Statement of the American Farm Bureau Federation

To The House Agriculture Committee

Hearing to Review Food Safety

July 16, 2009

Presented by Larry Wooten
President, North Carolina Farm Bureau Federation
on behalf of the American Farm Bureau Federation

600 Maryland Ave. SW | Suite 1000W | Washington, DC 20024 | p. 202.406.3600 | f. 202.406.3606 | www.fb.org

Good morning, Chairman Peterson, Ranking Member Lucas and members of the committee. I am Larry Wooten, a tobacco and grain producer from North Carolina. I am president of the North Carolina Farm Bureau and testifying today as a member of the board of directors of the American Farm Bureau Federation (AFBF).

On behalf of Farm Bureau's more than 6 million members, thank you for your dedication and commitment to farmers, ranchers and the related industries that provide the U.S. with the world's most abundant, affordable and safe food supply. We appreciate you scheduling this hearing to review current food safety issues. AFBF is pleased to present producers' perspectives on this issue and we thank you for inviting us to share our views on a topic that is important to our members, producers and consumers alike.

As the nation's largest general farm organization and the representative of farmers and ranchers in every state in the nation, AFBF has a vital interest in how food safety is practiced, perceived and regulated. We represent growers of virtually every commodity, from apples to zucchini and pigs to peanuts.

My home state of North Carolina is a microcosm of Farm Bureau's diversity, as we proudly claim the nation's third most diversified agriculture economy. Agriculture is North Carolina's number one industry accounting for about $70.8 billion in annual economic activity and just under one-fifth of our state's jobs.

North Carolina's rural landscape is made up of many small farms due to our state's history with the federal tobacco and peanut programs. It is a perfect example of the need for any food safety legislation to recognize the different needs of farmers based on the size and scope of their operations. One size does not fit all, and agencies with experience in the diversity of farming operations – including USDA – appreciate regional differences in production and cultural methods.

The Safety of the U.S. Food Supply

American consumers deserve to have confidence that their food is safe and that the best science is used to ensure that the most wholesome product possible is produced and offered. Consumers reasonably expect that their food is safe, whether grown domestically or imported.

By their nature, food systems are biological and thus, not failsafe nor can they ever be "zero risk." However, food today is safer than in the past and food safety is constantly improving, particularly through reporting and tracing when food problems occur. In 1996, the Centers for Disease Control (CDC) improved its data collection of foodborne illnesses. The results since then indicate a 25 percent decline in E. coli ailments, campylobacter cases are down 32 percent, and listeria has shown a 36 percent decrease in illnesses. Other bacterial infections are down by about 33 percent.

These improvements have occurred despite new challenges for food safety, such as changes in the typical American diet to include more imported foods and more food consumed away from home. The U.S. now imports food from more than 150 different countries through more than 300 ports of entry. About half of fresh fruits eaten in America are grown outside of the country, and if you've

ever been to a mid-Atlantic farmers market in January an explanation of why this happens becomes clear – these imports allow us to enjoy our favorite produce year-round. Trade in food permits a more varied and customized diet suited to today's consumer preferences. It permits our farmers and other food producers to sell their goods abroad. Yet, it also means that food safety requires enhanced attention to the global food supply.

Adding to the complexity presented by increased food sources, the number of people involved in preparing the food we consume has also increased. Approximately 50 cents of every food dollar today is spent on foods prepared outside the home in places like restaurants, vending machines, and schools. This development increases the need to ensure adequate training for food service workers across the country and to consider the potential widespread impact of deliberate contamination of the food supply. As the supply chain gets longer, there are more opportunities (both accidental and intentional) for the introduction of public health threats.

Though the U.S. food production system is among the best in the world, producers and consumers agree that improvement is always an important goal. In addition to the new trends previously noted, recent food recalls have increased consumer awareness of food safety. The nation's food safety system must have the resources, authority and structural organization to safeguard the health of American consumers against foodborne illness. Evaluating food safety laws to determine whether they have kept pace with significant changes in food production, processing and marketing – such as new food sources, advances in production and distribution methods, and the growing volume of imports – is a priority for the agriculture and food industry, as well as government.

However, there is concern that too many new standards will unnecessarily complicate the marketplace without improving food safety overall. While we understand the need for continuous food safety improvement, the farm-level impact on producers must be considered in any new food safety regulations or legislation.

Farm Bureau Policy

AFBF supports:

- Adequate funding of the government's food and feed safety and protection functions;
- Increased education and training for inspectors;
- Additional science-based inspection, targeted according to risk;
- Research and development of scientifically based rapid testing procedures and tools;
- Increased funding for the Food Animal Residue Avoidance Databank (FARAD);
- Accurate and timely responses to outbreaks that identify contaminated products, remove them from the market and minimize disruption to producers; and
- Indemnification for producers who suffer marketing losses due to inaccurate government-advised recalls or warnings.

Farm Bureau strongly opposes efforts to eliminate years of food safety expertise by creating a new, single food safety regulator. Rather than streamlining authorities, the result would be less organization, more energy expended in transition than inspections, and the cumulative loss of valuable technical knowledge.

While we believe that import inspections must be increased in a risk-based manner, we have concerns about food safety bills which could threaten trade. Port closures and discriminatory treatment of international products are especially problematic.

Food Safety Responsibilities

Food safety is a shared responsibility of everyone in the food chain, from producer to consumer and each step in between. The government also plays a vital oversight and regulatory role.

It Starts with the Producer

America's farmers and ranchers are committed to producing safe and affordable food for consumers in the U.S. and around the world. There are several reasons for their strong support for food safety. They have the same desire as other consumers to have a safe, abundant and affordable food supply. They also have an economic interest because the demand for their products is determined by consumer confidence that food is safe. Food safety is paramount for everyone involved in the agriculture industry. We have an obligation to produce a safe, nutritious product for domestic and international consumers, and that obligation is at the core of all that we do.

Government Role

The Government Accountability Office (GAO) has identified 15 federal agencies that administer at least 30 laws related to food safety. The Food and Drug Administration (FDA) within the Department of Health and Human Services and the Food Safety Inspection Service (FSIS) within the Department of Agriculture (USDA) handle most of the government's food safety regulatory system.

FDA regulates 80 percent of the food supply. The agency is responsible for ensuring that all domestic and imported food products – except for most meat and poultry derived from the major animal species – are safe, nutritious, wholesome and accurately labeled. FDA share responsibility for the safety of eggs with FSIS.

FSIS regulates 20 percent of the food supply, ensuring the safety, wholesomeness and proper labeling of most domestic and imported meat and poultry and their products sold for human consumption. FSIS inspects all cattle, sheep, swine, goats and horses before and after they are slaughtered. FSIS also maintains oversight during meat and poultry processing into food products.

Among the other agencies that play a role in food safety are USDA's Agricultural Research Service, the Center for Disease Control, the Environmental Protection Agency, the National Marine Fisheries Service and the Department of Homeland Security (DHS).

Consumers are the Ultimate Step

Once a safe food product leaves the retail shelf, the final responsibility for safe storage, handling and preparation ultimately rests with the consumer. The amount of time (less) and methods used (more) to prepare food have changed considerably, requiring consumers to

increase their knowledge and vigilance. Yet, consumers' knowledge about food storage and preparation has declined markedly in the past 30 years. This results in greater chance for human error in food choices and preparation. Many of the estimated 76 million cases of food-borne illnesses in the U.S. each year are contracted in the home, and many can be prevented through proper kitchen health, storage and cooking.

The entire food industry is committed to not only offering a safe product to consumers, but also doing all that we can to ensure the safety of that product until it is consumed. On February 10, AFBF launched a consumer website, *Your Agriculture*, at www.fb.org/yourag, which includes safety guidelines for food preparation, cooking, serving and storage in the home. Our biannual publication "Farm Facts," dedicated to educating the public about all facets of agriculture in layman's terms, details the four simple food safety steps: clean, separate, chill and cook. Last year, we began publishing a monthly e-newsletter, "Foodie News." AFBF also produces a brochure, "Farmers Provide Safe and Abundant Food," to help educate the public about food safety.

It is important to note that everyone plays a role in food safety, including the food industry and regulatory agencies. Therefore, we support Congress' efforts to strengthen the country's food- and animal feed-safety systems utilizing sound science and a risk-based approach. We also recognize the importance of structuring and providing adequate resources to our food- and feed-safety systems to increase efficiencies. However, legislation currently pending in the House of Representatives contains some very troubling provisions that could undermine our ability to provide a safe, affordable and abundant food supply.

Legislative Action in the House of Representatives

Although numerous bills have been introduced in Congress to address a variety of food safety related issues, we will focus our comments today on the Food Safety Enhancement Act (H.R. 2749) as it appears to be the primary vehicle for food safety reform in the House. We appreciate the interest of both the majority and minority Members and staff of the Energy & Commerce Committee in learning about how and why we do what we do to produce safe food. We remain engaged in ongoing discussions to continue improving H.R. 2749 before it comes to the House floor for a vote.

Farm Bureau is encouraged by several provisions in H.R. 2947 to increase FDA resources, both internally and through cooperative relationships. We support the goal of the legislation to strengthen and provide additional resources for food safety functions. We appreciate the bill's requirement that FDA establish a program to recognize laboratory accreditation bodies and encourage that third-party certification be extended to domestic testing and inspections. Much of the additional research required in the legislation – to develop efficient rapid methods for detecting contaminants; determine the sources of contamination; identify common and emerging zoonotic diseases; and develop methods for destroying pathogens – has been necessary for several years and is critical to any effective food safety initiatives in the future.

Bipartisan negotiations took place prior to House Energy and Commerce Committee passage of H.R. 2749 to address numerous concerns raised by Farm Bureau and other agriculture groups. Most notably, livestock operations and the livestock portion of diversified operations are generally exempted from the bill. Other improvements include the removal of troubling restrictions on

modified atmosphere packaging and clarification that country-of-origin labeling (COOL) requirements not conflict with what is already required by the USDA program.

Despite substantial and significant progress from the legislation's original discussion draft, unresolved issues that could increase cost and paperwork burdens on farmers and ranchers remain. As amended and approved by the full committee on June 17, H.R. 2749 would significantly expand authorities for FDA to regulate and oversee on-farm production activities. Farms are explicitly included in extensive new recordkeeping, reporting and traceability measures which may not be feasible or practical for many producers.

Furthermore, H.R. 2749 paints the entire food supply system with a very broad brush. As you know, each segment of the food and agriculture spectrum is unique.

The bill would for the first time permit the Food and Drug Administration (FDA) oversight of many on-farm production activities with which it has little to no experience and which have not traditionally been under its jurisdiction on a routine basis. Many of these authorities are duplicative and overlapping with the jurisdiction of the U.S. Department of Agriculture and the Congressional Agriculture Committees.

Not only are the authorities redundant with existing USDA authority, but FDA does not have the personnel, funding, knowledge, expertise or time to regulate agricultural production practices – particularly given its overall volume of increased responsibilities contemplated in H.R 2749. While that view is certainly widely held within the agriculture community, it is not limited to the production audience. Even the National Federation of Independent Businesses noted the business impracticalities in a letter on June 17 which noted that H.R. 2749 "will do little to improve food safety but (would) impose significant costs on small farms and food producers."

Last month, Farm Bureau and a coalition of 18 other agriculture organizations expressed written concerns about the scope of H.R. 2749 on production agriculture activities. As currently written, H.R. 2749 would:

- Expand FDA's on-farm authorities to potentially include production practices;
- Lower the existing on-farm inspection trigger threshold from the 2002 Bioterrorism Act which requires that FDA have a reasonable belief that a product presents threat of serious adverse health consequences of death to humans or animals;
- Require additional recordkeeping, including new requirements for farms;
- Increase FDA's access to records without sufficient guarantee of confidentiality;
- Require FDA to create a food traceability system which could include farms (except most direct sales and farmers markets);
- Greatly expand FDA authority to quarantine geographic areas for food safety problems; and
- Delegate to FDA District Offices the authority to issue subpoenas and mandatory recalls, including to farms.

A more detailed discussion of these specific concerns follows.

<u>Safety Standards for Agricultural Commodities:</u>

The bill (Sec. 104) would require FDA to promulgate science and risk-based safety-standard regulations for seven activities, including the safe growing, harvesting, packing, sorting,

transporting and holding of raw agricultural commodities. The performance standards are not limited to produce, but extend to any plant or fungus.

"Reasonably necessary" regulations would be determined at FDA's discretion for both broad and specific safety standards, including manure use, water quality, animal control and temperature controls. These types of activities are all outside of FDA's realm of expertise, and most are redundant with existing USDA, EPA and Interior Department jurisdiction. While FDA would be required to consider impacts on small-scale and diversified farms and on a variety of environmental criteria, there is no guarantee that FDA will produce fair or necessary standards that ultimately result in safer food.

Recordkeeping:

The bill (Sec. 106) would require farmers to keep records regardless of the commodity they are producing and its associated risk profile, or lack thereof. FDA has unprecedented routine access to business records without justification of cause. Producers are required for the first time to allow a federal official to access and copy all records, including production and sales records that may be related in any way to food or feed safety. By deleting the farm exemption in the Bioterrorism Act of 2002, each farmer would be required to maintain records showing every buyer to which the farm's products are sold (except products sold directly to final consumers or restaurants). Further, the bill would allow FDA to require that farmers retain records for up to two years.

In a change from traditional practice dating back to 2002, FDA is not required to show cause prior to requesting records. Indeed, the bill would delete the current Bioterrorism Act threshold that requires that FDA first have a "reasonable belief" that a food article "is adulterated and presents a threat of serious health consequences or death to humans or animals" before having the authority to access records.

Finally, confidentiality remains a serious concern in the committee-passed bill. The ability of FDA to appropriately protect the privacy of producers' information from unauthorized release and/or access is unclear, at best, and not explicitly guaranteed.

Food Traceability:

FDA is required (Sec. 107) to create a new system to track any food or feed contamination incident to its source within two business days. Because this provision exceeds the current Bioterrorism Act requirements to trace "one-step-forward/one-step-back," it could require producers to maintain a complete history of where farm inputs originated and where farm-production outputs are sold. Electronic recordkeeping is not specifically required, but farm records would likely need to be electronic to facilitate traceability in the specified time frame.

This system would increase production costs for diversified farmers and grain farmers, most of whom operate small businesses. The requirement is overly burdensome considering the plethora of records that producers currently maintain. Yet, most farms do not have the technical or financial resources to make their record-keeping systems interoperable with others in the food chain. According to USDA Census of Agriculture data, less than 60 percent of farmers and ranchers have a computer, and only 1/3 have high-speed internet access.

Quarantine Authority:

The quarantine authority (Sec. 133) is broad and far exceeds the authority granted to USDA. If FDA had this authority and had chosen to utilize it in 2008 – when it erroneously suspected, based on what it believed at the time was "credible information" that tomatoes were a source of salmonella contamination – entire regions of the country could have been quarantined, further decimating a sector of agriculture that already had suffered severe economic damage. Although livestock are exempt, it is unclear if the bill would allow FDA to conduct an on-farm inspection of or quarantine the livestock side of a diversified operation that has a food-safety issue with the grain side of its business. Unlike USDA, FDA is not required or even able to provide any indemnification, whether a quarantine is justified or erroneous.

Penalties:

FDA is required (Sec.134 and 135) to issue fines for criminal and civil penalties. Unintentional as well as intentional violations may be fined, including up to $20,000 per individual for a record-keeping mistake. Each violation cited and each day during which it continues shall be considered to be a separate offense. Although penalties per event are capped, the cap is high enough ($50,000 for individuals for unintentional violations) to severely damage producers financially or put them out of business.

Delegation of Authority:

The bill (Sec. 311, 418 and 420) gives wide latitude to the discretion of district office personnel for many authorities, including the right to recommend prescriptive preventive controls and the authority to issue mandatory recalls and subpoenas. This empowerment at the FDA District Office Director level is particularly troubling given the removal of the previous threshold for FDA action and records access. We strongly urge that authorities with broad and significant impact on the regulated entities be non-delegable beyond, at a minimum, the Center Director level and ideally retained within the office of the secretary or commissioner.

Trade Impacts:

The latest version of H.R. 2749 removes the separate user registration for importers and production facilities, a very positive development. However, several provisions of the bill still violate U.S. trade commitments and would invite retaliation by our trading partners against exports of U.S. agricultural products.

The food safety regime should be science based and flexible enough to recognize equivalence between food safety authorities. For example, there is no need for redundant inspections between countries like the U.S. and Canada. In addition, the frequency of inspections does not seem to be scientifically justified. The bill sets an arbitrary timeline for recurring inspections.

There is serious concern that the user fee currently in the bill does not provide enough additional service to justify the fee. User fees that do not generate additional benefit for the importer may be trade restricting.

As Congress works to finalize this legislation, Farm Bureau urges lawmakers to remain conscious of the international implications that food safety regulations have. Congress should ensure that the mechanisms put in place to regulate food safety do not treat importers more harshly than domestic facilities. To do so would be a violation of our World Trade Organization obligations.

Conclusion

Thank you again for arranging this public hearing to better understand food safety issues, and for allowing us to share producers' views of current legislation. We are committed to improving food safety in a targeted, scientific, and risk-based manner, and we stand ready to work with Congress in that effort. We look forward to working with you and your colleagues as food safety legislation continues to be developed.