each other for a long time. You talk back and forth. But what about when one of you leaves?

Mr. PETERSEN. Yes.

Chairwoman DAHLKEMPER. You know, just a thought there.

Mr. WESTMORELAND. I have just got one last question for both of you. I am assuming both agencies have looked this meat recall, the tomato recall, the peanut recall. Have you all changed any of your policies? And has anybody with either one of your agencies been disciplined or reprimanded over not following some existing policies that you had that could have led to some of this being a little loose, so to speak?

Mr. SOLOMON. We look at every foodborne outbreak. And we try and learn lessons from it. And we do learn lessons. And we consistently improve the process. So I think we have learned lessons from the tomato outbreaks, spinach outbreaks, peanut butter outbreaks. And we incorporate those new pieces.

So when I was speaking earlier about basically the new science, about understanding how Salmonella can live in a facility in a dry plant. It is some of that new science that needs to be integrated. And we do integrate that into new inspectional approaches, so the environmental pieces.

There has been no disciplinary action related to any of the FDA outbreaks.

Mr. PETERSEN. Well, I mean, you haven't said it here, but every recall for us is a failure. We have put product in the marketplace that we have said was okay, and we have to bring it back. And many recalls look alike, but there are many things we do learn from every single one.

And we do our best to communicate those flaws, whether it be a plant flaw or some other activity, so other people know so they don't repeat the same mistake. And that is for recalls. That is for outbreaks.

So we try to communicate "Here is what didn't work," "Here is how they got into trouble." Obviously we have to kind of protect their proprietary interests, but there are some lessons learned that we do get out.

Some of the outbreaks that we have had as far as interagency from our perspective, we have learned from those certain regulatory approaches, legal authorities that we can work together on. So we have taken those lessons.

As far as employee actions, I guess I can tell you in certain outbreaks, the appropriate personnel actions have been taken.

Mr. WESTMORELAND. Thank you.

Chairwoman DAHLKEMPER. I want to thank both Dr. Solomon and Dr. Petersen for being with us here today. You are now excused, and I would like to call up the second panel. Thank you very much for joining us, gentlemen.

Good morning. I want to thank the second panel here for joining us today. Witnesses again will have 5 minutes to deliver their prepared statements. The timer begins when the green light is illuminated. When one minute of time remains, the light will turn yellow. And the red light will come on when the time is up.

Our first witness today is Ms. Diane Austin. Ms. Austin is Vice President of Perry's Ice Cream in Akron, New York. Perry's Ice Cream is a family-owned business that was founded in 1918.

Ms. Austin is testifying on behalf of the International Dairy Foods Association. The association's members represent more than 85 percent of the milk cultured products, cheese, and frozen desserts produced and marketed in the United States.

Thank you, Ms. Austin.

STATEMENT OF DIANE AUSTIN

Ms. AUSTIN. My name is Diane Austin. I am the Vice President of Perry's Ice Cream Company in Akron, New York. I would like to thank you for the opportunity to discuss the impact of food recalls on small food manufacturers.

Chairwoman DAHLKEMPER. Thank you.

Ms. AUSTIN. I have 3 points to make today. First, remember, American dairy products are among the safest in the world. Second, product recalls of ingredients have had devastating impacts on small food manufacturers. And, third, Congress should consider financial assistance for small businesses that have been impacted by these recalls.

Perry's Ice Cream is a small family-run business that has been making great tasting ice cream for 4 generations. We manufacture 550 different ice cream products at our facility in Akron. And we employ nearly 300 team members. We make ice cream for grocery stores, convenience stores, mom and pop ice cream stands, schools, nursing homes, and many food service venues.

We recently received the 2008 INNOVATE award in the agribusiness category by the Buffalo Niagara Partnership for growth, innovation, and investment in our regional economy. Our 90-year commitment to product quality and consumer safety is a key reason for our success.

I am here today with the International Dairy Foods Association, which represents our nation's dairy manufacturing companies and their suppliers. More than half of IDFA member companies are small businesses.

To begin, I would like to remind the Committee that the American dairy products are among the safest in the world. Dairy manu-

facturing plants must meet stringent federal, state, and local regulations, including those developed by the U.S. Food and Drug Administration as well as state regulatory agencies.

As is typical in our industry, Perry's has a plant-wide HACCP, or Hazard Analysis and Critical Control Point, plan, which includes good manufacturing practices, preventative maintenance programs, and other food safety and quality programs. Our good manufacturing practices are based on FDA's requirements for food processing plants. In 2008, Perry's delivered over 1,700 hours of training to our team members in the area of food safety and quality alone.

Previous to the peanut recall, Perry's had only 2 limited product recalls in the past 10 years. Simply put, it is never in our best interest to cut corners or risk delivering unsafe products to our customers.

Until January, Perry's had used PCA ingredients in some of our product lines. Because these ingredients are added after pasteurization, we require documentation that they meet our safety standard. And, in spite of our best efforts, we were significantly impacted by the events at PCA.

Perry's issued 3 separate recall notices, impacting 44 different products. We traced distribution to 6,534 individual locations. We have conducted audits at more than 900 locations to ensure that the product had, in fact, been removed for sale. To the best of our knowledge, no consumer illnesses were related to any of our ice cream.

We destroyed more than 170 tons of product, spent more than 2,100 employee hours, placed recall notices on our Web site, and responded to nearly 1,000 consumer and customer contacts. These efforts continue as we communicate with our customers and consumers and begin the resupply process.

In addition to these mounting expenses, we are financially responsible to make sure that our customers are whole. Perry's is now crediting our customers for recalled product that they purchased, paying our suppliers for ingredients that were used in the recalled products, incurring costs for dumping product, legal fees, and other recall-related expenses, all this while we begin to try to reestablish a pipeline of product that has been dry for nearly 8 weeks.

At the same time, we are trying to build inventories for the peak summer demand season, which is absolutely a make or break season for our industry.

While we do not yet have a complete accounting of the losses, they are likely to be in the hundreds of thousands of dollars, if not more. And we are just one of nearly 300 companies that purchased product from PCA.

In spite of the significant investments that we have made over the years, to meet or exceed industry best practices in the areas of quality and food safety, we have incurred a considerable financial loss through no fault of our own.

There was little hope that we will recover any of these costs from PCA. And with over 3,000 products now on the FDA recall list, there can be no doubt that other small businesses encounter the same problem.

Small businesses are dependent on cash flow for operations. And those affected by the PCA recall must make difficult and immediate choices about which bills will be paid, whether people can be hired, and which products can now be produced. We fear that before this is all over, many small business manufacturers or small food manufacturers will go under.

This Committee and Congress should consider providing financial assistance, preferably in the form of grants or loan guarantees, to help small businesses that have suffered significant financial losses as a result of a recall prompted through no fault of their own. As a small business, we would ask Congress to carefully balance business responsibility and government regulation to ensure a safe food supply but to be careful before assuming that more regulation is always the answer.

On behalf of Perry's Ice Cream and the 530 members of the IDFA, I would like to thank you for the opportunity for us to voice our views this morning. Thank you.[The prepared statement of Diane Austin is included in the appendix at page 63.]

Chairwoman DAHLKEMPER. Thank you.

Our next witness is Mr. Mike Ambrosio. Mr. Ambrosio is Vice President of Quality Assurance at the Wakefern Food Corporation in Elizabeth, New Jersey. The Wakefern Corporation is a retailer-owned cooperative comprised of entrepreneurs that own and operate supermarkets.

Mr. Ambrosio is testifying on behalf of the Food Marketing Institute, which develops and promotes policies supporting food retailers and wholesalers.

Welcome.

Mr. AMBROSIO. Thank you.

STATEMENT OF MIKE AMBROSIO

Mr. AMBROSIO. Thank you. Chairwoman Dahlkemper, Ranking Member Westmoreland, and members of the Regulation and Health Subcommittee, I am Mike Ambrosio, Vice President of Quality Assurance for Wakefern Food Corporation. And I have been in charge of food safety programs at Wakefern for 29 years.

I am honored to appear before you today to testify on behalf of my company and our members but also FMI, Food Marketing Institute, our trade association, representing over 1,500 retail members.

Founded in 1946, Wakefern Food Corporation has grown from a small, struggling cooperative into a strong regional player. Headquartered in Keasbey, New Jersey, Wakefern is comprised of 45 members, who independently own and operate supermarkets under the ShopRite banner in New Jersey, New York, Connecticut, Pennsylvania, Delaware.

While we are the largest retailer-owned cooperative in the nation, the majority of our members own 1 or 2 stores and understand the challenges that businesses face. Only owners that understand these needs of their customers and community are able to survive and prosper.

As a result of our members' dedication to their customers and communities, ShopRite has been named the New Jersey Corporate Philanthropist of the Year by the Community Foundation of New Jersey. And America's Second Harvest Food Bank Network has

also recognized ShopRite as a Grocery Distributor of the Year for its ShopRite Partners in Caring Program, a year-round initiative dedicated to fighting hunger.

As part of our dedication to the consumer, our most important goal is to ensure that the food resale is safe. our store has many prevention programs in place to protect our customers, such as consumer education campaigns, employee food safety training, extensive sanitation programs, and food safety management systems. But all of these prevention programs at retail level cannot ensure that we deliver safe food to our customers if the food coming into our stores isn't already produced and processed to the highest standards.

When we do receive notification that a product is adulterated, we take a variety of vital steps to ensure that the effective product has been removed from our shelves as quickly as possible and also to notify our customers in certain instances. However, this process is often challenging, time-consuming, and expensive due to the loss of man-hours and the loss of sales created not only by not having the product taken off the shelves but also due to a recall impact on consumer confidence.

I would like to provide the Committee a snapshot of what steps we take when we are notified that a product has been recalled. The notification process, when we receive notification a product has been recalled through a variety of different means, we use third party services that we subscribe to, direct contact by the vendor through monitoring government Web sites, such as the FDA and USDA, or through a variety of media outlets.

With any notification method, it is vital that we receive the necessary information, such as product name, correct UPC codes, product size, and sell-by dates to ensure we know exactly what product is being recalled.

The average size grocery store has over 45,000 items on their shelves every day. In the case of the high-profile Peanut Corporation of America recalls, the FDA as of March 9th had over 3,200 listed products on their Web site.

The actions we take once we receive the necessary information in the Quality Assurance Department, we notify Consumer Affairs. While comparing the affected UPC codes to our current inventory, all identified products are embargoed and segregated to a designated holding area. In addition, recalled UPC codes are locked out of our point-of-sale system. So product cannot be scanned for sale at our registers or sold through the front end.

Our bulletin is sent to our store owners and applicable in-store divisions and management staff. The information is posted on our internal Web site, also an external Web site if you log onto the shoprite.com.

Class I recalls triggers automatically phone calls to notify our store owners, management staff directly to reinforce the bulletin. We also have a third party private visit to the stores to ensure that the class I product has been removed from the shelves.

At the same time we are removing products at store level, our Consumer Affairs Department is creating signage for display at point of sale and sending releases directly to the media. That's a

vital piece of this because consumer education when it comes to recalled product is key.

Depending on the type of recall, they also search for data from our loyalty card program. That allows us to notify our customers directly through phone calls and about product they had purchased. It is important that grocers are able to employ a variety of different methods to notify consumers.

I am proud of the actions we take as a company to remove adulterated product. As a matter of fact, last fiscal year we had 214 recalls, 27 class I, 43 pharmacy recalls. That accounts for 238 UPC codes that were blocked out at the front end as well as the time dedicated to that. Over 2,140 hours are dedicated to that, 305 working days if you want to break that down. And these don't even include the numbers with PCA.

Our trade association, FMI, is working with Wakefern and other members of all sizes dedicated to continually improving food safety. And we also support the FDA and the USDA with regard to mandatory recall authority that they have.

We also believe that suppliers should be--[The prepared statement of Mike Ambrosio is included in the appendix at page 71.]

Chairwoman DAHLKEMPER. Thank you, Mr. Ambrosio.

Mr. AMBROSIO. Okay.

Chairwoman DAHLKEMPER. We will cover more this in the questions. Thank you.

Mr. Conrad is next. Mr. Conrad, Ken Conrad, is President of Libby Hill Seafood Restaurants in Greensboro, North Carolina. Libby Hill Seafood was founded in 1943 by Mr. Conrad's father. It operates restaurants in North Carolina and Virginia.

He is testifying on behalf of the National Restaurant Association, which represents more than 380,000 restaurant establishments.

Welcome, Mr. Conrad.

STATEMENT OF KEN CONRAD

Mr. CONRAD. Chairwoman Dahlkemper, Ranking Member Westmoreland, and members of the Subcommittee on Regulations and Healthcare, on behalf of the National Restaurant Association, thank you for the opportunity to testify before you today regarding the impact of food product recalls on restaurants.

My name is Ken Conrad. I am the Chairman of the Board of Libby Hill Restaurants. For the past 5 years, I have had the privilege of serving as the North Carolina delegate to the National Restaurant Association. I also serve as Chair of the North Carolina Restaurant and Lodging Association. And by operating a chain of seafood restaurants, it has kept me very active in the seafood industry. I currently serve as Vice Chair of the National Fisheries Institute.

My family continues to own and operate Libby Hill Restaurants, and I am proud to say that my son today is the third generation to run the business. Three weeks from today, we will begin our 57th year of serving seafood in a family-friendly atmosphere. We currently operate 12 units scattered across western North Carolina and southwest Virginia.

The restaurant industry is comprised of 945,000 food service locations, 13 million employees nationwide. We serve 130 million

guests every day, and every $1 million of revenue in our industry creates 33 new jobs for the economy. Seven out of 10 restaurants are single-unit operators, with 91 percent of eating-and-drinking places having 50 or fewer employees. We are truly an industry of small businesses.

Food safety is of the utmost importance for restaurants. Restaurants have taken the lead in ensuring food safety within our 4 walls with the National Restaurant Association and its members making a multi billion-dollar investment to continuously improve food safety programs and develop state-of-the-art food safety education.

We are proud of ServSafe, the food safety education program that sets the standard for the industry. Foodborne illness outbreaks and the recalls that follow have greatly impacted our industry. Lapses in management in the food supply chain can create negative consequences to consumer confidence, as recent outbreaks and recalls have shown.

Most recalls are due to mislabeling mistakes, but very large outbreaks and recalls due to adulteration or contamination indicate more could be done in both the supply chain and with improvements in the federal and state regulatory approach.

Since 2006, the United States has dealt with the impact of foodborne illness outbreaks and recalls resulting in the contamination of tomatoes, serrano peppers, chicken and turkey pot pies, ground beef, chili sauce, lettuce, spinach, and peanut butter.

Currently, the industry continues to cope with peanut butter recalls resulting from a Salmonellosis outbreak involving thousands. It is likely this outbreak will become one of the most infamous outbreaks of foodborne disease.

When a foodborne illness outbreak occurs, the first priority is to identify the affected product and immediately remove it from the food supply. Restaurants often use an abundance of caution when learning of an outbreak and may just simply choose to remove that item from the menu until the dust clears and it has gone away.

Trace-back investigations to determine the source of outbreaks can require extensive resources and may result in irreparable damage to a food service establishment. Therefore, it is critical that each piece of the investigation be thorough, complete, and accurate. We must remember that trace-back investigation recalls are reactive measures. We should not neglect the importance of preventing contamination to ensure safety to reduce or mitigate the need to recall product.

Adequate funding to food safety agencies at both the state and federal levels to ensure appropriate staffing and expertise is mandatory, improved collaboration and communication between government and industry during the investigation of a complex outbreak, communication and education strategies to effectively inform consumers in the event of an outbreak or recall. We need stronger standards and practices for fresh produce and additional tools such as recall authority, traceability, and improved epidemiological investigation.

In conclusion, the safety of the food supply must and will continue to be the top priority for the restaurant industry. We stand by and are ready to work with Congress, the administration, and

our food chain partners to improve food safety and the needed reforms. Thank you for the opportunity to testify. And I will be happy to answer questions at the appropriate time.[The prepared statement of Ken Conrad is included in the appendix at page 78.]

Chairwoman DAHLKEMPER. Thank you.

Mr. Westmoreland will introduce our next witness.

Mr. WESTMORELAND. Thank you, Madam Chairwoman.

It is my pleasure to introduce a friend of mine and fellow Georgian, Mr. Don Koehler. Mr. Koehler is the Executive Director of the Georgia Peanut Commission.

Mr. Koehler and his family reside in Tifton, Georgia, where he has lived for 25 years. He is a native of Alberta, Alabama and received a B. S. in agricultural science from Auburn University in 1979.

In 1986, he became the Executive Director of the Georgia Peanut Commission. In that position, he has served in numerous positions of leadership within the peanut industry. He oversees the Commission's programs in the areas of research, education, and promotion, including advocacy for the farmers in Atlanta, Washington, and on international issues.

He currently serves on the Agricultural Technical Advisory Committee on trade for cotton, tobacco, peanuts, and planting seeds. He also serves on the management team of the Southern Peanut Farmers Federation, which represents peanut farmers in Alabama, Florida, Georgia, and Mississippi.

I want to thank Don for being here today to share his perspective on behalf of the Georgia Peanut Commission. And I know we all look forward to hearing your testimony, Don. Thank you.

Mr. KOEHLER. Thank you, Congressman.

STATEMENT OF DON KOEHLER

Mr. KOEHLER. Good morning, Chairwoman Dahlkemper, Ranking Member Westmoreland, and members of the Committee. I am Don Koehler, the Executive Director of the Georgia Peanut Commission. On February 1st of this year, I celebrated 22 and a half years in that position.

The current outbreak and recall attributed to the Peanut Corporation of America is the most devastating issue to ever face our industry in my time there. We currently have 4,535 peanut farmers in Georgia. That number has the potential to decline in 2009.

An inscription over the entrance to Washington's Union Station reads, "the farm, best home of family, source of our national wealth, the natural providence." That is true even today. Farmers provide more to the economic health of our economy than at any time in history.

On January 10th, the U.S. Food and drug Administration issued a voluntary recall notice on peanut butter processed at a plant owned by the Peanut Corporation of America. The initial recall was expanded to roasted peanuts and later to include all product ever produced at a PCA plant in Texas.

PCA was a supplier of peanut butter to the food service industry and a supplier of ingredients to food manufacturers. They had a broad reach for a small processor.

The recall has been ongoing for 2 months and has rippled throughout the peanut industry. We are dealing with a situation of historic proportions. The full impact will not fully be known for some time. Rebuilding cannot fully begin until the outbreak is over and the recall complete.

The 2008 peanut crop was a record crop, and we were faced with managing a surplus. USDA has been slow to react to the current market conditions in setting the weekly posted price, which has complicated this issue. Peanut sales are nonexistent for farmers who have uncontracted peanuts. Yet, USDA has not sufficiently reduced the posted price.

After the recall, sales of peanut products tumbled. General agreement is that peanut butter consumption is off as much as 20 percent. Peanut butter processing accounts for about 70 percent of the Southeastern peanut market.

Due to uncertainty, no contracts are being offered to farmers. This is critical because farmers need a contract to get financing and to make planting decisions. In 2 Georgia towns, groups of farmers built modern shelling facilities to add value to their peanuts. Each has fewer than 50 employees, and they will be impacted.

Peanut buying points are paid on the volume that they handle. And then there is the impact on our farmers. The market has collapsed. So the best case scenario seems to be $355 per ton, which is the loan rate.

Using projections for only variable costs, excluding land rent, farmers would need irrigated yields of 4,700 pounds per acre and non-irrigated yields of 3,500 pounds to achieve a zero cash flow. Typically, the yield in the Southeast would be less than 3,800 pounds irrigated and about 2,800 pounds for non-irrigated. There is little to no likelihood of farmers' cash flowing this year.

The National Center for Peanut Competitiveness took a 5-year Olympic average of U.S. peanut production and used USDA's posted price for peanuts and came up with an average price of $408-plus a ton. The difference of that price and the loan rate include factors showing a loss that ranges from about $114 to $121 million.

If you take into account a loss of production, these numbers grow. Growers anticipate a reduction of acres of at least a third. The NCPC indicates that that reduction could be 40 to 60 percent based on their representative farm. This is a loss of $225 to $450 million just at the farm gate. If you use a conservative multiplier of 2, which is very conservative, we are looking at potential for a billion-dollar impact in the peanut industry in this country.

What can be done to help us? The formula that USDA uses to set the national posted price is a farce. Congress should ask USDA to review this formula and report back in a firm time and come up with something that is realistic.

Peanut butter has been a staple for U.S. and international feeding programs. It is good, and it is good for you. And we need USDA to look at this and to really come to the table now. We need them to buy peanuts and peanut butter now more than ever.

Peanut butter is 25 percent protein and about $2 a pound. So the only thing that even beats that is whole chickens and chicken legs with the or bone in.

Farmers have felt the impact of this recall, but the thing that I will tell you is that the growers in Southeastern United States, peanut farmers, are here to work with Congress to find ways to make sure that this can never happen again.[The prepared statement of Don Koehler is included in the appendix at page 83.]

Chairwoman DAHLKEMPER. Thank you, Mr. Koehler.

Our next witness is Ms. Sheryl Vanco, who is from my district. She is a dairy farmer from Bear Lake, Pennsylvania. In addition to being a Pennsylvania Farm Union member, Ms. Vanco is also active with the Farmers Union Milk Producers Association and serves on the Pennsylvania Animal Health Commission.

She is here to testify on behalf of the National Farmers Union. The National Farmers Union represents 250,000 farm and ranch families.

Welcome, Ms. Vanco.

STATEMENT OF SHERYL VANCO

Ms. VANCO. Thank you, Madam Chairman Dahlkemper, Ranking Member Westmoreland, and members of the Subcommittee. We thank you for the opportunity to testify today.

My name is Sheryl Vanco. My husband and I have and operate a 95-cow dairy in northwestern Pennsylvania. We hire 2 full-time workers. One of them is an Amish man. My husband and I both work full-time on the farm. It is a lifestyle that we chose and that we love.

As a member of the Animal Health Commission, I help to oversee all of the animal health rules and regulations in the State of Pennsylvania. And we have 3 animal health diagnostic labs that we oversee.

We are proud of our industry and the dairy industry. We produce a quality product, and we produce quality meat products. We work hard every day to ensure that they are wholesome when they meet the market.

Our farm facilities are inspected by state and federal inspections. And annually our milk is tested for Brucellosis. There is mandatory monthly testing for bacteria. Weekly our milk is tested for somatic cell counts, which indicate the health of the cow's udder.

Every drop of milk that we ship to market is tested for antibiotic residues. It is very costly if a farmer has a load of antibiotic milk. He loses not only the value of the milk of his on the truck, but he is responsible for paying the value of all of the other milk. Typically there is $10,000 worth of milk on the truck.

We routinely vaccinate our cows to prevent diseases and take very good care of them if they need prompt health with any of the medical emergencies that they encounter. Veterinarians are in very short supply for large animals in this country now. So most of the farmers and herdsmen do a lot of the veterinary work themselves. We have nutritionists who advise us on the diet for the cows to keep them healthy.

Cows have a very high value. And they are the heart of the dairy business. We work very hard to take very good care of our cows. We appreciate them both for their value and the emotional attachment that we have with them when we work with them every day.

When the cow's productive life is over, it joins the beef cattle in the market. The animal is visually inspected before and after slaughter. Unhealthy cattle, whether they are downers or not, do not enter the food chain. Our domestic meat and milk products are highly regulated for quality and safety on the farm level.

Dairy is one of the most highly inspected and regulated industries in the food industry. When there is a problem that leads to a dairy or beef recall, the contamination is usually found to have been after it has left the farm.

Not only does the product recall of hamburger affect the financial loss of the processing facility, but it leads back to a reduced consumption by consumer, which leads to lower prices for the farmers. This works the same way in milk products. As soon as people back off from purchasing them, it ultimately leads back to us receiving less money for our milk or our meat that we are selling.

My own milk coop processes their milk in a cheese plant in Ohio. We sell it to the Ohio plant. If there were to be a product recall for dairy in the country, we are faced with financial loss because of the loss of consumption. But if we had a recall of the product from the plant that we ship our milk to, it would be much more devastating to us.

If it was a large enough recall to require the shutdown of the plant or to lead to bankruptcy of the plant, then we would be looking for another market out of the milk marketing generally. And we at this time have way too much milk on that market. So we would have very, very little financial ability to sell that milk. It would lead to devastation to the farms that have this supply on the milk.

We are very highly regulated on the farms, but we think that imports pose a greater threat to the health value in the United States than the farm-produced milk in this country. Only a minimal amount of that milk is inspected. And we think that it should all meet the same health requirements that we meet.

The recent melamine scare should wake everyone up to the fact that we need to regulate these imports. That melamine came in in powder into this country, could have very easily been in food bags that produced the cheese that we ate. We are very, very lucky that it was just showing up in a couple of candy products. It could have been far more reaching in this country, and we could have been facing the health problems that the Chinese have faced.

It comes into this country under the guise of MPCs, which is multiple protein components. It was missed in the last trade rounds. So it is not regulated. It does not really have a standard of identify to inspect it. And it is both economically devastating to this country and poses a health risk to the products that we have worked very hard to produce for you.

The impact food recalls would have, especially negative impact, on family farmers' and ranchers' recent contamination events have demonstrated in animal and non-animal foods, the current U.S. laws and their enforcement are not sufficient. We need more inspectors for the imports. And we need to highly regulate and keep on top of these.

We think we have in the dairy industry enough regulations in process, but we need more enforcement.[The prepared statement of Sheryl Vanco is included in the appendix at page 85.]

Chairwoman DAHLKEMPER. Thank you.

I just want to let you know that we may be called out for a vote. So we will try to get through some questions here quickly.

I would just like to ask the panel. And any of you or all of you could address this. Obviously each one of your industries is affected by recalls in different ways, but each one of your industries, which is consisting of small businesses, entrepreneurs, is affected, sometimes in a devastating way, with these recalls.

So as we look forward, we certainly don't want to impose undue regulations on struggling small businesses, whether that be the farmers, whether that be restaurants, whether that be the producers.

We have got 15 agencies already working on this issue. How can we who are looking at policy work in collaboration with small businesses in whichever industry we are talking about here in terms of the food supply to help you produce what you want to produce? And that is safe food for the people of this nation. I mean, that is kind of the crux of it here. How can we work better collaboratively with you through the agencies that we currently have?

I asked the question of the previous panel. Do we need to look at one agency. Do you have some thoughts on that from your perspective on the ground?

Ms. AUSTIN. I will start that. I am sure some of my other panel members probably have some thoughts on that as well.

One of the things that we would like to see is a generally accepted overview of the Global Food Safety Initiative, GFSI. There are a lot of activities underway regarding third party certification for imports. And some of those same practices could be applied domestically so that as an auditing body or anyone who is looking at a facility has got commonly accepted practices that are applied routinely.

So that, for instance, in our facility, New York State Ag Markets is in. We are an organic-certified facility. We have an auditor for that. The military comes in and audits. We have New York State Ag Markets come in routinely for other things as well.

We have customers who require third party audits. Everyone has a certain kind of oversight that they would like to see. If there was one standard generally recognized, we could streamline a lot of those activities and the burdens that that places on a small business so that there could be consistent application of practices. It will make it easier for us to train our people and increase the opportunity for small businesses to improve their food safety without taking on additional responsibilities.

Chairwoman DAHLKEMPER. Mr. Ambrosio?

Mr. AMBROSIO. There is a difference between what Diane is speaking about and inspections. Inspections is a snapshot at the time when you go into a facility. And you spoke about that earlier with the government panel.

I think what is important to capitalize and what you are saying is GFSI, the Global Food Safety Initiative, it's recognizing food management systems. It is a cultural change, I think. And that is

what we need to look at in this country. We need to have a cultural change on how we go about doing business. We have gotten away from actually having management and everybody else buy into the fact that you have to produce food in a safe manner before it leaves the facility.

And if we are going to go about just having inspections, inspections, inspections, I could tell you that I have been doing this a long time. You can't inspect quality or food safety into any system. You have to have a culture. And when you embrace an SQF model or an IFSS or a VRC that are all members of GFSI, you have a foundation of a management system that is going to be working in a good way. And I think they alluded on it a little bit about third party inspections. I think that is important.

It is a good adjunct to what the government is doing right now. It can't replace government oversight. I think it is a good adjunct to what they have.

Chairwoman DAHLKEMPER. Does anyone else want to comment on this?

Mr. KOEHLER. Again I want to go back to the whole issue of culture within a business. And what we were dealing with in the peanut recall is very evident now when you look at 2 factories with the conditions that they had, it is very evident that it was a culture within that business.

Certainly the thing that needs to be there is a major amount of accountability for these people in the food business, for the food production business. They have got to be accountable for what they do. And though it has put this business out of business, there needs to be a lot of accountability that even losing the business might not be all that you have.

Our organization wants to be sure we work with Congress on everything that is going on. And so we have not talked about issues on mandatory recall, any of those kinds of things right now, though they are there, because we want to look at everything there and find the best result that comes out of the United States Congress for the food-processing industry.

We are not terribly negative toward mandatory recalls, but they come with a great deal of responsibility. I want to use a personal example to tell you how that is.

I have a farmer friend who grows peanuts, but the other thing he grows is tomatoes. In the just advisory that happened last year, he had beautiful table-stock tomatoes. I ended up going to his farm, and we bought 5-gallon buckets full of these tomatoes that we picked ourselves for $5 for a 5-gallon bucket and canned those tomatoes. These were table-stock tomatoes.

And then they find out that it was a problem not on tomatoes but on peppers. So anything we do has to make a good system better. And it has to be based, too, on the science that we can say, "Hey, there is a reason that we did it."

Mr. CONRAD. There is currently a bill in Congress that I had worked with Senator Burr in North Carolina about and Senator Durbin and Gregg have cosponsored in regard to food safety. It does have some things that restaurants are certainly looking at. And certainly it seems to be a path that we may want to go down.

Two things have happened in the last several years that we would like strengthened: the requirements on produce safety and mandatory recall. We think that both of these probably need to happen.

Chairwoman DAHLKEMPER. Ms. Vanco, do you have any comment on this?

Ms. VANCO. The only comment that I have is when they did the Homeland Security, they moved some of the testing to Homeland Security from USDA. I think it would be a good idea to put it back with USDA, consolidate that back into one entity again.

Chairwoman DAHLKEMPER. Okay. I'm going to yield to Mr. Westmoreland at this point so he can get his question before we might be called away.

Mr. WESTMORELAND. Thank you, Madam Chairman.

Ms. Austin, you were talking about the products that you had made that you had to take off the shelves. Just curious, is there any type of testing that you do after these ingredients are added and then all put together? Do you do any type of testing on that? I mean, I am just curious.

Ms. AUSTIN. We would require in this particular case a COA, or certificate of analysis, for the incoming ingredients before we would bring them into the facility. So that if there were a potential that there was something harmful included, we would not bring them into the facility, number one.

The testing after the fact is unlikely to find things. You really want to test it proactively. So we did have certificate of analysis on the incoming PCA ingredients that indicated that they tested negative for Salmonella. Otherwise we never would have used them.

Mr. WESTMORELAND. In this testing, I am assuming you all have turned over that information to whoever is investigating this, that certificate?

Ms. AUSTIN. No, we have not. I don't think they have gotten into our facility to look at that. I think they looked at the documentation in Blakely. But we did.

Mr. WESTMORELAND. But you got a certificate.

Ms. AUSTIN. Yes.

Mr. WESTMORELAND. Right?

Ms. AUSTIN. Yes.

Mr. WESTMORELAND. That's interesting that they haven't contacted some of those, looking for some of those certificates.

Ms. AUSTIN. I think it was alluded to as well. Testing, particularly in this case, if you have an intermittent problem, you are not going to necessarily find everything by testing.

Mr. WESTMORELAND. Right.

Ms. AUSTIN. It goes back to practices.

Mr. WESTMORELAND. Yes.

Ms. AUSTIN. It goes back to culture. And that's what we rely on. There has to be some degree of trust throughout the supply chain. And there is a certain amount of trust that you put in your vendors and suppliers. And those are the same kinds of trust that they need to have of us.

Mr. WESTMORELAND. How long had you been doing business with PCA?

Ms. AUSTIN. Probably no more than two years.

Mr. WESTMORELAND. Mr. Koehler, let me ask you. The peanut industry is very supportive of food safety, right?

Mr. KOEHLER. Absolutely. You know, what we had was a bad actor that took a very short-term view. But, you know, we have got a product that we can go out, and we can tell folks that it is good and good for you.

And it is a long-term proposition for us. And the only way that we can have long-term health as an industry is to be sure that what we put out there, the mother that feeds that to a child or in my case the grandfather that feeds it to his grandsons knows that that product is safe and that it is good and that it is the best that it can be.

Mr. WESTMORELAND. And is it not true that whether you are a peanut farmer or a tomato farmer, that your job is to grow the crop and to make sure that you know it is the best product that it can be and then you take it to the processing plant and, from there, it is up to them and that you certainly have the interest of the consumer at heart and want to make sure that that is the best product that can come out of what you produce? Is that true?

Mr. KOEHLER. Even though the farmer sells to a buying point that sells to a peanut sheller that then sells to a company like PCA or a major processor, you know, we are four spaces removed. But if the consumer won't each that product, then it impacts us, too.

And it doesn't matter whether it is peanut farmers or whatever. Food safety is all of our issue in the agricultural system in this country.

Mr. WESTMORELAND. And you mentioned that this could be up to a billion dollars on the peanut industry. Is that just dealing with the growers or is that the total industry?

Mr. KOEHLER. What the multiplier number looks at is the total economic impact but on growers, almost $500 million right there.

Mr. WESTMORELAND. Ms. Vanco, I want to thank you for what you do. I have had an opportunity to both work on a dairy farm and to go out and visit them. You earn your money. And I want to thank you for doing that because that is a very worthwhile way of life, and I want to thank you and your family for doing that.

So, with that, I will yield back.

Chairwoman DAHLKEMPER. I would like to recognize Mr. King for 5 minutes.

Mr. KING. Thank you, Madam Chair. I want to thank all of the witnesses for your testimony. Now I understand something about what is good about Mr. Westmoreland since he worked on a dairy farm.

A lot of your testimony had remarks in there about--I would synthesize it down to this, the best place in the world to raise a family is right there on the land. I just came from the Ag Committee, by the way, why I was late. But your testimony does empt me as I can reference that in our corn region.

I want to assure you, Mr. Koehler, if your peanut producers decide they want to raise corn down there--and I know they have got to make up their mind pretty quick--that I am not looking at this in any parochial way. You've got to get all you can out of the land.

And one of the things we have tried to do is more dollars per acre. That solves, really, our agricultural problems throughout time.

I am curious about this. Before I ask my question, I want to comment also. Mr. Ambrosio's comment I think was the most significant in that you can't inspect safety into a system. You have to have a culture and reiterated by Mr. Koehler, if I remember correctly, and agreed I think by the rest of you.

I think that is a very significant point. I think that food inspection needs to be the inspection of the culture. And if the culture doesn't reflect the kind of food safety that is necessary, then that should bring more scrutiny in the food safety until such time as the culture is created or the place is shut down.

And I reflect back on having gone to a pharmaceutical manufacturing company and visited that. And they had great vats of white powder and people walking around in white frock coats. And they had a laboratory to evaluate quality control. And I asked, "Where is my FDA inspector?"

"Well, there is none here."

"When was the last time he was here?"

"Well, I think he was here late last year, maybe 6 or 7 months ago."

"You mean you don't have anybody on site like a USDA meat inspector watching all of the pharmaceuticals?"

The answer is no. Their quality control is in the quality of the pharmaceuticals that they produce in bulk that are packaged up in little capsules and sold to people and in the liability that trails that clear back to them. They create that culture because there are incentives in place for a good, solid, clean food culture. And I don't think that is what we have to do.

I wanted to pose this question this way. How many people have died in America because of lack of food safety in the last 10 years, the last 50 years, any increment anybody would like to take a stab at?

Myself I have a hard time coming up with numbers that I think would impact in comparison to many of the other hazards we face in life. Does anybody want to take a stab at that?

[No response.]

Mr. KING. I understand. Then I take you back to Alar, which seemed to be the precursor for the modern reaction to the lack of food safety. And it destroyed the apple market. Of course, it didn't affect my region again either, but it set the parameter that a scare of food safety chases the market away. It took a lot of apple producers out of business.

We had the BSE issue, which was mentioned. That hurt the beef industry dramatically. Now here we are with the impact on the peanut industry. Sitting there having to make a decision, if you don't get some answers, Mr. Koehler, can you tell us what you might do?

Mr. KOEHLER. Well, I represent farmers because that is my job, but I can tell you what farmers are telling me. They are struggling now to know what to do because our primary rotation is peanut and cotton with some corn. And we can't grow corn like you guys can there in the Midwest. We have to work pretty hard at it.

And it's pretty costly for us to do that. We have to irritate. The choices just aren't there. With 42-cent cotton, there is no cash flow there; with peanuts now below our cost production, nothing there to cash flow.

And I am not sure I know what farmers are going to do because sometimes they make a decision based on a motion, rather than on what their pocketbook is.

The National Center for Peanut Competitiveness has run every representative farm they have in this country. And they have found that farmers would lose more money if they would go fishing all year and not farm.

Mr. KING. I am looking at the projected gross receipts that you need to make your land cash flow. And I come up with $621 an acre for dry land, $834 an acre for irrigated land. What has happened to your land values, your asset values, that uphold your continuing operation?

Mr. KOEHLER. Farming-wise land values have kind of held where they are because of one thing. But it has changed a whole lot in the last few years. Our land values aren't continuing to escalate because we don't have the migration from Florida coming back up to buy 100 acres and a horse--it used to be 40 acres and a mule, but it's 100 acres and a horse right now--because of the situation in the economy.

So certainly land values aren't going back up. And the question is, at what point do they start falling, then, in value?

Mr. KING. I just thank all of the witnesses. And we will keep sending you corn because we don't know how to make grits.

[Laughter.]

Chairwoman DAHLKEMPER. I just have one last question, I think, for all of you. As we look forward, obviously we want to prevent recalls is really the issue here. You have talked a lot, Mr. Koehler, about the cost of what this particular recall has cost your industry.

I don't know if any of you could address this. This is just kind of looking in the past. In terms of your industries and the recalls, whether we're talking about beef, whether we're talking about tomatoes, spinach, peanuts currently, the cost, do you have any idea what the cost is to your individuals within your industries? You know, what kind of costs have they been dealing with?

Mr. AMBROSIO. I know in the supermarket industry, it is in the millions of dollars every time we go through this because it is not only do you lose product, there is product liability. Plus, there is loss of product. Once you pay for that product, you throw it out. And a lot of those companies, they go out of business and then stand in line with everybody else trying to recoup your money.

Chairwoman DAHLKEMPER. Do any of them or whatever percentage have recall insurance?

Mr. AMBROSIO. I think not too many. Recall insurance is a tricky one. It covers, it could cover, a variety of different things on the liability side, but we are looking also from the product loss side because if you are purchasing a million dollars worth of inventory and that million dollars worth of inventory has to be thrown out, then that is a tough pill to swallow.

Chairwoman DAHLKEMPER. Anyone else address that within your industry?

Mr. CONRAD. Recalls at the retail level are catastrophic if there is an event, an event such as the Jack in the Box chain or Taco Bell in the salad or in Cheyenne, Wyoming Taco John's. You know, those events were catastrophic for those companies because people got sick.

Chairwoman DAHLKEMPER. And how about your individual restaurants? Because you represent a lot of the small entrepreneurs, rather than the chains, correct?

Mr. CONRAD. That's correct. The small entrepreneur just pitches it more often than not. He takes his case of spinach. He takes spinach off the menu. And he doesn't put spinach back on the menu until such time as it goes away.

Chairwoman DAHLKEMPER. Ms. Austin?

Ms. AUSTIN. Well, I spoke to the potential losses for our individual company. And if you multiply those by even IDFA, the 530-member, it is in the millions. There is the out-of-pocket cost. There is also the disruption and the distraction from day-to-day, business growth opportunities, and reintroducing product in the market. And, again, until people are comfortable buying those products, your sales suffer.

So it definitely has a huge ripple effect. Until we get through it, we are not sure how long that will last? But if in the case of dairy, because it is a very seasonal business, if companies right now are in a position where they can't buy ingredients to make ice cream for the season and they don't have ice cream to sell, they may suffer when they get to July and August and they don't have product to sell and their bankruptcy or going out of business would really not look like it is related to the recall, but it has an awful lot to do with how they position themselves and set themselves up for success.

Chairwoman DAHLKEMPER. Have any within your industry gotten to that point?

Ms. AUSTIN. Well, we haven't approached the season yet, but I can tell you from our perspective cash flow is huge. And the immediate impacts for us because we have product that we are not getting paid for, in the case of ice cream, we figure the PCA inclusions represent only about one-tenth of the product cost. So the product cost to us multiples substantially.

We have to pay our cream and dairy suppliers. We have to pay for sugar. We have to pay for packaging. And then we throw all of that out. And to resupply, we have got to buy it all again.

And so it is really a double hit. We don't have cash coming in, and we have a lot of cash going out. And we are at a critical season where we need to be building our inventory because we don't have the infrastructure to manufacture the peak demand.

So if we are not able to make enough in July and August, then our sales will suffer as a result of that.

Chairwoman DAHLKEMPER. Last, Ms. Vanco?

Ms. VANCO. At the farm level, it is very, very difficult to measure the impact of a recall because those are products that have been produced after they have left our farms. We just sell the bare product to you. And so the trace-back is very hard to measure.

I do know that the BSE cost the whole country in the millions of dollars when that cattle lost their market. On our particular

farm, it would have been in the thousands. But it is very, very difficult to measure because everything that we sell fluctuates daily on the prices that we get. It is really hard to measure what the total effect is from a specific thing that is making those prices go up and down.

It does cost us thousands of dollars, I know, on a beef recall, but I can't tell you how many.

Chairwoman DAHLKEMPER. Well, I want to thank everyone on the panel today. This was very timely and informative testimony that you gave. And I appreciate you all taking the time to be down here with us to discuss this topic.

And, with unanimous consent, the members will have 5 days to submit statements and suppurating materials for the record. If I have unanimous consent, without objection, this hearing is now adjourned.

[Whereupon, at 12:00 p.m., the Subcommittee was adjourned.]

KATHLEEN DAHLKEMPER, PENNSYLVANIA
CHAIRWOMAN

LYNN A. WESTMORELAND, GEORGIA
RANKING MINORITY MEMBER

Congress of the United States
U.S. House of Representatives
Committee on Small Business
Subcommittee on Regulations and Healthcare
2361 Rayburn House Office Building
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STATEMENT
Of the Honorable Kathy Dahlkemper, Chairwoman
House Committee on Small Business, Subcommittee on Regulations and Healthcare
"Food Recalls-- The Impact on Small Business"
Wednesday, March 11, 2008

From the dinner table to the grocery store, most Americans take the safety of their food for granted. But what happens when that safety is jeopardized? Recent outbreaks of salmonella and E.coli have shown that--as much as we would like to believe otherwise--we cannot always assume the food our families are eating is safe.

This past January, a salmonella outbreak in peanut butter tainted a wide range of products, from crackers to candy bars. The epidemic killed nine people, sickened hundreds, and kicked off one of the largest food recalls in U.S history. The men and women on the front lines, getting products off the shelves and educating consumers about which foods were safe to eat, were small business owners. They did this not because they had to--after all, they weren't the ones who created the problem--but because they felt a responsibility towards their customers. But for all the good that these entrepreneurs did for consumers, there is a very real economic side to their stepping in to do the right thing. Now that the Peanut Corporation of America has declared bankruptcy, small businesses are the ones left holding the bag.

In today's hearing, we will examine the effects of a food safety crisis on entrepreneurs. More importantly, we will look for solutions moving forward.

For small firms, managing a food safety crisis is an enormous financial burden. They not only have the responsibility of tracking down and destroying tainted products, but they often have to dispatch costly damage control campaigns. Whereas large firms can often afford to retain public relations firms, most entrepreneurs cannot. This can be especially damaging, considering the stigma attached to tainted products. Even foods not directly affected have been stigmatized.

In the case of the salmonella outbreak, jarred peanut butter sales plummeted 22 percent. Peanut butter cookies also stayed on the shelves, with purchases down 14.6 percent. These drop-offs have been devastating for the broad range of small businesses that sell peanut butter products, from 7-eleven franchises to boutique bakeries.

Food safety crises are particularly hard on small businesses. Because many of these firms operate on tight profit margins--generally between 2 and 5%-- large recalls can mean bankruptcy. This is especially true for small firms that cannot afford recall insurance. Even companies that *do* have these policies are struggling to recoup their costs. Many insurance providers are now refusing to fill peanut butter related claims, arguing that they are PCA's responsibility.

Perhaps the most frustrating aspect of the salmonella epidemic is the fact that it could have been avoided. To begin, the regulatory process is fragmented, with different foodstuffs falling under different agencies' jurisdictions. These divisions prevent authorities from properly responding to outbreaks. On top of that, agencies like the FDA are often understaffed and overwhelmed.

In response to the spotty inspection system, many large businesses have taken food safety into their own hands. In fact, some large firms have gone so far as to hire their own private inspectors, yet this is not likely the best response to this issue.

From the fields to the processing plant to the grocery store to the dinner table, small businesses are an integral part of our food supply chain. But recent recalls have made us question the safety of our food. And they have not only jeopardized the health of our families--they have put an important part of the small business community at risk.

For release only by the
House Small Business Subcommittee on Regulations and Healthcare

Statement of
Dr. Kenneth Petersen
Assistant Administrator for the Office of Field Operations
Food Safety and Inspection Service
United States Department of Agriculture
Before the
House Small Business Subcommittee on Regulations and Healthcare

March 11, 2009

Madam Chairwoman and Members of the Committee, thank you for inviting me to appear before you today to address the Food Safety and Inspection Service's (FSIS') recall procedures and outreach to small businesses. I am Dr. Kenneth Petersen, Assistant Administrator for the Office of Field Operations with the Food Safety and Inspection Service, of the U.S. Department of Agriculture (USDA).

Who We Are

FSIS is the public health regulatory agency within the USDA. We are responsible for ensuring that the Nation's commercial supply of meat, poultry, and processed egg products is safe, secure, wholesome, and accurately labeled and packaged, whether those products are domestic or imported. FSIS is charged with administering and enforcing the Federal Meat Inspection Act, the Poultry Products Inspection Act, the Egg Products Inspection Act, portions of the Agricultural Marketing Act, the Humane Methods of Slaughter Act, and the regulations that implement these laws. The high volume and the

high-risk nature of the products that FSIS inspects demand an in-plant inspection presence, which is not only required by law, but is necessary to protect consumers. For this reason, the agency employs over 9,500 personnel, including around 7,800 full-time in-plant and other front-line personnel protecting the public health in approximately 6,200 Federally-inspected establishments nationwide.

To accomplish its tasks, FSIS inspection program personnel perform antemortem and postmortem inspection procedures to ensure public health requirements are met. In fiscal year (FY) 2008, this included about 50 billion pounds of livestock carcasses, about 59 billion pounds of poultry carcasses, and about 4.3 billion pounds of processed egg products. At U.S. borders, they also inspected 3.3 billion pounds of imported meat and poultry products. In addition, FSIS personnel conducted millions of inspection procedures to verify that establishments met food safety and wholesomeness requirements. In 2008, FSIS personnel collected and tested about 24,000 ready to eat product and environmental samples using risk based criteria for *Listeria* and approximately 56,000 raw product samples for *E. coli* O157:H7 in ground beef and *Salmonella* in raw meat and poultry. We employ a number of other field personnel, such as laboratory technicians and investigators. The majority of our personnel are working in the field to ensure that the appropriate sanitation standards and procedures are adhered to so that a recall is not necessary. But when it is necessary, our personnel are ready to respond to protect the public health.

Protecting the Food Supply

FSIS is currently taking steps to strengthen its public health data infrastructure. As part of this, FSIS is building an unprecedented dynamic data system that will alert us to changing and emerging food safety trends by smart use of reliable data. The Public Health Information System will enable FSIS to more rapidly see trends and vulnerabilities in the food safety net. This system will allow the agency to analyze the data more quickly and identify trends or problems sooner. This will, in turn, decrease the time needed to respond to incidents.

The best asset that FSIS has is a dedicated workforce. The Agency has developed new recruitment and retention strategies to retain those employees who have a passion for food safety and public health and to attract others to join us in this mission. As a result of our efforts, Agency in-plant personnel vacancy rates are declining. At the end of FY 2008, FSIS had more in-plant inspection personnel than at any time since 2001.

FSIS is also taking new steps to tackle foodborne pathogens. For *E. coli* O157:H7, we now have more targeted routine testing, we are testing more ground beef components, we refined the testing method and we have released draft compliance guidelines for industry. We have also held several public meetings to discuss the challenges posed by *E. coli* O157:H7 and to work on solutions with industry, including small plants, consumers, and other public health partners. Those discussions have helped us begin developing directives and policies to address our new steps for the future. We are also pleased to

report that we have seen improvement in the data trends as a result of the *Salmonella* incentive and verification testing programs. Furthermore, FSIS has recently completed a microbiological baseline study of broiler carcasses and is analyzing the data on *Salmonella* and *Campylobacter* contamination from that baseline. FSIS scientists continue to stay abreast of new developments in the area of microbial food safety, and inform Agency management of potential policy implications.

Recalls

The purpose of a recall is to remove meat or poultry from commerce as quickly as possible when FSIS has reason to believe it is adulterated or misbranded. Just as we approach preventing a recall in a proactive way, FSIS is also proactive in managing recalls once they become necessary.

It should be noted that recalls are voluntary actions taken by industry at the request of the Agency. The voluntary recall is the quickest way to determine where the affected product has been distributed because companies are familiar with who their customers are and can notify them much more quickly than the Federal government could after waiting to receive such information from the company. Should a firm deny FSIS' request for a voluntary recall, the Agency has the authority to seize and detain product in commerce.

FSIS may become aware of misbranded or adulterated product in commerce in several ways. We may be alerted to a potential recall situation by the company that manufactures or distributes the product, test results from our sampling programs, observations or information gathered by

our inspection program personnel in the course of their routine duties, consumer complaints, or epidemiological or laboratory data submitted by State or local health departments, other USDA agencies, or other Federal agencies, such as the U.S. Department of Heath and Human Services' Food and Drug Administration, the Centers for Disease Control and Prevention, and the Department of Defense.

In the event of a recall, when FSIS has identified the adulterated product and its source, FSIS' Recall Management Staff coordinates and convenes the recall committee, which makes recommendations for all recalls of FSIS-inspected meat and poultry products. While the company itself conducts the recall, which can and does occur 24 hours a day, seven days a week, FSIS notifies the public through a press release that is posted on FSIS' Web site along with a photo of the product when practicable. FSIS is currently able to convene a recall in a matter of hours.

The Agency also issues recall information as quickly as possible through list-serves, e-mails, and faxes sent directly to stakeholders, including Members of Congress; news media; Federal, State, and local public health partners; and constituents. We have begun translating more of the recall releases into Spanish. Individuals can also subscribe to receive automatic e-mail notification of recall updates, including press releases, directly from FSIS' Web site at www.fsis.usda.gov.

After the recall occurs, FSIS conducts effectiveness checks to ensure that consignees have received notice of the recall and are making reasonable efforts to retrieve and destroy the

recalled product or return it to the recalling firm. Upon compliance, the recalling firm is officially notified by letter that the recall is completed, and no further action is expected.

On August 18, 2008, in order to improve the effectiveness of a recall, FSIS also began to make available to the public a list of retail establishments that have likely received products subject to the recall. FSIS believes this information helps consumers lower their risk of foodborne illness by providing more information that may assist consumers in identifying recalled products. Individuals can subscribe on the FSIS Web site to get e-mail alerts on recalls or retail distribution lists.

Outreach to Small and Very Small Plants

Recalls, though necessary in the event of adulteration or mislabeling of product, are the last weapon in FSIS' arsenal to combat foodborne illness and protect public health. Industry is responsible for the production of safe food, while FSIS continuously inspects carcasses at slaughter, and visits processing establishments at least once per shift per day. FSIS' system is preventative - it is our goal to eliminate the need for recalls altogether. One way we do this is through education and outreach. By educating producers and manufacturers of FSIS regulated product, FSIS continually seeks to minimize the risk of adulterated product, and subsequently the need for recalls at all. However, FSIS does not hesitate to fully enforce the food safety laws and regulations. This can range from issuing non-compliance records to suspending plant operations.

Some of the most important groups that FSIS works with are the small and very small plants. In accordance with Small Business Administration guidelines, small plants have 500 or fewer but

10 or more employees. Very small plants have fewer than 10 employees or annual sales of less than $2.5 million. The businesses that fall into this category have a particular need for current and frequent food safety information because they generally lack the resources to monitor food safety developments from the Agency, academia or trade associations. The FSIS Strategic Plan, the foundation document for both the long range and day to day operations of the Agency, describes the initiative to enhance outreach to assist small and very small plants as one of the Agency's key focuses. To address the challenges that these companies face, and to further the Agency goals of minimizing the need for recalls with better business practices and full compliance with Agency regulations, FSIS has initiated additional efforts to work with small and very small plants, including another approximately 1,900 under state inspection. FSIS has received several honors for our outreach to small businesses. FSIS received all As from SBA's Office of the National Ombudsman on their Small Business Regulatory Enforcement Fairness Act (SBREFA) rating criteria, as reflected in their 2007 Report to Congress. Also in 2007, the Government Accountability Office (GAO) gave FSIS outreach programs for small and very small plants positive recognition for serving the needs of small businesses. While FSIS does not hesitate to regulate as necessary to protect the public heath, it also assists small and very small operators to help them maintain and improve their food safety and food defense systems.

FSIS has implemented an action plan to deliver outreach assistance to promote food safety and food defense systems for small and very small plants. As part of that plan last year, FSIS established a new program office, the Office of Outreach, Employee Education and Training (OOEET), to provide comprehensive or one-stop assistance to owners and operators of small and very small plants to improve their food safety programs. The office provides consolidated access,

resources, and technical support for small and very small plants to assist them in producing safe and wholesome meat, poultry, and processed egg products. This new office will ensure that the small and very small plants get the same message about public health policies as does the FSIS workforce, and enhance the Agency's ongoing effort to assist small and very small plants with implementing food safety and public health regulations.

FSIS continues to hold a series of regulatory education sessions around the country to provide a walk-through of a variety of topics of interest for small businesses, including Hazard Analysis and Critical Control Point (HACCP) systems, Sanitation Performance Standards, SSOPs, combating *E. coli* O157:H7, and food defense strategies. Our most recent session took place in Alameda, California on March 6. We will continue these efforts in Dallas, Texas on March 17 and in Philadelphia, Pennsylvania on April 7. Since our first session in summer 2006, we have reached over 2,000 representatives from FSIS and industry. Also, in January 2009, FSIS began holding a series of "how to" workshops to provide practical tools and methods for proper application and compliance. These workshops are designed so that the small and very small plant operators can walk away from the workshop with a plan that they can implement immediately. The topics we are covering in these sessions include how to develop a recall plan, humane handling, sanitation, Specified Risk Material (SRM) removal, *Salmonella* control, and how to develop a food defense plan. The workshops are planned through April 2009. Because FSIS has been receiving very positive feedback from these events, additional workshops may be planned for later this year.

For small and very small operators who use the Internet, FSIS has a variety of resources available through the FSIS website. These include a Web page devoted to the full range of small and very small plants needs, podcasts, and access to educational Web seminars. It also includes access to FSIS compliance guidance that helps small and very small plants apply complex regulations to their working environment. A "What do you need to know today?" is available that is constantly updated with the latest FSIS news. The site links to commonly asked questions, and displays an order form for printed materials. Information about how to obtain a grant of inspection can be found on this page. FSIS also developed a series of audio podcasts to assist small and very small plants, available on the FSIS website. A sample of the topics include preventing developing a HACCP plan, exporting product, recalls, generic labeling, and navigating AskFSIS. AskFSIS is a new feature on the Web site designed to answer technical and policy questions regarding inspection and public health regulations 24 hours per day, seven days per week. Visitors can also ask new questions, which are reviewed and answered quickly, then categorized and posted on the agency's Web site.

In FY 2008, FSIS sent Enforcement Investigations and Analysis Officers (EIAO) to conduct over 100 proactive visits at small and very small plants to explain to them how they can prepare for a food safety assessment and to offer resources to help improve their food safety system and continues with this outreach. Again, this is another way our Agency is preventative in its orientation – we work to assure establishments have systems in place to prevent the necessity of a recall to begin with.

Finally, as an additional mode of outreach, FSIS has begun assembling a group that will provide direct assistance to small and very small plants through a toll free number, email, and workshops. The center is expected to be fully operational by September 2009.

Conclusion

FSIS' system for achieving food safety is strong because we focus on preventing recalls at the plant level through outreach to producers and manufacturers of FSIS regulated product industry. FSIS continually seeks to minimize the risk of product becoming adulterated and in doing so, to fulfill our greatest charge – protecting public health.

FSIS will continue to provide vital guidance to all small and very small plant operators concerning emerging foodborne pathogens, HACCP, sanitation performance standards, and humane handling and inspection requirements, helping existing small and very small establishments to maintain their competitive edge, and assisting interested parties in opening safe and successful businesses. FSIS will continue to work to ensure that small and very small businesses continue to operate and, thus, continue to be the generators of innovation and growth among the industry.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
Rockville MD 20857

STATEMENT OF

STEVEN M. SOLOMON, D.V.M., M.P.H.

ASSISTANT COMMISSIONER

FOR COMPLIANCE POLICY

OFFICE OF REGULATORY AFFAIRS

FOOD AND DRUG ADMINISTRATION

DEPARTMENT OF HEALTH AND HUMAN SERVICES

BEFORE THE

SUBCOMMITTEE ON REGULATIONS AND HEALTHCARE

COMMITTEE ON SMALL BUSINESS

U.S. HOUSE OF REPRESENTATIVES

MARCH 11, 2009

FOR RELEASE ONLY UPON DELIVERY

INTRODUCTION

Good morning, Madam Chairwoman and Members of the Subcommittee. I am Dr. Steven Solomon, Assistant Commissioner for Compliance Policy in the Office of Regulatory Affairs at the U.S. Food and Drug Administration (FDA or the Agency), which is part of the Department of Health and Human Services (HHS). FDA appreciates the opportunity to provide you with information about how we manage the recall of FDA-regulated products that can harm consumers, including the ongoing recalls related to peanuts and peanut-containing products made by the Peanut Corporation of America (PCA). As you know, these products have been the source of a foodborne illness outbreak caused by the *Salmonella* Typhimurium bacterium which, as of March 3, has infected 677 people in 45 states and may have contributed to nine deaths.

When a product on the market presents a public health hazard, promptly recalling that product usually is the most effective means of protecting the public. As illustrated by recent events, however, a recall initiated by one company can sometimes have repercussions for a very large number of businesses that receive those products or ingredients for further processing, distribution, or retail sale.

It is important to understand that manufacturers play a critical role in ensuring the safety of the foods they introduce into commerce. Strong food safety programs in food manufacturing facilities begin with the promotion of a strong culture of food safety throughout the company, including the need for preventive measures to detect and prevent problems before they occur.

Establishing this culture requires a strong sense of corporate responsibility and continuous management oversight.

One of the key messages that FDA has been emphasizing over the last few years is that all food companies, both large and small, must know their suppliers. It is critically important for firms to know the supply chain for the ingredients they use in their products and to be sure that their suppliers provide accurate information about their food safety and defense controls and the products they supply. In a complex, global market, this may require close interaction with many critical components throughout the food supply chain, including growers, manufacturers, distributors, retailers, food service providers, and importers.

RECALL POLICIES AND PROCEDURES

Various statutory provisions authorize FDA to require recalls of certain products in particular circumstances. However, in the food arena, with the exception of infant formula, FDA does not have the authority to order a recall of a food or dietary supplement.

Subpart C of Part 7 of FDA's regulations (Title 21, *Code of Federal Regulations*, 7.40-59) provides general guidance for the voluntary recall of products, including those recalls initiated by a firm on its own and those initiated at FDA's request. In addition, FDA has published guidance for recalling firms which can be found at:
http://www.fda.gov/ora/compliance_ref/recalls/ggp_recall.htm.

FDA's recall guidance describes actions that FDA and the industry can take to carry out their respective recall responsibilities. The underlying premise of FDA's recall guidance is that firms producing and marketing FDA-regulated products assume a responsibility to timely remove violative products from the marketplace when removal is necessary to protect the public health.

FDA assigns recalls to one of three categories according to the level of hazard associated with the violative product that is being recalled:

- Class I recalls are those where there is a reasonable probability that the use of, or exposure to, a violative product will cause serious adverse health consequences or death. Examples of products that could fall into this category are a food found to contain botulinum toxin or *Salmonella*, or a food with undeclared allergens.

- Class II recalls are those in which use of, or exposure to, a violative product may cause temporary or medically reversible adverse health consequences or where the probability of serious adverse health consequences is remote. One example is a drug that is under strength but that is not used to treat life-threatening situations.

- Class III recalls are those in which use of, or exposure to, a violative product is not likely to cause adverse health consequences. One example is a food sold at retail with a label that does not contain the required information in English.

A recall is intended to achieve the orderly and prompt removal or correction of a violative product. As previously mentioned, almost all recalls are conducted voluntarily since FDA has mandatory recall authority in very limited circumstances. A formal FDA "request" for a recall, although still voluntary, is reserved for urgent situations, i.e., those violative distributed products that pose a hazard to the consumer. In most instances, companies are willing either to conduct voluntary recalls of their own accord or after a formal request from FDA. If a firm refuses to recall violative product, FDA may pursue a remedy in Federal court, such as a seizure or injunction. FDA also may choose to issue press releases to warn the public about violative products that are in the marketplace.

ROLE OF FDA AND FIRMS IN CONDUCTING RECALLS

The cooperation of industry in expediting recall activities is vital to ensuring that recalled products are removed from the marketplace swiftly, efficiently, and effectively. Recalling firms are urged to notify FDA as soon as they determine that the recall of a violative product is appropriate. Firms also are asked to provide certain information about the recall to FDA, including: the reason for the recall; why the product is violative; how the problem occurred; the extent of the problem; how and when the problem was discovered; where the product was distributed; and any consumer or supplier complaints.

Following notification, in most cases the recalling firm and FDA work collaboratively to develop a recall strategy. This early communication helps to ensure the orderly and prompt removal or correction of a violative product to the extent necessary to protect the public health. Likewise, it

allows FDA to determine the steps it must take to address the specific circumstances, which may include: making certain that all products that need to be recalled are, in fact, recalled; helping to locate the product subject to the recall; assisting in identifying the cause of the problem; and checking similar firms and/or products to determine if the problem could be more widespread. FDA uses information it learns during recalls to help prevent future problems and to identify similar problems if they arise in the future.

Throughout the course of the recall, it is the recalling firm's responsibility to determine whether the recall is progressing satisfactorily by performing effectiveness checks. These checks help to verify that all known, affected consignees have received notification about a recall and have taken appropriate action. At the same time, FDA conducts "audit checks" to assess the effectiveness of a firm's recall efforts.

Even though the firm recalling the product may issue a press release, FDA will further publicize a recall when it believes the public needs to be alerted about a serious hazard. For example, if a canned food product, purchased by a consumer at a retail store, was found by FDA to contain botulinum toxin, the recall strategy would include an effort to retrieve all cans in circulation, including those in the hands of consumers. As part of this effort, the Agency also could issue a public warning via the news media to alert as many consumers as possible to the potential hazard. The news media is a very effective way to inform large numbers of people that a widely distributed product has been recalled.

HOW FDA WORKS WITH FIRMS DURING RECALLS

FDA is committed to working with recalling firms to effect the orderly and prompt removal of a violative product from the marketplace and has a variety of mechanisms in place to achieve this goal. For example, FDA has field recall coordinators located throughout the country to act as the point of contact for a recalling firm and to assist firms with a recall. The recall coordinators provide a recalling firm with information about the recall process and are available to work closely with the firm throughout the course of the recall. For example, recall coordinators assist the firm in determining an appropriate recall strategy, review the recalling firm's notification letter to customers affected by the recall, and coordinate the appropriate destruction, reconditioning, or disposition of recalled product. A list of the recall coordinators can be found at: *http://www.fda.gov/oc/opacom/hottopics/salmonellatyph/recallcoordlist.html.*

In addition, FDA has developed "model" press releases available for use by a recalling firm that needs to issue press to inform the public about its recall. These model press releases help ensure that all appropriate information about the recalled product is accurately and appropriately conveyed to the public. Further, FDA encourages recalling firms to consult with their local recall coordinators before issuing press releases.

To assist firms in communicating their recall actions, and to help ensure that the public is informed, FDA posts firms' press releases on its Web site. In the case of a Class I recall, FDA also will post photos of the recalled food product if provided by the firm. The use of product

photographs for food recalls has proven to be so successful and useful to consumers that FDA plans to expand it to include other Class I recalled products, such as drugs or medical devices.

For recalls of widely distributed products, such as pet food contaminated with melamine, and the current recall of peanuts and peanut-containing products that may be contaminated with *Salmonella* Typhimurium, FDA also has posted a searchable database on its Web site to help the public and recalling firms identify recalled products. FDA updates the database daily and includes descriptive information about the recalled products such as brand name, recalling firm, UPC code, size, and description of the product. In at least one instance during the current peanut-related outbreak, FDA learned that a small business, using the searchable database, was able to identify a recalled peanut product it had used in its finished product and initiate a recall of its own products even before receiving notification from its supplier.

THE IMPACT OF FOODBORNE OUTBREAKS ON BUSINESS

FDA has a duty to protect the public health. At the same time, FDA is aware that foodborne outbreaks can adversely impact businesses, which bear the cost of the recall and may suffer from negative consumer perception of their products. FDA believes that responding quickly to remove misbranded and adulterated products from shelves through effective recalls is in industry's and the public's best interest.

Preventing such outbreaks from occurring is the most desirable goal, from the perspectives of both public health and industry. Businesses should take measures to ensure the quality of the

ingredients they use in their products. To protect against contamination, food manufacturing facilities are required to follow FDA's current Good Manufacturing Practices regulation. FDA remains committed to working with industry at all levels to prevent foodborne outbreaks.

In addition, there are actions that firms can take to be prepared if a recall becomes necessary. For example, FDA recommends in its recall guidance that firms prepare and maintain a current written contingency plan for use in initiating and effecting a recall. FDA also recommends that firms take steps to enable them to trace their inventory in the event of a recall to limit the amount of product affected.

PCA INVESTIGATION

On January 7, 2009, FDA discussed peanut butter as a possible source of the outbreak with the Centers for Disease Control and Prevention (CDC) and the Minnesota Department of Health. On January 8, based on preliminary data from CDC and Minnesota's investigation, FDA initiated an inspection and collected samples at a peanut butter distributor, King Nut Company. King Nut distributed peanut butter manufactured by PCA at its Blakely, Georgia plant to institutional facilities, food service industries, and private label food companies in several states. On January 9, FDA initiated an inspection of the PCA plant in Blakely.

By January 19, tests by the Connecticut Department of Health of an unopened container of King Nut peanut butter showed that it contained the same strain of *Salmonella* Typhimurium that was associated with illnesses linked to the outbreak. The fact that the *Salmonella* Typhimurium was

confirmed in an unopened container of peanut butter indicated that the peanut butter was contaminated before it left the Blakely processing plant.

PCA sold peanut butter in bulk containers ranging in size from five to 1,700 pounds and peanut paste in sizes ranging from 35-pound containers to tanker trucks. In addition, PCA sold peanut meal, granulated peanuts, and oil and dry roasted peanuts in bulk containers of various sizes and, in some instances, in retail-sized containers. Through its investigation, FDA determined that PCA distributed potentially contaminated products to more than 300 consignee firms in 2007 and 2008, many of which then further distributed products for consumption or for use as ingredients in hundreds of different products, such as cookies, crackers, cereal, candy, and ice cream.

Because of public health concerns related to PCA's plant in Blakely, Georgia, FDA expanded the scope of its inspections to include the PCA plant in Plainview, Texas, where FDA found additional problems relating to filth and Salmonella contamination.

PEANUT AND PEANUT PRODUCT RECALLS

After discussions with FDA, the first product recall related to the outbreak was initiated on January 10, 2009, by King Nut of peanut butter distributed under the King Nut and Parnell's Pride labels. On January 13, PCA initiated a voluntary recall of certain lots of peanut butter produced on or after July 1, 2008, due to the risk of *Salmonella* contamination. PCA expanded this recall on January 16 to include all peanut butter produced on or after August 8, 2008, and all peanut paste produced on or after September 26, 2008. This was followed by yet another

expansion on January 18, 2009, when PCA announced it was recalling all peanut butter and peanut paste manufactured on or after July 1, 2008, at its Blakely processing plant.

On January 28, PCA expanded the recall again to include all processed peanuts and peanut products, including all dry and oil roasted peanuts, granulated peanuts, peanut meal, peanut butter and peanut paste processed in its Blakely facility since January 1, 2007.

On February 12, the State of Texas issued an emergency order directing PCA's Texas facility to cease the manufacture and distribution of all food products at the facility and issued a mandatory recall order requiring PCA to recall all products manufactured at the plant. On February 20, PCA issued a statement indicating it earlier had filed for Chapter 7 bankruptcy and that it was no longer able to communicate with customers regarding recalled products. As a result, FDA and Texas officials are now coordinating their efforts to notify companies that received product from PCA's Plainview, Texas facility from January 1, 2007, forward.

Many companies that received recalled peanuts and peanut products from PCA have, in turn, conducted voluntary recalls. The recalled peanuts and peanut products were used as ingredients in many additional products, exponentially increasing the scope of the recall.

To help consumers and others identify affected products, FDA has placed a user-friendly, searchable list of the products being recalled, with corresponding photographs, when available, on its web site at: *www.accessdata.fda.gov/scripts/peanutbutterrecall/index.cfm.* The searchable list currently includes approximately 3,200 product entries in 18 categories, representing

products that have been recalled by approximately 300 companies. FDA is updating this list on a daily basis, as new information becomes available.

FDA has been working with companies that purchased PCA's peanuts and peanut products to identify affected products and facilitate their removal from the market. FDA and state officials have contacted more than 14,000 firms throughout the distribution chain, including direct accounts, sub-accounts, and retail accounts.

FDA is continuing to work closely with firms, conduct follow-up audits and inspections, monitor the progress of firms' actions, work with state and local regulatory authorities, and notify our foreign regulatory counterparts of affected products that have been confirmed as having been distributed internationally. Further, FDA is continuing its work to identify products that may be affected and to track the ingredient supply chain of those products to facilitate their removal from the marketplace.

CONCLUSION

The facts of this outbreak, as well as our experience with other outbreaks, highlight the need to enhance FDA's statutory authority to protect consumers from foodborne outbreaks. We are currently reviewing with HHS the Agency's prior legislative requests to strengthen our ability to protect Americans from foodborne illness.

One of the areas under discussion is mandatory recall authority, which would be a useful tool that in some circumstances could result in faster removal of implicated products from commerce. We are also discussing the need for new or enhanced authority in several other areas:

(1) Authority for FDA to require preventive controls;

(2) Authority for enhanced access to food records during routine inspections; and

(3) Authority for FDA to require food facilities to renew their registrations more frequently, and for FDA to modify the registration categories.

FDA is working hard to ensure the safety of food, in collaboration with its Federal, state, local, and international food safety partners, and with industry, consumers, and academia. Although the *Salmonella* Typhimurium foodborne illness outbreak underscores the challenges we face, the American food supply continues to be among the safest in the world. Food safety is a priority for the new Administration. We can, and will, learn from the outbreak what we can do to better ensure the safety of our food supply moving forward.

Thank you for the opportunity to discuss FDA's recall process and its application to the ongoing recalls of contaminated peanuts and peanut products. I would be happy to answer any questions you may have.

International Dairy Foods Association
Milk Industry Foundation
National Cheese Institute
International Ice Cream Association

Statement to the U.S. House of Representatives
Committee on Small Business
Subcommittee on Regulations and Healthcare

Diane Austin, Vice President
Perry's Ice Cream Company

March 11, 2009

"Impact of Food Recalls on Small Businesses"

Good morning, Madame Chair and Committee members.

My name is Diane Austin, and I am the Vice President for Marketing at Perry's Ice Cream Company in Akron, New York. I would like to thank you for holding this hearing today to discuss the impact of food recalls on small food manufacturers like Perry's.

In my statement today, I will highlight three areas: first, outline the steps we take to make sure American dairy products are among the safest in the world; second, explain why product recalls can have a devastating impact upon small businesses and third, ask you to consider how Congress can help us get through the economic losses suffered through no fault of our own. My statement will conclude with a call to carefully consider the impact of any new food safety regulations on small businesses.

Perry's Ice Cream is a family run company that has been making great tasting, creamy ice cream for four generations. From our humble beginnings in 1918, using hand cranks and horse-drawn delivery wagons, Perry's Ice Cream has evolved to be one of the most modern ice cream production facilities in the country. We now employ nearly 300 team members in Akron, NY.

We manufacture ice cream under our own label and under contract for other brands as well. We maintain a fleet of vehicles to distribute our products in New York and Pennsylvania but you can find products manufactured in our facility as far West as Chicago and as far South as Florida. In the Western New York area, we proudly maintain the # 1 Market share against large multinational competitors and supply ice cream across multiple channels of trade, including chain and independent grocery stores, convenience stores, independent mom-and pop ice cream stands, schools, nursing homes and other food service venues.

Perry's remains committed to the old-fashioned values that have made us a successful household name for over 90 years. We are very proud of the fact that the Niagara University Family Business Center named us the 2008 Family Business of the Year. This award recognized our commitment to family businesses and our contribution to the economic growth of Western New York.

We also recently received the 2008 INNOVATE award in the Agribusiness category from the Buffalo Niagara Partnership for growth, innovation and investment in the regional economy.

We enjoy bringing smiles to others, not only through our many delicious flavors of ice cream, but also by sponsoring charitable teams, supporting nonprofit agencies and donating products to community organizations throughout Western New York. If you take a look around the Western New York region for the Perry's logo, you'll see the many ways that we're making life a little better.

I am here today with our trade association, the International Dairy Foods Association, which represents our nation's dairy manufacturing companies and their suppliers. IDFA has a membership of 530 companies representing more than 85 percent of the milk, cultured products, cheese and frozen desserts produced and marketed in the United States. More than half of IDFA's member companies are small businesses. Perry's is an active member of IDFA and one of its constituent organizations, the International Ice Cream Association. Our Chairman, Tom Perry, and our President, Brian Perry (Tom's son), have both served on the Board and as officers of the organization.

IDFA annually hosts an ice cream party on Capitol Hill for Congress and its staff. We serve thousands of scoops of ice cream that is donated by the members of IDFA. This year's event is on June 18th and I'd like to take this opportunity to invite each of you and your staff members to attend.

American dairy products are among the safest in the world

Product quality and consumer safety are the top priorities at Perry's Ice Cream. Like small businesses across the country, the trust and confidence of our customers is paramount. From premium ice cream to custard, Perry's makes more than 550 different flavors of ice cream products at our facility in Akron.

To better understand the impact of this recall on Perry's, it's important to understand the food safety and quality control protocols we use. These are typical for dairy processors, both large and small.

Dairy manufacturing plants must meet stringent federal, state and local regulations, including those developed by the U.S. Food and Drug Administration (FDA) and state regulatory agencies.

Food safety controls begin with the receipt of milk, cream and other ingredients. We require that our dairy ingredients are sampled and tested for animal drug residues, total bacteria count, temperature and composition. For non-dairy ingredients, such as peanuts or peanut butter, we require that a Certificate of Analysis (COA) be provided with each shipment to document compliance with our ingredient specifications. Any ingredient that does not meet our specifications is rejected and returned to the supplier.

Effective food safety procedures are used throughout the manufacturing process. Making ice cream begins by blending all the dairy ingredients and sweeteners in a high-speed blender to produce a base ice cream mix.

This mix is then pumped through stainless steel piping to a pasteurizer that destroys any potential harmful micro-organisms. The pasteurized and homogenized ice cream mix is then stored in closed, refrigerated, stainless steel

tanks at 45°F or less until lab testing is completed and the mix is ready for freezing. This process could take between 1 to 96 hours. The ice cream mix is then pumped from the pasteurized refrigerated storage tanks to flavor vats where color and flavor are added. The product is then pumped to the barrel freezers that add air and freeze the mix to 21°F. The frozen product is then passed through a "Fruit Feeder" and revel pumps where inclusions (such as peanuts, chocolate chips) and revel (such as peanut butter or chocolate sauce) are added.

The ice cream mix, now with inclusions or just plain, flows into consumer-ready packaging. This packaging is quickly conveyed to the blast freezers where the final hardening of the ice cream occurs.

A very similar process is used for making ice cream novelties, except the frozen mix flows into metal molds where it is partially frozen in the shape of the particular novelty, then removed, packaged and conveyed to the blast freezers. A thick peanut base is sometimes injected into the center of the metal molds prior to removal.

Because inclusions do not undergo pasteurization with the rest of the ice cream mix, Perry's establishes product specifications for our vendors and evaluates the vendors of these products to ensure the ingredients are safe and of high quality.

To further ensure that our products are safe and of the highest quality, Perry's has a plant-wide Hazard Analysis and Critical Control Point plan, known throughout the food industry as HACCP. This includes good manufacturing practices, preventative maintenance programs for processing equipment, standard operating procedures and other food safety and quality programs. In addition, Perry's uses a strong on-going Good Manufacturing Practices program that is based on FDA's requirements for food processing plants. This program includes:

- Maintenance of the plant surroundings and the integrity of the plant facility to prevent entry of pests and rodents
- Extensive training of processing personnel regarding personal hygiene and plant operations
- Detailed maintenance and cleaning of the processing facility and its equipment
- Correct storage and handling of food ingredients and packaging
- Proper temperature control of the food product during processing and storage.

In 2008, Perry's delivered over 1700 man hours of training to our team members in the areas of food safety and quality.

As you can see, dairy foods go through extensive and rigorous safety and quality tests before they reach the grocery store.

These practices enable us to reliably deliver safe products to our customers. Until the peanut recall, Perry's had only two very limited product recalls in the last ten years and each of those events were limited in scope and costs. Simply put, it is never in our best interests to cut corners, or risk delivering unsafe products to our customers.

Now I will describe how product recalls can be devastating to the successful operation of a small business such as Perry's.

Product recalls impose many direct and indirect costs on small businesses, most of which cannot be recovered

Earlier this year, Perry's Ice Cream voluntarily recalled and destroyed a significant amount of product as a result of the food safety lapses at the Peanut Corporation of America. These recalls have already had a significant impact upon our business, and I fear that before this is all over, many small food processors may go under.

For background, I think it's important that you understand that food processors, like Perry's, are in the middle of the food chain; that is we buy raw products and ingredients; we process them into food products; and sell them to other distributors or directly to food retail and food service outlets. Our customers are both the grocers who sell our products and, ultimatly, the consumer.

As the seller and manufacturer in a food recall, we are financially responsible for making sure our direct customers and the consumers are made whole. So instead of being paid for our product, we are paying our customers, and absorbing the cost of finding the recalled products and destroying them. At the same time, we also have to pay our suppliers of milk, cream, and other inputs that went into the recalled products and for new ingredients needed to manufacture the re-supply. This presents a double burden on our cash flow – one that many small businesses are unable to absorb.

Small businesses are heavily reliant on cash from their operations or banks for funding. When cash flow is interrupted, very tough choices must be made about what expenses can be met and what purchases can be made.
Let me now give you some details describing the current PCA recalls.

As I have explained, some of our ingredients, such as peanut paste, are added to the ice cream mix after it has been pasteurized. These ingredients cannot be added prior to pasteurization and that is why we require certificates and additional testing of those products to ensure they have been safely handled.

When we received multiple recall notices from PCA this year, we had no choice but to recall our products even though our testing and certificates indicated

complete compliance. We did not receive direct information from FDA about unfolding events at PCA. In fact, we heard about the PCA investigation on the news. Our initial recall, which was launched on January 17th, was based on products we received from PCA's Georgia facility. Each subsequent recall (the second was on January 22nd and the third on January 30th) expanded the scope of the PCA products being recalled and, therefore, expanding the number of our products that we needed to recall.

Although we received the recall notices from PCA, we coordinate our recall efforts with the Food and Drug Administration's food recall coordinator for our region. We immediately contacted our customers and began the effort to pull and destroy the affected products from our inventory in retail stores and distribution networks. This activity was followed by extensive field audits to confirm that all channels were clear of affected product before we could begin the product re-supply.

As a result of the series of recalls associated with PCA, we had to recall 44 different products affecting the Perry's brand as well as the products of five of our customers. We traced the affected products to 6,534 individual locations ranging from distribution warehouses to retail grocery stores; from schools to mom and pop ice cream stands.

So far, we have conducted audits at more than 900 locations to insure that the product has, indeed, been pulled from sale. These audits are most often performed by drivers who check the freezers and back rooms to assure that the product is gone.

In addition to the direct costs of destroying more than 170 tons of valuable products, we have already accounted for over 2100 employee hours spent on the PCA recalls and we believe that to be a very conservative estimate. We placed a notice of the recalls on our Web site and have responded to nearly 1,000 contacts via our 800 number. These efforts continue as we communicate with our customers and consumers, and begin our re-supply.

This describes our losses, but unfortunately, Perry's Ice Cream is only one of hundreds of food processors that have recalled products because of PCA. At least twenty members of IDFA, both large and small businesses, have been similarly affected through no fault of their own. More than 3,000 food products have been recalled as a result of the failure of PCA and 10 percent of these recalls have been ice cream products.

To the best of our knowledge, no consumer illnesses were related to any of Perry's recalled ice cream products. Yet, the recalls have damaged the trust that our customers and consumers place in our products. Additionally, we are likely to suffer continued business disruption as we complete the recall and re-supply process.

Congress should consider assisting the small food manufacturers injured by the PCA recalls

The dairy industry has an excellent record of food safety and is considered a leader in developing new technologies and processes. However, food processors have been hit particularly hard because the recalled PCA products were used primarily as minor ingredients in a larger product. In our ice cream products, we estimate that the cost of the peanuts or peanut paste was only one tenth of the value of the food inputs that we lost.

We do not yet have a complete accounting of the financial losses that Perry's will face as a result of the PCA recalls. It will surely be in the hundreds of thousands of dollars, if not more.

Just as our customers look to Perry's, their supplier, for reimbursement; we would look to PCA for liability for these losses. However, PCA has filed for bankruptcy, its owners are under investigation, and any insurance it may have will be woefully inadequate to cover the millions of dollars that have been lost across the food supply chain. If we can recover anything at all from PCA, it will take years to do so. Many small companies cannot afford to wait years for reimbursement.

What about our own insurance? Insurance to cover recalls is not common and is limited in scope. We did have some insurance for extra expenses associated with the additional cost of conducting the recall (postage, disposal cost, communication cost) and we are in the process of making claims against our policy. However, our insurance will not begin to cover all of our costs. Due to the fact that the legal liabilities will not be resolved in the next few weeks or even next few months, we can't look to insurance to get us through the immediate cash crunch.

The major problem we face is cash flow. Perry's is: crediting our customers for recalled product they purchased; paying our suppliers for the ingredient used in the recalled product; incurring costs for dumping product, legal fees and other recall-related expenses and working to re-establish a pipeline that has been dry for almost eight weeks. As an ice cream manufacturer, we are also trying to build our inventories for the critical sales demand during the spring and summer season. Those manufacturers not affected by the PCA recall, do not have the same burdens.

Perry's is a successful business. Only a portion of our product line was affected by the PCA recalls. As such, we believe we will be able to weather this storm. Unfortunately, many businesses do not have the diversity of product lines or quality of management staff to be able to get past the financial losses and cash

flow problems that this recall has likely created for them. Some will surely be forced out of business as a result.

This Committee and Congress should consider providing financial assistance, preferably in the form of grants or loan guarantees, to help small businesses that have been the innocent victims of recalls such as this. In addition, we would propose that any new food safety legislation consider giving authority and funds for maintaining a program to keep small businesses from going under due to recalls when they are not at fault. Similar programs assist agriculture producers, and I think something should be done to protect small food manufacturers as well.

Finally, I would like to add that as we struggle through the financial implications of this recall; we are also worried by the cost of complying with new food safety regulations.

Congress is currently considering food safety legislation. Yet, small businesses are already subjected to considerable regulation, not just from the Food and Drug Administration (FDA), but from other federal and state authorities.

The current food safety program at Perry's is effective and we have rarely recalled products. The possibility of bad, negligent, or even criminal behavior in any part of the supply chain makes it impossible to regulate to a zero risk level. Adding more regulations without fully understanding their impact could make the cost of doing business prohibitive, especially to smaller businesses, and ultimately to our customers and consumers.

We hope that any changes to FDA's food safety program will be combined with an effective regulatory structure to prevent the need for future recalls. However, when one is necessary, small businesses need reliable, timely and accurate information from the FDA and local regulators. Our financial liability would be less, for example, if recalled products did not cover an unnecessarily long two years. One recall for all products would have been easier than three.

Given the illnesses and deaths caused by PCA products, it is understandable that Congress would be focused on improving the food safely oversight by FDA. As a small business, we would ask Congress to carefully balance business responsibility and government regulation.

On behalf of Perry's Ice Cream and the 530 members of the International Dairy Foods Association, I thank you for this opportunity to offer our views to you this morning.

Your Neighborhood Supermarkets

Testimony of Michael Ambrosio
Vice President, Quality Assurance
Wakefern Food Corporation

before the
House Small Business Committee
Subcommittee on Regulations and Healthcare

"Impact of Food Recalls on Small Businesses"

Wednesday, March 11, 2009
10:00 a.m.

2360 Rayburn House Office Building
Washington, D.C. 20515

Chairwoman Dahlkemper, Ranking Member Westmoreland and Members of the Regulations and Healthcare Subcommittee, I am Mike Ambrosio, Vice President, Quality Assurance, for the Wakefern Food Corporation. I have been in charge of food safety programs at Wakefern for the past 29 years. I am honored to appear before you today to testify on behalf of my company and our members, but also the Food Marketing Institute (FMI), our trade association representing over 1500 food retailers of all sizes.

Founded in 1946, Wakefern Food Corporation has grown from a small struggling cooperative into a strong regional player. Headquartered in Keasbey, New Jersey, Wakefern is comprised of 45 members who independently own and operate supermarkets under the ShopRite banner in New Jersey, New York, Connecticut, Pennsylvania, Delaware, and Maryland. While we are the largest retailer-owned cooperative in the nation, the majority of our members own one or two stores and understand the challenges that small businesses face. They operate in an industry of razor thin profit margins averaging between one and two percent – only owners that understand the needs of their customers and community are able to survive and prosper. As a result of our member's dedication to their customers and communities, ShopRite has been named the New Jersey Corporate Philanthropist of the Year by the Community Foundation of New Jersey and America's Second Harvest Food Bank Network also has recognized ShopRite as the Grocery Distributor of the year for its *ShopRite Partners In Caring* program, a year-round initiative dedicated to fighting hunger.

As part of our dedication to the consumer, our most important goal is to ensure that the food we sell is safe. Our stores have many prevention programs in place to protect our customers, such as consumer education campaigns, employee food safety training, extensive sanitation programs, and food safety management systems. But all of these prevention programs at the retail level cannot ensure that we deliver safe food to our customers if the food coming into our stores isn't already produced and processed to the highest standards. When we do receive notification that a product is adulterated, we take a variety of vital steps to ensure that the affected product has been removed from our shelves as quickly as possible and also to notify our customers in certain instances. However, this process is often challenging, time consuming and expensive due to a loss of man hours and a loss of sales created not only by having product taken off the shelves, but also due to a recall's impact on consumer confidence.

I would like to provide the Committee a snapshot of the steps we take when we are notified that a product has been recalled.

Notification:

We receive notification that a product has been recalled through a variety of different methods including third-party services that we subscribe to, direct contact by the vendor, through the monitoring of government websites such as FDA, or through various media outlets. With any notification method, it is vital that we receive necessary information such as product name, correct UPC codes, product size and sell-by-dates to ensure we know exactly which product is being recalled. The average size grocery story has over

45,000 individual items on their shelves every day. In the case of the high profile Peanut Corporation of America (PCA) recalls, the FDA as of March 9th had 3223 products listed on their website that have been recalled due to the recent salmonella outbreak.

Actions Taken

Once we receive the necessary information in the Quality Assurance Department, we notify Consumer Affairs, while comparing the affected UPC codes to our current inventory. All identified products are embargoed and segregated to a designated holding area. In addition, recalled UPC codes are locked out of our Point of Sale (POS) systems so product cannot be scanned for sale at the registers or sold on our website. A bulletin is sent to all stores owners and applicable in store divisions and management staff. The information is also posted on our internal website. Class I recalls trigger automated phone calls that notify store owners and managers directly to reinforce the bulletin. We also have private third-party auditors visit our stores to ensure that Class I recalled product has been removed from the shelves within a twenty-four hour period.

At the same time we are removing products at the store level, our Consumer Affairs Department is creating signs for display at the point of sale and sending releases directly to the media if needed. Depending on the type of recall, they also search data from our loyalty card program that allows us to notify our customers directly through phone calls about a product that they had purchased. It is important that grocers are able to employ a variety of different notification methods based on their capability to reach as many consumers as possible.

I am very proud of the actions that we take as a company to remove adulterated product that we receive in our stores out of the supply chain as soon as possible. It is a time consuming and complicated process averaging 10 hours per product recalled. In the last fiscal year, our stores had 214 recalls (27 Class I and 43 Pharmacy Recall's) accounting for 238 UPC codes. Total time dedicated to handling recalls during this was 2,140 hours or the equivalent of 305 working days.

Industry

Our trade association, FMI – working with Wakefern and its other members of all sizes – is dedicated to improving food safety by working throughout the supply chain to ensure that consumers continue to receive safe, high-quality, and affordable food. Improving the ability to remove adulterated food products from the supply chain quickly and efficiently is part of enhancing the overall food safety system. While due attention must be paid to preventing adulteration in the first instance, I would like to share with you initiatives the food retail industry has undertaken to help improve the recall system.

Require Mandatory Recall Authority and Immediate Notification of Recall

We believe that FDA and USDA should be given the authority to mandate a recall in those cases where a company responsible for adulterated food does not act promptly to voluntarily recall a food product that presents a reasonable probability of causing serious health problems or death. Although companies generally recall adulterated foods voluntarily, providing FDA and USDA with the authority to mandate a recall in the event that a company refused to recall an adulterated product would strengthen both the food

safety system and consumer confidence. We also believe that suppliers should be required to give retailers immediate notification when a recall action is taken.

Improve Food Recall Communications

As discussed previously, the quality of information supplied to a grocer plays a vital in role in the speed in which an adulterated product can be removed from our shelves. We are continuously working with our suppliers to develop ways to improve the quality of information on recalled products and the manner in which we receive it. One such initiative was to use technology to create a system that would be able to initiate, target, deliver and receive comprehensive product recall information immediately through a single, convenient, easy-to-use portal. In collaboration with our suppliers and GS1 US™, which oversees the Universal Product Code (U.P.C.), the FMI Product Recall Portal was introduced. The Product Recall Portal provides an important online resource that includes a secure and automated alert system allowing suppliers to send information to retailers and wholesalers about products that must be recalled and to do so rapidly and accurately in a standardized form 24 hours a day, seven days a week. With this system in place, retailers and wholesalers can receive relevant and vital information the moment it is available, allowing them to take immediate action and remove recalled product from the distribution chain and retail shelves as quickly as possible.

As the purchasing agent for the consumer and the final link the supply chain, we are dedicated at Wakefern to improving food safety. It is our goal to ensure that every time a

customer enters a ShopRite store, the product they place in their cart is safe, high quality and affordable – no matter which of the 45,000 items they choose from.

Madame Chairwoman, thank you for the opportunity to testify. We appreciate the interest expressed by you and the members of your subcommittee about the impact of product recalls. I remain available to the Subcommittee for further discussion and information should you need it.

REPRESENTING THE RESTAURANT INDUSTRY
The Cornerstone of the Economy, Career Opportunities and Community Involvement

Written Testimony

of

Marshall "Ken" Conrad

for the hearing

Impact of Food Recalls on Small Businesses

before the

U.S. House of Representatives
Committee on Small Business
Subcommittee on Regulations and Healthcare

on behalf of the

National Restaurant Association

Wednesday, March 11, 2009

1200 SEVENTEENTH STREET, NW • WASHINGTON, DC 20036-3097
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Chairwoman Dahlkemper, Ranking Member Westmoreland, and members of the Subcommittee on Regulations and Healthcare; on behalf of the National Restaurant Association, thank you for the opportunity to testify before you on the impact of food product recalls on restaurants.

My name is Ken Conrad, and I am currently Chairman of the Board of Libby Hill Seafood Restaurants, Inc., a seafood restaurant first opened by my father Luke Conrad back in 1953. I represent North Carolina on the Board of Directors of the National Restaurant Association and currently serve as Chair of the North Carolina Restaurant and Lodging Association. I am also active in the seafood industry, where I serve as Vice Chair of the National Fisheries Institute.

My family continues to own and operate Libby Hill Restaurants and I'm proud to say my son Justin is the third generation of Conrads in the business. Our first restaurant is still located within the city limits of Greensboro, North Carolina with 12 other locations scattered across North Carolina and Virginia. We cook some of the best seafood in the area, and you know that every Libby Hill Restaurant is a family-friendly kind of place.

Introduction

The National Restaurant Association, founded in 1919, is the leading business association for the restaurant industry, which is comprised of 945,000 foodservice locations and 13 million employees, generating estimated sales of $566 billion in 2009 – and a total economic impact exceeding $1.5 trillion. Nationwide, the industry serves 130 million guests everyday, and every $1 million in restaurant industry sales creates 33 jobs in the economy. Seven out of ten restaurants are single-unit operators, with 91 percent of eating-and-drinking places having fewer than 50 employees – we are truly an industry of small businesses!

Not only are restaurants the cornerstone of the economy, they are also the cornerstone of career opportunities and community involvement. Nearly half of all American adults have worked in a restaurant and 32 percent of adults got their first job experience in a restaurant. Nine out of 10 salaried employees at table service restaurants — including owners, operators and managers — started as hourly employees. We are also a diverse industry, with eating-and-drinking places employing more minority managers than any other industry. Ownership opportunities for minorities are also growing with 25 percent of eating-and-drinking places being owned by women, 15 percent Asian-owned, 8 percent Hispanic owned, and 4 percent African-American owned. In the most recent 5-year period available, the number of African-American owned restaurants jumped 77 percent, and Hispanic-owned firms increased 30 percent. The restaurant industry is one of the nation's largest employers, representing more than 9 percent of the job-base. We are an engine of job growth; projected to add 1.8 million new jobs by 2019.

Furthermore, restaurateurs are active in the lives of their communities with more than nine out of 10 restaurants involved in some type of charitable activity on a local, state or national level – from sponsoring a youth sports team, to raising money for charities, to providing meals to those in need. In fact, our community involvement is important to our

guests too as 52 percent of adults surveyed said they chose a restaurant based on how much a restaurant supports charitable activities and the local community.

The Importance of Food Safety

Food safety is of the upmost importance to the restaurant industry. Restaurants have taken the lead in ensuring food safety within the four walls of our restaurants. The National Restaurant Association and our members are making multi-billion-dollar investments to continuously improve food safety and develope state-of-the-art food safety education programs. We are especially proud of ServSafe, the food safety education program that sets the standard for our industry. We began our efforts with ServSafe in 1988. Since then, more than 3 million foodservice professionals have been certified through our ServSafe Food Protection Manager Certification exam. The industry's leading suppliers, distributors and academic institutions also use ServSafe both online and in classrooms, and our exams and certification meet or exceed regulations in all 50 states. Our newest edition – which debuted early in 2008 – is the strongest we have produced. Recognizing the demands of a changing workforce, the product is accessible, understandable and industry-leading.

Trust is absolutely essential to what we do. Our nation's 945,000 restaurants feed approximately 130 million Americans each day, and our guests entrust us with serving them food that is safe. It is a big responsibility and one which we take very seriously. There is no room for error. That is why America's restaurateurs support an even stronger and more effective food safety program.

Restaurants also depend heavily on food safety systems of suppliers and manufacturers throughout the foodservice supply chain. The fact is, we are also major consumers in the food marketplace. Last year, restaurants spent more than $200 billion purchasing food and beverages to serve our guests. The National Restaurant Association and its members are increasingly involved in driving changes all the way back through the supply chain, to take on a more influential role across the entire life cycle of food.

On behalf of our members, we support risk-based and thoughtful efforts to increase food safety throughout the food chain so that the food received by U.S. restaurants continues to be among the safest in the world.

Impact of recalls on restaurants

Lapses in the management of the food supply can create negative consequences to consumer confidence as recent outbreaks and recalls have shown. Most recalls are due to mislabeling mistakes, but very large outbreaks and recalls due to adulteration or contamination indicate more could be done both in the supply chain and with improvements in the federal and state food regulatory approach. Since 2006, the United States has dealt with the impact of foodborne illness outbreaks and recalls resulting from contamination of tomatoes, serrano peppers, chicken and turkey pot pies, ground beef, chili sauce, spinach, lettuce, and peanut butter.

Currently, we are continuing to cope with peanut and peanut butter related recalls resulting from a Salmonellosis outbreak involving thousands. This outbreak is likely to become one of the nation's most infamous outbreaks of foodborne disease. Companies that used potentially adulterated peanut products from two locations of the Peanut Corporation of America are recalling manufactured products dating back to January 2007. The challenges of recalling products over a two year time period are apparent. In speaking with member companies, we learn of a growing recall fatigue in the supply chain and the negative impact on customer trust.

When a foodborne-illness outbreak occurs, the first priority is to identify the affected product and immediately remove it from the food supply. Restaurant companies, small and large, often use an abundance of caution when learning of an outbreak and may choose to replace it with another similar product or remove all such products from their menus. In the case where a specific restaurant is involved in an outbreak investigation, that company works with federal, state, and local public health and food safety officials to provide them the necessary information to trace and identify the source of the foodborne illness in a timely manner.

Traceback investigations to determine the source of outbreaks can require extensive resources and can result in irreparable damage to food firms. Therefore, it is critical that each piece of the investigation is thorough, complete, and accurate.

The food industry should take an active role in developing and implementing systems to trace products from farm to table. Changes to current industry practices must be supported by science, be effective, and affordable. The restaurant industry supports improving the capability to trace back foods to their source, and any traceability system, should enable USDA, FDA and the industry to quickly contain foodborne illness outbreaks and help identify the causes of food contamination. Traceback systems must be cost-effective and complement current business operations—from small to large operations. A quick and accurate traceback system that can identify implicated products can minimize the impact to the industry by potentially reducing the amount of product that may need to be recalled.

Finally, we must remember that traceback investigations and recalls are reactive measures. We should not neglect the importance of preventing contamination to ensure food safety and to reduce or mitigate the need to recall or withdraw products.

Food safety reform recommendations

Foodborne-illness outbreaks of the last several years have highlighted the need to re-evaluate our food safety system and implement needed improvements. The U.S. Government Accountability Office released a report last year listing urgent issues the Obama Administration should address and we agree with their recommendations. In addition, there are several areas where we think food safety efforts can move forward: our food safety agencies need adequate funding, most especially the Food and Drug Administration, to ensure staffing and expertise; improved collaboration and communication between government and industry during the investigation of a complex

outbreak; better communication and education strategies to effectively inform consumers in the event of an outbreak or recall; stronger standards and practices for fresh produce; and additional tools in the form of recall authority, traceability, improved epidemiological investigations, and private sector certification. These must be focused on both domestic and imported food.

The food supply chain has been transformed in a very few years. The federal food safety agencies, such as Food and Drug Administration (FDA) and Department of Agriculture (USDA), are facing new and broader demands precisely because the food supply chain is more complex and global. Food safety requires vigilance, surveying the food supply environment and keeping education and practice ahead of the changes we see.

We build confidence by showing people that we are always ready – always vigilant. We want to identify key areas that can advance our food safety efforts:

- Adequate funding to food safety agencies at the both the state and federal levels to ensure appropriate staffing and expertise;
- Improved collaboration and communication between government and industry during the investigation of a complex outbreak;
- Communication and education strategies to effectively inform consumers in the event of an outbreak or recall;
- Stronger standards and practices for fresh produce;
- Additional tools such as recall authority, traceability, and improved epidemiological investigations.

Conclusion

The safety of the food supply must and will continue to be the top priority for the restaurant industry. We simply MUST do better. This means taking a new look at our food safety system to be sure we have a comprehensive farm-to-table strategy. We must look for ways for the government at all levels and the private sector can work together to improve our food safety system. Together we can provide greater protection for public health and in doing so mitigate the impact of recalls and outbreak by reducing their number.

Food safety is a collective responsibility. If we are to maintain the bond of trust with our guests, it requires every segment of the food industry to collaborate. As an important partner along the food chain, we pledge our best efforts and look forward to working together with all involved to ensure the safety of our food supply chain. We stand ready to work with Congress, the Administration and our food chain partners to improve food safety and make the needed reforms.

Thank you for the opportunity to testify on behalf America's restaurant industry.

Small Business Committee
Subcommittee on Regulations and Healthcare

Hearing on
Impact of Food Recalls on Small Businesses

Testimony of

Don Koehler
Executive Director, Georgia Peanut Commission

March 11. 2009

Good morning Chairwoman Dahlkemper, ranking member Westmoreland, members of the Committee, I am Don Koehler, the Executive Director of the Georgia Peanut Commission. On February 1 of this year I completed twenty-two and a half years in that position. I am also testifying on behalf of the Southern Peanut Farmers Federation which represents peanut farmers in Alabama, Florida, Georgia, and Mississippi. The Federation represents about three fourths of the US peanut production. I want to say up front that the current outbreak and recall attributed to peanut products produced by the Peanut Corporation of America is the most devastating issue which has faced our industry in my time at the Commission.

Our Commission was established under the laws of the State of Georgia in 1961 to conduct programs in the areas of research, education, and promotion. We currently have 4535 producers of record in Georgia based on the 2008 crop year. That number has a potential to decline in 2009 given the current situation. We are talking 4535 small businesses which help to fuel the US economy.

An inscription on the right panel over the entrance to Washington's Union Station reads, "the farm, best home of family, source of our national wealth, the natural providence." That is largely true even today. Though farmers are far fewer in number they provide more to the economic health of our economy than at any time in the history of this country. By taking raw inputs and turning them into a useable commodity which is further processed in the U.S., farmers are a part of the creation of economic wealth in America.

Background

On January 9th of this year I was notified by the Georgia Department of Agriculture that the Minnesota Department of Health had identified peanut butter distributed by a company in Ohio and processed at a factory in Georgia as the source of Salmonella which was responsible for an ongoing outbreak. On January 10th the U.S. Food and drug Administration issued a voluntary recall notice on peanut butter processed at a plant owned by the Peanut Corporation of America (PCA) of Lynchburg, Virginia which was located in Blakely, Georgia.

The initial recall was expanded to roasted peanuts from the Blakely facility and then again later to include all product ever produced in the PCA plant in Plainview, Texas.

It would appear that the company had a culture of being a bad actor in our industry. Sanitary conditions in the plants were poor. Testimony by witnesses before the House Energy and Commerce Committee seriously questioned the prior knowledge and intent on the part of PCA and the state of their facility as well as products.

PCA was a supplier of peanut butter to the food service industry but also a supplier of peanut ingredients to numerous food manufacturers and in that respect had a broad reach for a relatively small processor. This has by some standards become the largest food recall in American history.

The recall has been ongoing for two months. The effects have rippled throughout the peanut industry.

Current Economic Situation

When the Salmonella recall hit, we asked the National Center for Peanut Competitiveness (NCPC) located within the University of Georgia's College of Agriculture to help determine the impact of the recall on our farmers. I have also spent a great deal of time discussing the recall and its impact on the market with people in the industry in whom I have a great deal of confidence. The Commission has held public meetings with producers in the peanut belt counties this year. I have used these resources in preparing this portion of my testimony.

Frankly, we are dealing with a situation of historic proportions, that the full impact will not be known until some point in the future. Rebuilding in the peanut industry cannot fully begin until the outbreak is over and the recall is complete.

The 2008 peanut crop was a record crop and the industry was faced with managing a significant carry-over. The fact that USDA has been slow reacting to the current market conditions in setting the weekly posted price of peanuts has complicated this issue greatly. Peanut sales are non-existent at any price for farmers who have not contracted peanuts and yet USDA has not reduced the posted price.

After the recall began, sales of peanut products have tumbled. Scan data would indicate that January sales of jarred peanut butter was off 24% however that number may be skewed because of deep discounts on peanut butter in January 2008. One major brand was still building back market share after their own smaller recall a year earlier. Still, general agreement is that peanut butter consumption is off as much as 20%. Peanut butter processing accounts for about 70% of the Southeast peanut market. Salted nuts are off about 8% and peanut butter cracker sales have tanked.

Due to this uncertainty and non-existent sales at the sheller level, no contracts are being offered to farmers at this time. This is a critical issue because farmers in many cases need a contract or at least some indication of the market to achieve financing and make planting decisions. These decisions should have been made no later than February because a major option for farmers to consider if they don't plant peanuts is corn. Corn in the peanut belt of Georgia is planted in

March while peanuts are planted in May. This has made planning very difficult for farmers who grow peanuts.

In two locations in Georgia, groups of farmers have invested in and built modern shelling facilities. At least one of these facilities received funding from the state and federal governments to encourage the farmers to seek added value for their product. These small businesses have fewer than 50 employees. The current situation may hurt them disproportionately because they are small compared to the two major peanut shellers. Peanut buying points, which serve as the transfer point from the farmer to the peanut shellers, are paid on volume handled. Reduced volume significantly impacts their efficiency and income. Most of these are independently owned small businesses in our rural communities. Please note these rural communities are not seeing large economic growth. Adding value to local products and creating local jobs is critical for their economies.

And, then there is the impact on our farmers.

The NCPC, using their accepted Representative Farm Model, looked at the situation our farmers face.

The market has collapsed so the best case scenario seems to be the loan rate of $355 per ton. With the present projections for only variable costs, excluding land rent, farmers would need to have irrigated yields of almost 4700 pounds per acre and non-irrigated yields of over 3500 pounds to achieve just a zero cash flow. Typically, the mean yield on the farms in the Southeast would be just under 3800 pounds per acre for irrigated acres and about 2800 pounds for non-irrigated production. Currently, the University of Georgia Extension Service peanut production budgets for the year 2009 project potential yields at 3700 pounds per acre for irrigated production and 2700 pounds per acre for non-irrigated yields.

You can see there is little to no likelihood of farmers' cash flowing under today's situation.

Another way to view this, the NCPC took a five year Olympic average of the U.S. peanut production that would total slightly over 2.1 million tons of peanuts. They then used USDA's posted price for peanuts and came up with an average price of $408.37 per ton. Determining the difference of that price and the loan rate and including other factors such as option payments, the total loss numbers ranged from $114 million to a high of $121 million.

If you take in to account a loss of production these numbers grow. Growers tell us they anticipate a reduction of acres of at least a third. The NCPC Representative Farms would indicate a reduction of 40 to 60 percent is possible. This means a loss of $225 to $450 million dollars in farm gate value due to reduced production. Using the NCPC conservative economic multiplier of 2 we could see total economic losses of a billion dollars due to this recall.

What can be done to help our industry?

The formula that USDA uses to set the national posted price for peanuts, the price used to allow peanuts to move freely into the domestic and export market from the government loan, is a farce. The industry and government researchers have demonstrated time and again that the price USDA posts for peanut markets is too high. This has harmed our export efforts. This price was

published this past week at $449. No peanuts are being traded at this level. Doesn't the USDA read the newspaper or watch television? Congress should ask USDA to review this formula and report back in a firm time period as to how the formula can be made to be more realistic.

Peanut butter has been a staple for U.S. and international feeding programs. Our various programs are administered by the USDA. Where has USDA been in this process? Our market is in trouble yet we have not seen public statements from the Department about the nutritious value of peanuts, what products are safe to use, etc. Now is the time for USDA to heighten their use of our products in domestic and international feeding programs. We need their help more than ever before!

Peanut butter is 25 percent protein and costs about $2 per pound. This translates to about 9 cents per percent protein. Only whole chicken or bone in chicken legs offer a better protein value and those take significantly more preparation to make them ready to consume. Peanut butter offers a great value for use in feeding the needy.

Conclusion

The impact of this recall has been far reaching. Farmers, as small businesses have felt the real economic impact of this recall. Because farmers do business with other small businesses who supply them their inputs, the ripple will not likely stop at the farmer.

The devastation caused by this recall falls far beyond PCA and far beyond the companies who dealt directly with PCA as suppliers or customers.

Georgia's peanut growers stand ready to work with Congress and regulators to improve the food safety system in this country. While our system is one of the best in the world, nothing is so good it can't be improved. **We want to be sure this can never happen again.**

TESTIMONY OF SHERYL VANCO
BEFORE THE HOUSE COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON REGULATIONS AND HEALTHCARE
REGARDING THE IMPACTS OF FOOD RECALLS ON SMALL BUSINESSES
MARCH 11, 2009

Chairwoman Dahlkemper, Ranking Member and members of the subcommittee, thank you for the opportunity to testify today. My name is Sheryl Vanco, and my husband Steve and I own and operate a ninety-five cow dairy in Warren County in the Northwest corner of Pennsylvania. We have two sons working off the farm. Christopher is a computer tech specialist for a large mail-order company, and Peter is currently teaching English in the Hakodate Japan school system under the JET program. We hire two full time workers, one of them Amish. My husband and I both work on the farm full time. It is a lifestyle that we chose and love.

I have degree in Food Science from Penn State University. I am a director for the Farmers Union Milk Producers Association (FUMPA), a small independent co-op with members in Pennsylvania, New York, and Ohio. We currently market our milk to an independent proprietary cheese plant in Ohio. Our milk is pooled in Federal Order 33 and qualified at Smith Dairy in Ohio. I am also a Governor-appointed commissioner in the Pennsylvania Animal Health and Diagnostics Commission. The Commission is a fifteen member board chaired by the state veterinarian. There are six producers on the board, three of which are dairy producers. We oversee the animal health rules and regulations in the state, as well as the three animal health diagnostic labs in Pennsylvania. Lastly, I am a member of the Pennsylvania Farmers Union, a state chapter of National

Farmers Union (NFU). NFU is a general farm organization advocating on behalf of family farmers and ranchers across the country.

We are proud of our industry and the quality dairy products we produce. We work hard every day to ensure a wholesome product. Our farm facilities are inspected by our state licensed co-op or milk plant inspectors four times per year, and additionally if any milk tests indicate violations. Multiple repeat violations result in loss of market. Every eighteen months, all U.S. farms receive a federal rating inspection. The passing score is not 70 points out of 100, but rather 90 points minimum to retain the rating. All farms in the unit, whether it is a co-op or proprietary dairy direct producers, are include in this rating average, and a failure immediately diverts the milk to lower class utilization until the rating score is passing on re-inspection. This is very costly to the producers as they receive less money for the diverted milk.

Our milk is tested regularly for purity. Annually, our milk is tested for Brucellosis, which causes undulant fever in people. It has been very rare in recent years to find a cow testing positive for this disease in the United States. Nearly all of our states have had a Brucellosis free status for many years. There is mandatory monthly testing for bacteria: a direct microscopic account of all bacteria and an incubated test to count specific bacteria that correlates directly to milk shelf life, namely the PI count. Weekly our milk is tested for somatic cell counts which indicate the health of the cow's udder. Every drop of milk that we ship to market is tested for antibiotic residue. Each of these tests has strict criteria, and violations result in penalties ranging from a warning and visit by the milk

inspector to being shut-off from shipping milk until the problem is corrected. In the event of a positive antibiotic test, the entire truck load of milk that contains the contaminated milk is rejected and disposed. The producer whose milk is found to be positive not only loses the value of his milk, but he must reimburse producers for all other milk that is on that load, typically $10,000 worth of milk on a single truck. He is also responsible for the costs of transporting the milk to approved dumping facility and must pay disposal fees involved.

Our cows are routinely vaccinated to prevent diseases. They received prompt veterinary care for any health problems, and much of this is done by the farmer or herdsman at their own expense. Due to the increasing shortage of large animal veterinarians in the country, anything beyond the farmer's ability results in a call to the local veterinarian for diagnosis or specialized treatment. Vets play a huge role in advising on-herd protocols for routine vaccinations and care. Nutritionists work with the producers to ensure a diet that keeps the cow healthy and producing milk. The value of a cow is high. When milk prices are at a profitable level, a cow is worth $2000 or more. Unfortunately, today's depressed milk prices have declined a cow's value by several hundred dollars, but it is still a major investment on the farm. The cow is the heart of the dairy business and dairy farmers realize that the animal's health bears on the production of milk that provides the farm's income. Farmers appreciate the value of the cows and feel an emotional attachment to care for them well.

When a dairy cow's productive life is over, it joins the beef cattle in the market. The animal is visually inspected before and after slaughter. Unhealthy cattle, whether downer or not, do not enter the human food chain. Tissue samples are tested for antibiotic residue and those that test positive are rejected, along with those who do not pass the visual health inspection. Our domestic meat and milk products are highly regulated for quality and safety at the farm level.

When there is a problem that leads to a product recall, contamination is usually found to happen at the processing facility. Not only does a product recall of hamburger lead to severe financial losses to the processing facility, but it also leads to consumer fear and depressed sales of the product across the country. Reduced sales of the processed product lead to lower prices to the farmer supplying the cattle. The depressed prices can last for weeks or months and have a devastating effect on farmers' incomes. Likewise, a Listeria outbreak in cheese leads to lower cheese consumption that depresses farm level milk prices.

Our milk coop markets our milk to a cheese plant in Ohio. A recall of dairy products in any part of the country would erode consumer confidence and lead to an immediate reduction in sales. Milk is a highly perishable product, and reduction in consumption results quickly in lower prices to farmers. A recall of a product from the cheese plant that buys our milk would be more of an impact to us. Our contract would protect us, since the plant would be responsible to find an alternative market, but would still pay us the negotiated price. If the recall was large enough to lead to bankruptcy, we would lose our

market and be at the mercy of the general market. We would be forced to find a new home for our milk, and it could be at significantly lower prices. Milk spoils rapidly, and if there is a surplus due to over production, milk not under contract sells well below cost of production. Financial failure of our market plant would lead to financial devastation to the farms that supply it.

We believe that food imports pose a much greater food safety threat to American consumers than domestic food. In the 1950's, the United States passed laws requiring fluid or bottled milk to be refrigerated on farm and sent to the processing plant in a cold state. The Pasteurized Milk Ordinance defines the standards for milk. Only a minimal amount of food imports are physically inspected, and of those which are inspected, many are rejected for reasons ranging from mislabeling to residues of pesticides banned for use in this country. We support the following initiatives to ensure consumer protection:

1) Increased funding and number of inspectors for the Agriculture Quarantine Inspections Program and transfer inspectors back to USDA from Department of Homeland Security (DHS);

2) Legislation to pass "circle of poison" prohibiting the export of chemicals not registered for food and fiber uses in the U.S. for food and fiber uses in other countries;

3) Strict monitoring of imports to prevent importation of residues of chemicals banned in the U.S. for food and fiber;

4) Banning U.S. companies from manufacturing chemicals that cannot be used in the United States;

5) Requiring all imported foods, feeds and fibers to meet the same health and inspection standards as those required for domestic products;

6) Requiring inspection be continuous and thorough, not just an occasional, minor sampling. Products that fail inspection should be condemned and not allowed a second opportunity to enter our country; and

7) Expenses for all inspections coming from fees on the imported products paid by the exporter at the point of origin.

We should require all food products that enter our market to be regulated and inspected to meet the same safety standards. The recent Chinese melamine scandal in milk products, specifically infant formula, should be a wake up call. Melamine was added to milk to artificially raise the test level of protein to increase the sale value of the milk. This was a blatant case of adultery to the product and fraud to the buyer. Unfortunately, the health consequences to consumers, including the babies who drank the infant formula, where far more devastating to their health than their pocketbooks. True milk products are whey. A product called Milk Protein Concentrates (MPC) exists on the world market. These products are often casein derivates posing as whey. They are not the same protein product. There is a test to determine the difference but it is hardly ever used. The last trade agreement neglected to include MPC's in dairy trade tariffs and quotas. This has allowed a large loophole for these products to enter the United States free of tariffs and free of any quantity limits. Similarly, melamine tainted proteins enter the United States market from China. We were very lucky that only a small amount of candy was found to

contain melamine and was recalled. Imagine if a large amount of this protein powder had joined the MPCs used in the cheese vats of our country.

MPCs are not recognized as Generally Recognized As Safe (GRAS) approved by FDA. They are illegal in all dairy products with a standard of identity that includes the legal definition of milk. These MPCs are used in a variety of bakery and confectionary products (attached are the definition and list of standard ID products). A lot of it finds its way into our American cheese since it lowers the cost of production. The result is inferior flavor and texture to the cheese. MPC must be listed on the label of any cheese product containing it- look for it on Kraft Singles labels. Producers want all imported dairy products to meet the same inspection and production standards that we meet so that the products are safe and we can compete economically in the market. Using an inferior illegal product to lower the cost of production is not fair market practice.

MPCs are coming into the United States from countries that lack refrigeration on the farms. They come from Australia, New Zealand, China, India, and Soviet Block Eastern European countries, including the area around Chernoble, which had a major failure of a Nuclear Energy Reactor. These products are not produced under the same safety standards that we meet every day, and they jeopardize our products. Imported milk products that are contaminated can be mixed into our products and lead to food recalls that we cannot economically afford and health risks that we should not be exposed to.

America's farmers and ranchers produce the safest, most abundant food supply in the world. With each outbreak of salmonella, discovery of harmful chemicals in toothpaste, or threat of tainted infant formula, the agricultural industry in the United States is forced to defend itself. The impacts of food recalls are having an especially negative economic impact on family farmers and ranchers. Recent contamination events demonstrated that current U.S. laws and their enforcement are not sufficient to address the complexities of our nation's food supply. I encourage the subcommittee to work with their colleagues in addressing these issues.

Memorandum:
To: Small Business Committee
From: Congressman Bobby Bright
Re: Statement for the Record: Food Safety Hearing on March 11, 2009
Date: March 17, 2009

Food safety and reliability is an important aspect of daily life for every American. We have come to rely on a safe and dependable food system across the country. Recent e-coli and salmonella outbreaks for a number of different food products have triggered recalls that have caused serious illness and death, shaken consumer confidence and crippled agricultural industries. The most recent of these scandals, involving the Peanut Corporation of America (PCA), has severely impacted the peanut industry.

Peanut farming and processing in the South is a way of life for many and an indispensible part of the economy in southeast Alabama. As a member of the Agriculture Committee, I look forward to the opportunity to hear from peanut farmers and shellers and other impacted industries.

Unfortunately, the actions of a rogue company like PCA has created financial and psychological effects that will continue to impact our local economy for the foreseeable future. Since we first learned of PCA's actions in January 2009, I have been working with many of my friends in the peanut industry to determine the full impact that food recalls have had. While most of the processors I've spoken to believe they will be able to survive any short-term fiscal impacts, they are very fearful of the long-term implications of the scandal. Several have expressed concerns about the prospect of a misguided federal response that could result in over-regulation. I share their concern that the actions of one rogue company could lead to an overreaction and have numerous unintended consequences.

There is little doubt that we need to reassess our food safety policies. I believe we should offer a measured response that reforms deficiencies in the system. An appropriate response will streamline policies and procedures for food recalls while making sure the impact on small businesses is not overly burdensome or costly. Only after conducting a thorough investigation to identify where our current policies have been unsuccessful will we be able to make informed changes to those failed policies. We must first assess whether the FDA has had the oversight authority, staff, and budget to identify and isolate food safety violations. We must then consider how the FDA could streamline the recall process so as to minimize any impact on producers and processors that continue to "produce" safe products.

WRITTEN COMMENTS OF
TAZ MURRAY, CEO
DYNAMIC CONFECTIONS

BEFORE THE HOUSE OF REPRESENTATIVES COMMITTEE
ON SMALL BUSINESS,
SUBCOMMITTEE ON
REGULATIONS AND HEALTHCARE

March 20, 2009

Claudia Lewis-Ing, Esq.
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WRITTEN COMMENTS OF TAZ MURRAY, CEO, DYNAMIC CONFECTIONS BEFORE THE HOUSE OF REPRESENTATIVES COMMITTEE ON SMALL BUSINESS, SUBCOMMITTEE ON REGULATIONS AND HEALTHCARE

I. Introduction

The following comments are submitted by Mr. Taz Murray, CEO and co-founder of Dynamic Confections, Inc., a Utah-based premier candy and chocolate wholesaler and manufacturer. Dynamic Confections is one of North America's top 15 candy makers and is known for managing fine quality confectionery brands, including, in part, Kencraft, Maxfield's, Bogdon Candy, Mrs. Field's, Botticelli, Dolce D'Or, and All-American.

Dynamic Confections applauds the House Small Business Committee, Subcommittee on Regulations and Healthcare for its interest in examining the recent peanut recall and its far-reaching and potentially devastating impact on small businesses. We ask that our comments be included as part of the Subcommittee's record.

We also ask that the Subcommittee continue its scrutiny of the recall's affects on small business, the business consequences of the recall, and maintain an active dialogue with the private sector in order to determine the types of relief necessary for small businesses, such as Dynamic Confections. All of this is needed – along with financial support –to help small businesses recover from side affects of the tainted peanuts produced and distributed by Peanut Corporation of America (PCA).[1]

[1] Dynamic Confections is in no way affiliated with PCA or other peanut producers.

II. Unintended Consequences of PCA Recall

A. *Adverse Affects on Small Business*

Due to the broad application of the FDA recall to certain business, such as Dynamics Confections, and the corresponding financial costs of the recall efforts, small businesses are in need of short-term financial support (from the federal government) to off-set the adverse economic consequences of the recall. Importantly, time is of the essence for small business like Dynamic Confections. As the Subcommittee is aware, a joint investigation by the U.S. Food and Drug Administration (FDA) and the Centers for Disease Control and Prevention (CDC) into the outbreak of illnesses caused by Salmonella Typhimurium, identified peanut butter and peanut paste made PCA plant a source of the outbreak. The recall is far-reaching for the industries affected as a result of the ubiquity of peanuts; such as cookies, crackers, pet food, protein bars, pre-packaged meals, bird seed, ice cream and many others.

Hundreds of companies bought PCA peanuts through various suppliers and are now facing business-threatening financial difficulties, due to overall recall compliance measures and activities. Dynamic Confections initiated pro-active measures, once it determined that PCA products were, in fact, used as part of its production process. Despite testing negative for Salmonella Typhimurium within any of our facilities, Dynamic Confections voluntarily recalled its products containing peanuts as a precaution to prevent any health risk to the public. We maintain the highest regard for public health and safety; Dynamic Confections would never contribution in any way to endangering the food chain.

Like many small businesses, Dynamic Confections relies on the quality of its products for the success of our business. The peanut recall directly and substantially affects the majority of Dynamic Confections' product lines, across all of its brands. The losses due to the recall are not recoverable from PCA and could (potentially) require Dynamic Confections to terminate all operations. This would be a worst case situation for Dynamic Confections but is something that we must now acknowledge as a potential reality, given the broad application of the recall on our business.

B. *Estimate of Recall Costs*

Costs of the recall could potentially reach as high as $2 million dollars, which includes the loss of accounts receivables, $523, 818 in lost inventory and $140, 000 for lab testing, legal fees, return and destruction costs.

As with similarly situated companies, Dynamic Confections must deal with the catastrophic affects of the peanut recall, while also attempting to maintain business operations in an already highly uncertain economic environment. Despite implementing high quality control standards, such as requiring Certification of Analysis from PCA, as a third party, we must now spend millions of dollars complying with the recall, in order to help remedy the intentional misdeeds of PCA. Dynamic Confections has incurred the cost of swabbing its facilities, destroying entire boxes of chocolates (that may have only included to pieces that had peanuts) and absorbing replacement costs for products manufactured.

C. *Financial Realities Confronting Small Businesses*

The current deteriorating economic environment only heightens the critical financial straits facing Dynamic Confections, due directly by the recall. Many of our

customers are currently holding back all accounts receivables, even though the recall only affected a portion of the products on their shelves, until they can calculate total cost of removing the products from their shelves. Dynamic Confections is dependant on cash flow for operations. However, due to the current credit crisis, banks and other financial institutions are restricting loans and are refusing to lend because they use the accounts receivables as collateral for the loans. As a result, Dynamic Confections has a liquidity crisis and is struggling to make payroll.

The inability to secure loans to cover the costs of the recall has forced Dynamic Confections to lay off a large portion of its workforce. Time is quickly running out and the company has about 45 days before it will be necessary to terminate operations due to lack of liquidity.

III. Conclusion and Recommendations

As a small business, we pride ourselves on our entrepreneurial spirit and commitment to the free market. However, the recall has substantially undercut our ability to function in a market devoid of *temporary* government intervention and assistance. We now must look to the federal government to assist us during this period – small businesses need not ask for a hand-out or any type of financial bailout – Dynamic Confections believes that short-term financial assistance (underwritten by the federal government), perhaps in the form of low-interest type loans or other financial arrangements, will ensure our stability and survivability. Unfortunately, the small business initiatives recently released by the Administration can not be utilized by the company due to restrictions by the Small Business Administration policies on private funding.

In short, we call upon Congress to address this pressing issue, by way of legislation if needed. In this time of economic uncertainty, small businesses know one thing: without the support and assistance of the federal government, businesses will fail, jobs will be lost and a better economic future will be in jeopardy.

We seek some form of relief to help off-set the financial obligations created by the recall. Financial assistance through grants or loans is necessary for Dynamic Confections to remain in business and ensure the continued employment of hundreds of jobs in multiple states in the Nation.

Respectfully Submitted,

Taz Murry by AZ

Taz Murry
CEO and Co-Founder
Dynamic Confections, Inc.

March 20, 2009

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