

Written testimony of Robert Brackett

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Thank you, Mr. Chairman. My name is Robert Brackett and I am Senior Vice President and Chief Science and Regulatory Affairs officer for the Grocery Manufacturers Association.

We commend and share your commitment to ensuring the safety of our nation's food supplies and agree that a strong, adequately funded Food and Drug Administration (FDA) is fundamental to achieving this goal.

Food and beverage companies already implement a variety of food safety measures and controls to ensure the safety and quality of our products and ingredients. Ensuring the safety of our products is our most important priority. We agree that Congress must take steps to help FDA and the food industry address new challenges

posed by rising food imports and changing consumer preferences. We believe that a risk-based approach to the prevention of contamination should continue to be the foundation of nation's food safety strategies.

We are grateful for your willingness to work with us to craft food safety legislation. While we support giving FDA additional resources, we strongly oppose placing annual taxes on food facilities or food importers to finance FDA operations. All Americans, not simply food companies, benefit from improvements to our nation's food safety programs. We believe the costs of FDA inspections and research should be financed from general tax revenue, not from taxes imposed on food importers or facilities. While we support increased resources for FDA, we strongly oppose food taxes and "fees" that are not tailored to provide a government service to our industry and that will likely compound food costs at a time of record food inflation.

While we support additional regulation of food companies and importers, we oppose overly prescriptive new food safety requirements and oppose providing FDA inspectors with broad authority to review the adequacy of food safety plans. While we support the requirement that all food companies have a food safety plan, we believe food companies should be given the discretion to identify appropriate safety controls and measures beyond those controls and measures already required by regulation. Prescriptive, across-the-board new regulatory requirements will stifle innovation, divert resources from proven food safety measures, and will increase food costs at a time of record food inflation.

We are also very troubled by proposals to require FDA or third-party certification for all food facilities, regardless of risk. In particular, we are concerned that a proposal last week by Chairman Dingell to require all foreign and domestic food facilities to obtain certification from FDA-accredited certifying agents would exhaust FDA resources and would improperly delegate FDA responsibilities. Because importers who fail to seek certification would face severe import limitations and unworkable testing requirements, the “voluntary” program outlined in Chairman Dingell’s Discussion Draft is effectively mandatory. Rather than using public resources to strengthen our public food safety system, such proposals would effectively replace FDA with privately controlled and operated certifying agents with the power to determine whether a facility complies with federal law.

A massive across-the-board certification requirement that ignores risk is unworkable and wasteful of public and private sector resources. While there is a role for third party audits in our food safety system, we believe this role should be linked to demonstrated need, such as the certification of imports of certain high risk foods. Effectively requiring all domestic and foreign facilities to obtain certification would demand the creation of an unprecedented private army of third-party certifiers that would be tantamount to creating a “shadow” government.

While we believe that some facilities deserve greater scrutiny than others, we generally oppose rigid inspection schedules and instead believe that FDA inspections

should be based upon risk. We also strongly oppose needless civil penalties and re-inspection fees. Food companies have powerful incentives to ensure the safety of food products and ingredients and current law already provides a wide range of enforcement tools, including seizure, injunction, and civil and criminal penalties. Giving FDA the power to assign massive fines and fees will dramatically alter the cooperative relationship between FDA and the food industry and will create a powerful incentive for FDA to find violations regardless of merit.

We also oppose broad new reporting and labeling requirements. In particular, we oppose proposals to dramatically expand scope of the new reportable food registry and oppose proposals to require food companies to identify the source of all ingredients. Food companies combine dozens of ingredients from more than 160 countries and change the source of these ingredients every day. Unworkable new labeling requirements will increase the cost of food without improving the safety of food.

We instead propose that Congress modernize our food safety system by making risk and the prevention of contamination the focus of our food safety strategies. In particular, we propose the following reforms:

- One, we urge you to give FDA the power to establish safety standards for fruits and vegetables. In particular, give FDA the power to establish food safety standards for particular fruits and vegetables – when risk and science demonstrate standards are needed. Under this proposal, FDA should be given the power to

work with USDA and states to ensure standards are being met, and FDA should be given the power to work with states to tailor standards to meet local growing conditions.

- Two, we urge you to require food company to have a food safety plan. In particular, every food company selling food in the US should conduct a food safety risk analysis that identifies potential sources of contamination, identifies appropriate food safety controls, verifies that those controls are effective, and documents those controls in a food safety plan subject to FDA review.
- Three, require every food importer to police their foreign suppliers. In particular, Congress should require that all food importers, subject to FDA guidance, document the food safety measures and controls being implemented by their foreign suppliers and should require food importers to make their foreign supplier food safety plan available to FDA. Food importers who demonstrate their products pose no meaningful risk should be eligible for expedited entry at the border so FDA can give greater scrutiny to high risk imports.
- Four, build the capacity of foreign governments and enlist the help of the private sector. In particular, Congress should direct FDA to develop a plan to help build the scientific and regulatory capacity of major exporters to the U.S. and should create a registry of private laboratories that meet FDA standards. In addition, FDA should enlist the help of accredited third party auditors to ensure that high

risk imports meet federal safety standards, to verify the contents of foreign supplier safety plans, and to help identify those imports eligible for expedited entry.

We also believe that Congress should give the Secretary new powers to address bad actors. Although food companies routinely recall contaminated products, we believe Congress should give the Secretary the non-delegable power to order a recall, subject to due process protections, when a product poses the risk of severe health consequences of death and the company has refused to conduct a recall.

Mr. Chairman, we are grateful for the opportunity to work with you to promote a risk based approach to food safety regulation and to allow FDA the flexibility to respond to emerging risks in the manner that most efficiently uses the agency's precious resources. We look forward to working with you to develop and implement improvements that will make risk and prevention the focus of our nation's food safety systems.

Summary

Food companies support efforts to modernize our food safety system by making risk and the prevention of contamination the focus of our food safety strategies. In particular, we propose the following reforms:

- Give FDA the power to establish safety standards for fruits and vegetables. In particular, give FDA the power to establish food safety standards for particular fruits and vegetables.
- Require food companies to have a food safety plan. In particular, every food company selling food in the US should conduct a food safety risk analysis that identifies potential sources of contamination, identifies appropriate food safety controls, verifies that those controls are effective, and documents those controls in a food safety plan subject to FDA review.
- Require every food importer to police their foreign suppliers and build the capacity of foreign governments. In particular, Congress should require that all food importers document the food safety measures and controls being implemented by their foreign suppliers.
- Give the Secretary new powers to address bad actors. Although food companies routinely recall contaminated products, we believe Congress should give the FDA the power to order a recall, subject to due process protections, when a product poses the risk of severe health consequences or death and the company has refused to conduct a recall.

Although we support giving FDA additional resources, we oppose taxes on food facilities and imports and we are troubled by proposals to require that all foreign and domestic food facilities obtain third-party certification. We also oppose prescriptive new regulatory requirements, broad new labeling requirements, and civil penalty proposals that will increase food costs but will not improve food safety.

