

Prepared Statement

**Drew McDonald
Vice President, National Quality Systems
Taylor Farms
Salinas, California**

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

July 16, 2009

Introduction and History of Taylor Farms

Good morning Chairman Peterson, Ranking Member Lucas and Members of the Committee. My name is Drew McDonald and I am Vice President of National Quality Systems for Taylor Farms Salinas California. We are the world's largest salad and fresh cut vegetable processor with 10 processing plants operating in 6 states and Mexico. Taylor's valued network of independent, family-run farms who supply produce to us extend across more than 9 states including California, Arizona, Oregon, Washington, Colorado, New Mexico, Michigan, New Jersey, Florida as well as other countries such as Canada, Chile, and Mexico. We provide fresh healthy products to 100 million Americans each week to provide enjoyment and promote healthy lifestyles.

We are active in the major produce trade organizations including serving on the board of directors for United Fresh Produce Association, Western Growers, and Produce Marketing Association. These organizations have help lead industry efforts to bring safe, healthy, affordable and great-tasting fruits and vegetables to the public.

Taylor Farm Food Safety Investment

Taylor Farms is committed to the development of processes and systems that promote the prevention of product failure. It is our belief that it is both impossible and impractical to inspect quality into a product. As such, we employ a three-stage approach to assure product performance. We start with a development process that clearly defines the requirements of the product. The product is then integrated into our established quality systems where each key step of the process is carefully

monitored and controlled. Finally, the product is subjected to a rigorous hazard analysis and incorporated into our company wide HACCP program to insure food safety. Before any product is processed for commercial distribution, quality control points and food safety critical control points have been thoroughly documented and shown to be effective. Subsequent periodic audits and verification of key finished product attributes are conducted to assure the on-going adequacy of the procedures and systems. Together, these programs assure that the products packaged and distributed by Taylor Farms meet our exacting standards for quality, customer performance and food safety day in and day out.

Over the last few years we have invested over \$100 million in new, state-of-the-art processing facilities. The Taylor Farms' facilities, operations and work practices have been developed according to Good Manufacturing Practices. These FDA regulations cover the design, maintenance and sanitary operation of our facilities, equipment, processes, storage areas and distribution practices. Each of these areas is audited and results documented on a daily basis by Taylor Farms' staff. These daily audits include both visual inspections as well as random microbiological sampling of equipment surfaces. On a monthly basis, environmental samples are taken throughout the facility to verify the effectiveness of our overall sanitation program. Additionally, Taylor Farms commissions audits by accredited independent auditors to insure a fresh look at our sanitary practices.

What are Some of our Food Safety Challenges

First and foremost, the fresh produce industry has been at the forefront of developing comprehensive food safety programs for many years. In fact the first *Food Safety Guidelines for the Fresh-Cut Produce Industry* were published in 1992, and recently updated by FDA in February 2008. The industry also developed Good Agricultural Practices (GAPs) in the mid-1990s to minimize on-farm microbiological food safety risks for fruit and vegetables, and worked closely with FDA as the agency published its overarching GAPs document in 1998. More recently, the industry has worked with scientists from government, academia and industry to develop extensive commodity-specific food safety guidelines for tomatoes, melons, sprouts, and leafy greens, and have implemented strong compliance systems based on state inspections and audits

by government personnel. Put simply, food safety has been at the forefront of our industry's commitment to serve the American public for many years.

Despite this ongoing industry commitment, there continue to be significant challenges associated with preventive control practices along with how the government responds to outbreaks once they occur. Below are few of examples of challenges we continue to see related to food safety.

Audit Consistency and Cost – One of our greatest challenges today is the lack of a consistent and agreed-upon standard for food safety audits. Without that government endorsed standard, different customers demand different food safety audits which are burdensome to our company. Today, the produce industry faces multiple, redundant audits, which in most cases are not interchangeably acceptable to different buyers. Most buyers will only accept the results and certification of certain certification bodies, thus leading to a proliferation of different audits for different buyers. In some cases, the same auditor will visit a facility multiple times to perform different audits to verify compliance with different and potentially conflicting standards. In addition, inconsistencies in audit standards among the different certification bodies have created frustration and confusion, have unnecessarily increased operational costs, and may create an obstacle to training in food safety practices. To date, every effort to create a harmonized set of produce food safety audit standards has only added another set of standards to the list. If third-party certification programs are to be successful, there must be a system in place that requires buying companies to recognize and approve the results of these audits without requiring their own duplicative audits to recognize the same results.

In addition, produce industry food safety certification programs range in cost (auditor/certification fees alone) from a few hundred dollars per audit (generally by the not-for-profit organizations) to tens of thousands of dollars (generally by the more complex certification bodies like SQF or ISO). Yet, we do not have evidence that the increased costs of some audits result in better evidence of compliance with standards or better evidence of safer food. The tremendous range in audit fees can have a significant impact on the ability of particularly small businesses to participate. If

exorbitant audit fees were required, we fear that many producers would be financially challenged to comply with these requirements.

Need for Improved Accountability and Transparency – The produce industry has a decades-long history of implementing food safety improvements to prevent both deliberate and unintentional contamination of produce as it makes its way from the field to the retail store or restaurant. We have a commercial interest in ensuring that only safe wholesome fresh fruits and vegetables are delivered to our customers' tables. As a result, industry is driven to constantly improve and refine its own food safety programs and food safety defense capabilities.

In addition, there are legal requirements, such as the Perishable Agricultural Commodities Act, the Bioterrorism Act, and new governmental mandates that call for industry action including the FDA Produce Safety Action Plan and the more recent Food Protection Plan. These federal actions have spurred industry improvements in the areas of prevention and trace back; each integral parts of comprehensive food safety programs. These efforts, conducted in cooperation and consultation with FDA, DHS, USDA, state departments of health and agriculture and food safety experts, have also resulted in greater awareness of potential vulnerabilities, the creation of more effective prevention programs, and the ability to respond more quickly to outbreaks of food borne illness.

Yet, as I look at all of the work that has gone into industry driven initiatives along with our collaborations with the government, I am left with an observation that our priority has been almost exclusively on *prevention* of foodborne disease from the farm up through the distribution chain. This is a good thing as both the industry and FDA agree that the most important investment in food safety is on prevention.

Accordingly, the industry has implemented best agricultural practices for tomatoes, leafy greens, and other products to prevent contamination, and devoted extensive resources to auditing systems to measure compliance against these standards.

However, we also need to focus on the management of outbreaks after they occur. As the industry and government work towards enhancing food safety, what we have *not* done, is spend a commensurate amount of time on how best to investigate and

manage an outbreak when it does occur. It is time for government, industry and all stakeholders to figure out how we can better fight a foodborne disease outbreak to both protect public health and minimize damage to consumer confidence and industry profitability. Let me provide some examples.

In recent experiences with outbreaks and during the investigations, it has become clear that no one is in charge, leaving local, state, and federal officials vying for leadership; various agencies pursuing different priorities; and well-meaning individuals reacting independently to events rather than as part of a coordinated investigation moving forward in a logical and expeditious direction. Local and state governments are usually first to discover illnesses, and are free to draw their own conclusions and issue press releases at any time. But how can CDC or FDA stand by when a state seems to be “more protective” of its citizens? Yet, not just today’s experience but past history shows us that premature mistakes have consequences. When local officials first blamed strawberries for a cyclospora outbreak in the mid 1990s, their advice may have actually pushed consumers to eat more raspberries that were eventually found to be the cause.

The government’s failure to use industry’s expertise in outbreak investigations is one of the most important problems we have today. There is an abundance of knowledge in the industry about specific commodities, growing regions and handling practices, and specific distribution systems that can be used to protect public health in an outbreak. FDA and CDC should also welcome outside expertise not just from industry, but also from academia, from USDA experts who certainly better understand produce distribution systems, and even from the states themselves.

Finally, every health or safety regulatory decision requires an assessment of risks and benefits. Agencies make risk management decisions every day that attempt to balance risks and benefits broadly to society, whether in automobile design, toy manufacturing, airline safety, or even FDA approval of food additives. Yet in the case of foodborne disease, FDA and CDC seem ill-prepared to grapple with any risk management approach other than “all or nothing.” In the cases such as spinach in 2006 and then tomatoes/peppers from last summer, it seems that internal agency

decisions on when to warn the public, how broadly to make a warning, and what specifically to advise, are based as much on fear of being second-guessed rather than careful risk analysis. That inevitably leads one toward extreme measures – in effect banning all spinach, tomatoes or peppers – in the quest for zero risk of immediate illness. But, is such a consumer message truly without risk, when it needlessly scares the public away from a healthy food that may help prevent disease? We simply must develop risk management systems that can distinguish those producers or distributors who can assure the safety of their produce in the marketplace from those who cannot.

Stronger Industry/Government Collaboration – No company can take food safety for granted because when an outbreak occurs it impacts the industry as a whole, and we all suffer. It is incumbent upon us as an industry to do all we can to prevent these outbreaks and to ensure that our products are safe every bite, every time. That is why we should support strong industry and government collaboration to prevent outbreaks from occurring. One example that we think is very important is the California Leafy Green Marketing Agreement.

The California Leafy Green Marketing Agreement serves as a means of setting rigorous measurements of safety for leafy greens from this major production region. These science-based standards include careful attention to site selection for growing fields based on farm history and proximity to animal operations, appropriate standards for irrigation water and other water sources that can come in contact with crops, prohibition of raw manure with use of only certified safe fertilizers, good employee hygiene in fields and handling, and of course, strong food safety controls in all processing plants. The program is based on GAPs and essentially serves as a standard risk assessment similar to HACCP. Hazards in the growing and harvest operations have been identified and specific control points have been established. Under the Leafy Greens Agreement, produce handlers are required to ensure that their product is meeting these standards. They are audited by the California Department of Food and Agriculture to ensure that they are complying with these standards. It should be noted that not only are the auditors CDFA employees but they are USDA trained and the process by which they audit is USDA-certified. And, the produce suppliers will face penalties if found not to be in compliance, with the ultimate

consequence of not being allowed to sell product if they cannot do so safely. Taking this risk-based process approach involved industry coordination with FDA, CDC, CDFA and university food safety experts was not an easy task for the private industry sector. But we believe this is a critical step in continuing to assure the public that our industry is doing everything we can to make our products safe.

Food Safety Research – In recent years, federal funding for food safety research has been woefully inadequate, with little to no research focused directly on mitigating risk factors associated with potential field contamination of fresh produce, or to developing effective microbial reduction and elimination techniques after harvest and in processing. While there’s no obvious silver bullet around the corner, developing a “kill step” akin to pasteurization while still protecting the natural texture and flavor of our product would be a critical advancement in preventing even rare future illness outbreaks. As a nation, we need Congress to fund scientific research to help prevent future outbreaks. Specific produce safety research at FDA that is field oriented and implemented to find practical solutions is critically important, and we urge Congress to include a robust research agenda when considering reforming our nation’s food safety laws.

We believe that boosting produce safety research is a vital part of reducing risk in the future but we are not waiting for the government to act. Taylor Farms contributed \$2 million to the creation of the Center for Produce Safety at the University of California at Davis. This is a public-private partnership that funds applied research directed at the most acute needs of the produce industry’s food safety agenda. The food safety regulatory body not only needs to be able to address food safety today but also food safety in the future. This means they need be able to understand the economic and market impacts of food safety, have the means to develop meaning advances in food safety while supporting the industry in commercializing these advances. They must also be a vocal national and international advocate of the safety of the U.S. food supply. Any enhancement of the U.S. regulatory scheme must be driven by a central focus to insure that the US food supply remains the preeminent example of safety and wholesomeness.

Current Legislation before Congress

Over the past several years, you know that the fresh produce industry has been a leading proponent of strong, credible food safety standards. In fact, the industry has developed a set of policy principles that call for mandatory, science-based and commodity-specific standards. We are pleased that the consensus in Congress has grown in support of these principles, which have largely been incorporated into all major food safety legislative vehicles before the House and Senate.

Let me now turn specifically to the Food Safety Enhancement Act of 2009 which the House Energy and Commerce Committee passed in June. During the debate on this legislation, the committee addressed a number of critical issues including commodity specific produce standards, flexibility for industry to utilize best practices/innovation in traceability programs, and allowing individual experience for fresh produce processors in developing HACCP based food safety programs. However, there are several issues that Congress needs to continue to consider which will provide a strong foundation for this legislative proposal.

Finished Product Testing – The Committee-passed bill contains language on testing that, if implemented, will not improve food safety but will generate confusion and costs. First, the bill requires that companies include a description of the facilities' environmental and product testing programs. Second, the Secretary would be required to conduct a pilot project and a study to evaluate the feasibility, benefits and costs of collecting finished product testing results from Category 1 facilities that are required to comply with Good Manufacturing regulations. After completion of the study, the Secretary could require the submission of finished product test results of Category 1 facilities that must comply with Good Manufacturing regulations.

As someone who deals with testing on a regular basis, I continue to be concerned that one cannot test their way to a safe product. A 1985 National Academy of Science report came to that conclusion when they recommended HACCP as an alternative to product acceptance testing. Since then, scientists and FDA have recommended

finished product testing as a prudent validation that the process and associated HACCP plan is working; neither recommended it as a routine measure of lot safety.

Taylor Farms employs and rigorously maintains a HACCP program for all of our products at all of our facilities. As part of this program, Taylor Farms periodically verifies compliance with and the validity of our Critical Control Points and Pre-Requisite Programs by sampling for indicator microorganisms. It is Taylor Farms' belief that HACCP provides greater security of control over product safety than is possible with traditional product testing. The Taylor Farms' HACCP program was independently developed along the guidelines established by the National Advisory Committee on Microbiological Criteria. This plan is periodically re-evaluated and validated for changes and/or newly available information. All HACCP documentation is maintained at the production site for a period of 365 days after the end of shelf life of the product. When FDA inspects us, which is at least once per year per plant, these programs are review. The Taylor Farms' position on HACCP and finished product testing is consistent with the recommendations of the Joint FAO/WHO Codex Alimentarius Commission, the USDA and the U.S. Food and Drug Administration.

Companies with good food safety plans may decide to do finished product testing for this purpose but, again, this doesn't improve food safety, just verifies the plan is working, and punishes good companies for their surveillance when a positive is found. The bill requires rigorous food safety plans, but I believe the inclusion of finished product testing runs counter to the rest of the bill and will actually discourage testing. *Where to test, when to test, what to test, and what to test for, are very much product and process specific questions.* There is no blanket answer other than to say do not expect testing in and of itself to distinguish safe food products from unsafe food products. In some instances testing of raw materials may provide more insight into the safety process than finished product testing.

The goal must always focus on preventing food safety issues during the process rather than trying to detect them after the process. From this perspective one might say that finished product lot testing has little to no benefit in an ongoing food safety program. Even the most rigorous microbiological testing programs as outlined by the

International Commission on Microbiological Specifications for Foods can only ensure the detection of contamination 95% percent of the time when that adulterant has contaminated over 5% of the lot in question. Traceback on recent food borne illness outbreaks consistently tell us that contamination levels far lower than 5% are involved, suggesting that finished product testing would have absolutely no impact on the rate of future food borne illness outbreaks. Congress or the federal government should not rely on testing as a cornerstone for the improvement of our food supply's safety.

Funding of Food Safety Requirements - Food safety is a public health issue affecting our entire society and accordingly the cost of any increased federal regulatory oversight should be borne by U.S. general revenues. Public funding will have the advantage of making consistent funding available for food safety oversight and not be subject to the same inconsistent production that the produce industry faces. The funding structure for the Committee-passed bill uses a both appropriations and mandatory fee-based structure. While the fee structure is more reasonable than where it started, fee increases are pegged to inflation and FDA compensation shortages. The appropriations funding is not. One can envision that, very quickly, facility fees will become the funding vehicle for food safety, shifting fruit and vegetable production in favor of larger, more complex farming operations and away from many smaller operations. This shift could work against product diversity and support for local agriculture, and act as a barrier to entry for smaller operations that today already contribute substantially to the safe and wholesome supply of fruits and vegetables.

Geographic Quarantine – This section gives FDA the power to restrict the movement of food from states or regions if it believes that the type of food presents an imminent threat of serious adverse health consequences or death. While the bill demands that the commissioner or deputy commissioner may take this action only when a food may cause serious adverse health impacts, that evidentiary standard applies only to the particular food. As written, the bill provides no evidentiary finding that comparable food within that region or state carries that a risk of adverse health impacts. Based on recent outbreaks and actions taken by FDA, we would have serious

reservations about the intent of this provision and the impact it could have on particular commodity sectors or regions. In particular tomatoes would have qualified under this scenario last summer and thus the entire domestic tomato industry would have been under a nation-wide quarantine. What is more, the bill elsewhere allows FDA to stop distribution of product based on a reasonable belief that it may cause serious adverse health effects, which makes the quarantine language unnecessary. The produce industry supports reasoned action based on science and evidence but we must object to quarantining all growers based on nothing more than conjecture.

In addition, FDA currently, has a number of actions available to them such as a *Public Health Advisory*, *Import Alert*, *Detention without Examination* that would allow them to alert the public, if that is necessary. For instance, last year's *Public Health Advisory* press release from FDA recommended consumers not eat tomatoes was strong enough guidance for consumers to stop eating tomatoes while the entire distribution chain to stop moving tomatoes throughout the country. Similar actions occurred in the 2006 spinach outbreak. As discussed above, the bill's mandatory and emergency recalls provisions along with administrative detention authority empower FDA to stop movement of a food product quickly and efficiently. Further, with the new mandate that food companies must incorporate traceability systems, one would conclude that effective traceback/traceforward system will be implemented to render the need for a Geographic Quarantine Authority unnecessary.

Finally, by providing FDA with the ability to "quarantine" a particular food in a geographic region would be extremely harmful to a multitude of the innocent producers, handlers, distributors, and packers of a particular commodity under this authority and could have a long-term impact on consumer confidence of that region's ability to produce or process safe food. Again, we would cite the tomato situation from last summer and what that could have done for the tomato industry of this country had this been in effect.

Need for Improved Accountability, Transparency, and Industry Partnership –

I have already described the need for improved accountability and transparency by FDA during its foodborne illness outbreak responses and recovery activities, and the

need for FDA to use industry's expertise in outbreak investigations. None of these is addressed in the Committee-passed bill.

Conclusion

It is in everyone's interest to maintain a safe supply of healthy fruits and vegetables and starting with the fresh produce industry we must continue to take responsibility to do all we can on our own. Each time any fruit or vegetable is implicated in a food borne illness outbreak, industry suffers from lost consumer confidence in our industry as a whole and consumer health suffers due to a reduction in the consumption of healthy produce. In the long run, this simply is not sustainable and certainly not acceptable. As has been mentioned today from my industry colleagues, stakeholders should continue developing commodity specific best practices and marketing agreements such as the LGMA and self-imposed regulation is an important positive step. Industry action is our most important defense. At the same time a federal food safety system must also be elevated that maintains the confidence in eating healthy fresh fruits and vegetables; can deal with the rare problems without destroying public confidence; and doesn't kill the industry or sweep all products into the same bucket. Given the ongoing discussions on health care reform the benefits of fresh produce to the American diet cannot be stressed enough. How many lives can be extended with increased consumption? Imagine how regular consumption of fresh fruits and vegetables can extend quality of life in old age? What if fruits or vegetables are removed from the diet out of fear the consequences will be the cost to society?

Thank you again for the opportunity to participate in this hearing and look forward to answering your questions.