



**National Farmers Union
Testimony of Kent Pepler**

**Before the
U.S. House of Representatives Agriculture
Committee**

To Review Current Issues in Food Safety

**Thursday, July 16, 2009
Washington, D.C.**

Good morning, Mr. Chairman and members of the committee. My name is Kent Pepler, I serve as the president of Rocky Mountain Farmers Union, which represents family farmers and ranchers in Colorado, Wyoming and New Mexico. I am a fourth generation farmer from Mead, Colo., my operation consists of 500 acres of corn, wheat, alfalfa hay and barley. In the past my family raised sugar beets and sunflowers; we also fed cattle, sheep and hogs. I am here today on behalf of Rocky Mountain Farmers Union and National Farmers Union (NFU) – a nationwide organization representing more than 250,000 farm, ranch and rural residents.

There is no question that doing more to protect our food supply is necessary. The solutions to achieving this goal are as diverse as the perspectives of impacted communities. America's farmers and ranchers are the best in the world at what they do; it is in our best interests to maintain the confidence of American consumers that the food on their supper table is safe.

Many in agriculture would agree that food safety concerns could be addressed at minimum by adequate and appropriate enforcement of existing regulations. A vast array of regulations and laws exist today, yet the federal agencies tasked with enforcing those laws are not given adequate resources to accomplish the job. I must also note that existing regulations, even when enforced, have not yielded appropriate protections for consumers – as demonstrated by the recent cookie dough and peanut butter outbreaks. The failure to inspect and regulate food processing facilities is a concern held by producers across the country. However, adding additional mandates from Congress, without equipping the agencies to do the job, will yield the same failed results we are experiencing today.

The complexities of our modern food supply system have outpaced the ability of regulators to sufficiently address supply safety controls. Last summer, during the *Salmonella Saintpaul* outbreak, Rocky Mountain Farmers Union called on consumers to demand more local and seasonal food production rather than rely upon the status quo of food distribution. In response to other recent food safety outbreaks, some have suggested the solution is nationwide marketing orders. Our members have worked to prevent such regulations being imposed on family farmers because of evidence from the Food and Drug Administration (FDA) that demonstrates *E.coli* 0157:H7 outbreaks have been associated with products coming from processing facilities, not the farm. Efforts to establish a nationwide set of mandatory food safety marketing orders for all produce farms is the wrong approach to addressing food safety concerns.

A growing concern with the direction of legislative food safety action is the impact on farmers' environmental practices. Attached to my testimony is a July 13, 2009 article published in the San Francisco Chronicle titled, "Crops, Ponds Destroyed in Quest for Food Safety." If producers are required to eliminate environmentally beneficial practices based upon no evidence the revised production practices will yield safer food, the consequences will be severe. The FDA has no background, knowledge or expertise of real-world environmental practices by farmers and I strongly urge this subcommittee and others who understand the benefits of environmentally beneficial practices like buffer strips, wildlife habitat and water quality protection to engage your colleagues to articulate the consequences of pursuing this misdirected path.

Three weeks ago yesterday, the U.S. Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS) announced that JBS Swift Beef Company, based in my neighborhood

of Greeley, Colo., was voluntarily recalling approximately 380,000 pounds of assorted beef products that may have been contaminated with *E.coli* 0157:H7. While not the largest beef recall our nation has faced, it serves as an unwelcome reminder that the time to act on food safety is now. Unfortunately, time, attention and focus have been wasted by USDA on this recall by focusing on the origin of the cattle. It reminds me of the story of the guy who loses his wallet on the east side of the street, and decides to look for it on the west side because the light is better. Consumers and producers would be better served if slaughterhouses are no longer allowed to self-regulate and the entire regulatory system is updated to reflect the complexities of today's modern food supply.

NFU's policy has called on Congress to create a new regulatory body to oversee the U.S. food system. In order to be successful, such a system must be adequately funded to carry out its mission. This will require the federal government to make food safety a fiscal priority and not demand user fees or registration fees to cover the entire cost of providing safe food to American consumers.

Our members also support the creation of a single food agency to regulate the food supply as a whole, including increasing amounts of imported foods. The agency should be granted authority for issuing a mandatory recall in the event of a food safety outbreak. With the recent voluntary beef recall in my state, we know the meat was processed approximately 65 days prior to the voluntary recall and distributed to at least 13 states and international markets. The inability to issue a mandatory recall perpetuates both consumer fear and depressed product sales. Mandatory recall authority should also include a requirement for timely notification at points of sale to minimize distribution of product to consumers. Reduced product sales lead to lower market prices received by producers and can last for weeks or months, devastating producers' income. Mandatory recall authority could mitigate the economic impact on producers while at the same time containing consumer fear.

Any food safety legislation must recognize implications for farmers and their ability to continue to provide an affordable, safe and abundant food supply. Farmers are the first link of the food safety chain and can be a valuable resource as Congress determines what policies will yield the greatest results. As an organization that represents independent family farmers and ranchers, RMFU and NFU are eager to provide an "on-the-farm," real-world perspective as the food safety debate proceeds. An aggressive outreach and education effort must be made to producers regarding food safety measures that can be implemented on the farm. An affiliate of NFU, the Community Alliance with Family Farmers based in Davis, Calif., has been developing an educational outreach campaign, geared toward producers, to mitigate food safety concerns on the farm. Their efforts should be replicated across the country and would require no legislative action.

We are concerned with the lack of outreach to the independent farm production sector by those in Congress who are intent on moving food safety legislation forward. Provisions that adversely impact independent family farmers and ranchers will be counterproductive in improving the safety of our food. A punitive or one-size-fits-all approach for traceability, penalties or other efforts seeking to improve food safety will not yield successful results. Specifically, small and mid-sized operations focused on sustainable and organic production methods are concerned with

potential excessive burden and expense associated with legislative efforts on food safety. While the language in the Food Safety Enhancement Act of 2009 (H.R. 2749) to account for organic production methods and size are needed, more must be done to address these concerns. Congress must ensure new food safety legislation does not prescribe a separate set of standards that would unintentionally discourage producers from transitioning to organic production methods. I encourage this subcommittee to reach out to all food producers, including small scale and organic producers, to ensure legislative efforts do not disproportionately burden these good-actors.

Traceability -

H.R. 2749 includes language to establish a higher standard of traceability of food in order to quickly identify and contain the source of an outbreak. While working through the Energy and Commerce Committee process, the bill was improved to provide an accommodation for producers that sell directly to grocery stores, restaurants or consumers. The modified section allows producers to maintain records either electronically or in hard copy format for a six month period. This section was also improved by requiring a cost/benefit analysis, public hearings, a pilot project and information gathering effort prior to publishing regulations.

Imports

According to an April 2009 Congressional Research Service report, the FDA physically inspects approximately one percent of all imported food items with 450 inspectors covering more than 300 ports of entry. According to USDA's Economic Research Service, the value of agriculture imports went from approximately \$37 billion in 1998 to \$80 billion in 2008. Combined with frequent headlines of tainted imports such as pet food ingredients, baby formula, shrimp - our food safety efforts cannot continue to fail to acknowledge the increasing amount of food entering our country from places around the globe that either have no food safety standards or standards in name only.

Registration fees

As currently drafted, H.R. 2749 does not appropriately recognize the differentiation between small and large processors. To require all food facilities, regardless of size, pay an annual registration fee of \$500 demonstrates a deficiency in the legislation. Congress should recognize the uniqueness of small processing facilities and exempt such facilities from this fee so as not to discourage small-scale processors from participating in an already consolidated and concentrated food processing system.

Additional Policy Suggestions

In order to maintain the high quality of our food supply, NFU supports the following standards for production, processing and transportation of food products:

- Vigorous action by U.S. regulatory agencies to prevent the introduction of bovine spongiform encephalopathy (BSE) into U.S. livestock and livestock products;
- A moratorium on mechanical de-boning until the process can be improved to ensure that no undesired portions of the carcass are present in the final product;
- Labeling of irradiated products and further research on its long-term effects on human health;

- Opposition to the transportation of food in containers that have carried incompatible substances;
- Protecting our nation's food supply and the rigorous inspection of all imported food, fiber, Milk Protein Concentrate (MPC), animal products and by-products to ensure they meet our nation's sanitary and phyto-sanitary standards including safe pesticide levels. USDA inspection stamps/seals should be placed only on the individual items inspected;
- Permitting states to implement food safety regulations more stringent than comparable federal regulations where states deem consumer health and safety to be at risk or when individual agricultural producers strive to set a higher bar for the safety of food products destined for specialty or export markets; and
- Labeling the use of all additives, such as carbon monoxide injected in meat and seafood or packaging for appearance or shelf-life purposes.

Labeling

Thorough and accurate food labels are an important tool that help consumers make informed decisions and allows producers to differentiate their products. We support mandatory labeling for food products to include all ingredients, additives and processes such as:

- Carbon Monoxide;
- Artificial growth hormones;
- Products derived from cloned animals;
- Irradiation;
- The identity of the parent company; and
- Country-of-origin

Agri-Terrorism

With increased attention and focus on potential agri-terrorism attacks on our nation's food chain, rural America must be educated, prepared and vigilant of all potential circumstances. National Farmers Union supports:

- The Department of Homeland Security (DHS) and USDA immediately developing mechanisms to combat agro-terrorism with full funding provided by DHS. Such mechanisms should ensure the safety of the consumer and agricultural industry;
- Increased cooperation between USDA, DHS, Department of Health and Human Services (HHS) and the Federal Emergency Management Agency (FEMA) to establish, expand and continue to determine vulnerabilities within the agricultural and food industries;
- Establishing a USDA public awareness and education campaign for producers;
- Providing federal guidance and funding to states and localities to develop and implement plans for agricultural disease prevention, recovery and response, based upon already established state animal response activities; and
- A requirement of representatives of federal, state and county agencies to notify landowners prior to non-emergency access of their private property. Representatives and vehicles used for access should also display appropriate agency signage and identification.

I thank you for the opportunity to testify today and look forward to responding to any questions committee members may have.

Crops, ponds destroyed in quest for food safety

Carolyn Lochhead, Chronicle Washington Bureau

Monday, July 13, 2009

(07-13) 04:00 PDT Washington -- Dick Peixoto planted hedges of fennel and flowering cilantro around his organic vegetable fields in the Pajaro Valley near Watsonville to harbor beneficial insects, an alternative to pesticides.

He has since ripped out such plants in the name of food safety, because his big customers demand sterile buffers around his crops. No vegetation. No water. No wildlife of any kind. "I was driving by a field where a squirrel fed off the end of the field, and so 30 feet in we had to destroy the crop," he said. "On one field where a deer walked through, didn't eat anything, just walked through and you could see the tracks, we had to take out 30 feet on each side of the tracks and annihilate the crop."

In the verdant farmland surrounding Monterey Bay, a national marine sanctuary and one of the world's biological jewels, scorched-earth strategies are being imposed on hundreds of thousands of acres in the quest for an antiseptic field of greens. And the scheme is about to go national.

Invisible to a public that sees only the headlines of the latest food-safety scare - spinach, peppers and now cookie dough - ponds are being poisoned and bulldozed. Vegetation harboring pollinators and filtering storm runoff is being cleared. Fences and poison baits line wildlife corridors. Birds, frogs, mice and deer - and anything that shelters them - are caught in a raging battle in the Salinas Valley against E. coli O157:H7, a lethal, food-borne bacteria.

In pending legislation and in proposed federal regulations, the push for food safety butts up against the movement toward biologically diverse farming methods, while evidence suggests that industrial agriculture may be the bigger culprit.

'Foolhardy' approach

"Sanitizing American agriculture, aside from being impossible, is foolhardy," said UC Berkeley food guru Michael Pollan, who most recently made his case for smaller-scale farming in the documentary film "Food, Inc." "You have to think about what's the logical end point of looking at food this way. It's food grown indoors hydroponically."

Scientists do not know how the killer E. coli pathogen, which dwells mainly in the guts of cattle, made its way to a spinach field near San Juan Bautista (San Benito County) in 2006, leaving four people dead, 35 with acute kidney failure and 103 hospitalized.

The deadly bug first appeared in hamburger meat in the early 1980s and migrated to certain kinds of produce, mainly lettuce and other leafy greens that are cut, mixed and bagged for the convenience of supermarket shoppers. Hundreds of thousands of the bug can fit on the head of a pin; as few as 10 can lodge in a salad and end in lifelong disability, including organ failure.

Going national

For many giant food retailers, the choice between a dead pond and a dead child is no choice at all. Industry has paid more than \$100 million in court settlements and verdicts in spinach and lettuce lawsuits, a fraction of the lost sales involved.

Galvanized by the spinach disaster, large growers instituted a quasi-governmental program of new protocols for growing greens safely, called the "leafy greens marketing agreement." A proposal was submitted last month in Washington to take these rules nationwide.

A food safety bill sponsored by Rep. Henry Waxman, D-Los Angeles, passed this month in the House Energy and Commerce Committee. It would give new powers to the Food and Drug Administration to regulate all farms and produce in an attempt to fix the problem. The bill would require consideration of farm diversity and environmental rules, but would leave much to the FDA.

An Amish farmer in Ohio who uses horses to plow his fields could find himself caught in a net aimed 2,000 miles away at a feral pig in San Benito County. While he may pick, pack and sell his greens in one day because he does not refrigerate, the bagged lettuce trucked from Salinas with a 17-day shelf life may be considered safer.

The leafy-green agreement is based on available science, but it is just a jumping-off point. Large produce buyers have compiled secret "super metrics" that go much further. Farmers must follow them if they expect to sell their crops. These can include vast bare-dirt buffers, elimination of wildlife, and strict rules on water sources. To enforce these rules, retail buyers have sent forth armies of food-safety auditors, many of them trained in indoor processing plants, to inspect fields.

Keeping children out

"They're used to working inside the factory walls," said Ken Kimes, owner of New Natives farms in Aptos (Santa Cruz County) and a board member of the Community Alliance With Family Farmers, a California group. "If they're not prepared for the farm landscape, it can come as quite a shock to them. Some of this stuff that they want, you just can't actually do." Auditors have told Kimes that no children younger than 5 can be allowed on his farm for fear of diapers. He has been asked to issue identification badges to all visitors.

Not only do the rules conflict with organic and environmental standards; many are simply unscientific. Surprisingly little is known about how E. coli is transmitted from cow to table.

Reducing E. coli

Scientists have created a vaccine to reduce E. coli in livestock, and a White House working group announced plans Tuesday to boost safety standards for eggs and meat. This month, the group is expected to issue draft guidelines for reducing E. coli contamination in leafy greens, tomatoes and melons.

Some science suggests that removing vegetation near field crops could make food less safe. Vegetation and wetlands are a landscape's lungs and kidneys, filtering out not just fertilizers, sediments and pesticides, but also pathogens. UC Davis scientists found that vegetation buffers can remove as much as 98 percent of E. coli from surface water. UC Davis advisers warn that some rodents prefer cleared areas.

Produce buyers compete to demand the most draconian standards, said Jo Ann Baumgartner, head of the Wild Farm Alliance in Watsonville, so that they can sell their products as the "safest."

State agencies responsible for California's water, air and wildlife have been unable to find out from buyers what they are demanding.

They do know that trees have been bulldozed along the riparian corridors of the Salinas Valley, while poison-filled tubes targeting rodents dot lettuce fields. Dying rodents have led to deaths of owls and hawks that naturally control rodents.

Unscientific approach

"It's all based on panic and fear, and the science is not there," said Dr. Andy Gordus, an environmental scientist with the California Department of Fish and Game.

Preliminary results released in April from a two-year study by the state wildlife agency, UC Davis and the U.S. Department of Agriculture found that less than one-half of 1 percent of 866 wild animals tested positive for E. coli O157:H7 in Central California.

Frogs are unrelated to E. coli, but their remains in bags of mechanically harvested greens are unsightly, Gordus said, so "the industry has been using food safety as a premise to eliminate frogs."

Farmers are told that ponds used to recycle irrigation water are unsafe. So they bulldoze the ponds and pump more groundwater, opening more of the aquifer to saltwater intrusion, said Jill Wilson, an environmental scientist at the Central Coast Regional Water Quality Control Board in San Luis Obispo.

Wilson said demands for 450-foot dirt buffers remove the agency's chief means of preventing pollution from entering streams and rivers. Jovita Pajarillo, associate director of the water division in the San Francisco office of the Environmental Protection Agency, said removal of vegetative buffers threatens Arroyo Seco, one of the last remaining stretches of habitat for steelhead trout.

Turning down clients

"It's been a problem for us trying to balance the organic growing methods with the food safety requirements," Peixoto said. "At some point, we can't really meet their criteria. We just tell them that's all we can do, and we have to turn down that customer."

Large retailers did not respond to requests for comment. Food trade groups in Washington suggested calling other trade groups, which didn't comment.

Chiquita/Fresh Express, a large Salinas produce handler, told the advocacy group Food and Water Watch that the company has "developed extensive additional guidelines for the procurement of leafy greens and other produce, but we consider such guidelines to be our confidential and proprietary information."

Seattle trial lawyer Bill Marler, who represented many of the plaintiffs in the 2006 E. coli outbreak in spinach, said, "If we want to have bagged spinach and lettuce available 24/7, 12 months of the year, it comes with costs."

Still, he said, the industry rules won't stop lawsuits or eliminate the risk of processed greens cut in fields, mingled in large baths, put in bags that must be chilled from packing plant to kitchen, and shipped thousands of miles away.

"In 16 years of handling nearly every major food-borne illness outbreak in America, I can tell you I've never had a case where it's been linked to a farmers' market," Marler said. "Could it happen? Absolutely. But the big problem has been the mass-produced product. What you're seeing is this rub between trying to make it as clean as possible so they don't poison anybody, but still not wanting to come to the reality that it may be the industrialized process that's making it all so risky."

Some major recent outbreaks of food-borne illness

The Food and Drug Administration lists 40 food-borne pathogens. Among the more common: E-coli O157:H7, salmonella, listeria, campylobacter, botulism and hepatitis A.

June 2009: E. coli O157:H7 found in Nestle Toll House refrigerated cookie dough manufactured in Danville, Va., resulted in the recall of 3.6 million packages. Seventy-two people in 30 states were sickened. No traces found on equipment or workers; investigators are looking at flour and other ingredients.

October 2008: Salmonella found in peanut butter from a Peanut Corp. of America plant in Georgia. Nine people died, and an estimated 22,500 were sickened. Criminal negligence was alleged after the product tested positive and was shipped.

June 2008: Salmonella Saintpaul traced to serrano peppers grown in Mexico. More than 1,000 people were sickened in 41 states, with 203 reported hospitalizations and at least one death. Tomatoes were suspected, devastating growers.

April 2007: E. coli O157:H7 found in beef, sickening 14 people. United Food Group recalled 5.7 million pounds of meat.

December 2006: E. coli O157:H7 traced to Taco Bell restaurants in New Jersey and Long Island, N.Y. Green onions suspected, then lettuce. Thirty-nine people were sickened, some with acute kidney failure.

September 2006: E. coli O157:H7 found in Dole bagged spinach processed at Earthbound Farms in San Juan Bautista (San Benito County). The outbreak killed four people, sent 103 to hospitals, and devastated the spinach industry.

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<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/07/13/MN0218DVJ8.DTL>

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