



# Consumer Federation of America

**Testimony of Carol L. Tucker-Foreman  
Distinguished Fellow, The Food Policy Institute  
Consumer Federation of America**

**On Behalf of**

**Center for Foodborne Illness Research & Prevention,  
Center for Science in the Public Interest, Consumers Union, Food & Water Watch,  
Government Accountability Project, National Consumers League,  
The Pew Charitable Trusts, Safe Tables Our Priority, Trust for America's Health,  
and The United Food & Commercial Workers International Union**

**Before the  
Committee on Agriculture  
U.S. House of Representatives  
Washington, DC**

**July 16, 2009**

Chairman Peterson, Ranking Member Lucas and members of the Committee. I am Carol Tucker-Foreman, Distinguished Fellow in the Food Policy Institute at Consumer Federation of America (CFA). From 1977-81, I was Assistant Secretary for Food and Consumer Services at the United States Department of Agriculture. My responsibilities included oversight of the nation's meat, poultry and egg inspection and food assistance programs.

I am testifying on behalf of eleven consumer, public health and trade union organizations representing millions of Americans who are concerned about the safety of the food their families eat every day. A list and description of the organizations supporting this testimony is attached. We commend the committee for holding this hearing to explore current congressional efforts to address the serious food safety problems that confront the country.

Mr. Chairman, foodborne disease kills one American every two hours, every day of the year.<sup>1</sup> The vast majority of these deaths are preventable. There has been limited progress in reducing the toll because the Food Drug and Cosmetic Act (FDCA), which governs the

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<sup>1</sup> Based on Centers for Disease Control and Prevention estimates that foodborne disease kills 5,000 people each year.

safety of over 80 percent of the food we consume, was designed to address problems prevalent at the beginning and middle of the last century and hasn't been amended to keep up with changes that have altered the way we live and eat today. In 1906 the primary food safety danger arose from companies adding dangerous chemicals to meat to mask decay and substituting cheap ingredients to defraud consumers. The FDCA provisions don't adequately address the most pressing current food safety problem, protecting consumers from illness caused by food contaminated with disease-causing bacteria.

Current law does not give the Food and Drug Administration (FDA) specific authority to establish requirements to prevent foodborne illness. As a result, the Agency's program is almost entirely reactive. FDA often doesn't act until after there are confirmed reports of illness and death. That system doesn't work in a global marketplace where food is mass produced and travels around the world in a matter of hours. By the time we know a contaminated product is on the market, it is too late to keep people from getting sick.

Our country has experienced an almost constant stream of foodborne illness outbreaks traced to FDA regulated foods over the past few years, including:

- June 2009--*E. coli* O157:H7 contaminated Nestle chocolate chip cookie dough has made 72 people in 30 states sick.
- September 2008-March 2009—*Salmonella* contaminated peanut products from Peanut Corporation of America sickened 691 people and caused 9 deaths in 46 states and Canada.
- April to August 2008 -- Imported Jalapeno and Serrano peppers, contaminated with *Salmonella* Saintpaul sickened 1,442 people in 43 states, the District of Columbia and Canada. Originally thought to be caused by contaminated tomatoes, the outbreak virtually destroyed the market for summer tomatoes in several states.
- June 2007-- Veggie Booty snacks contaminated with *Salmonella* caused 65 illnesses in 20 states.
- February 2007—Peter Pan Peanut Butter contaminated with *Salmonella* sickened 425 people in 44 states.
- Dec. 2006-- *Salmonella* found in tomatoes sickened 183 people in 21 states.
- August-September 2006-- *E. coli* O157:H7 in bagged spinach sickened 204 people in 26 states and killed 3.

(Source- CSPI Building a Better Food Safety System)

All of these outbreaks were the result of poor sanitation or mishandling at some point in the food chain. None resulted from consumer mishandling.

In addition, we have been threatened by high levels of drug residues and toxic chemicals in fish and dairy products imported from South East Asia.

Some food industry representatives insist we are on the way to solving the problem of foodborne illness. In support of this claim, they cite reductions in illnesses caused by some pathogens since the Centers for Disease Control first began tracking illnesses through the FoodNet system and comparing the base years 1996-98 to the most recent year. However, the CDC acknowledges that, after initial reductions, progress has stalled and there has been virtually no further decline in the last five years.<sup>2</sup>

The CDC is reviewing the data but has not reduced the annual total of 76 million cases of foodborne illness each year, 350,000 hospitalizations and 5,000 deaths. That means someone dies every two hours. The best estimate for the human illness costs of foodborne pathogens for all CDC estimated cases is \$357 billion each year in medical costs, lost productivity, and pain and suffering.<sup>3</sup>

It is hard to comprehend numbers this large. Millions of illnesses and billions of dollars seem unconnected to what goes on in our daily lives. It is important to remember that these enormous numbers represent individual Americans whose lives have been altered forever by the simple act of having consumed common, everyday foods that appear regularly on family dinner tables—beef, chicken, spinach, lettuce, tomatoes, peppers and peanut products—that were contaminated with deadly pathogens.

The victims of foodborne illness live in your states and congressional districts. They are your friends and possibly members of your family. The known victims of the Peanut Corporation of America outbreak included 100 Ohioans; 76 Californians; 43 Minnesotans. The 2008 *Salmonella* Saintpaul pepper outbreak hit 559 Texans, 120 people in Illinois, 42 in Georgia, 59 in Arizona. Last April, 84 Nebraskans, 27 Iowans, and 5 Kansans and South Dakotans were among the victims of a *Salmonella* Saintpaul outbreak traced to eating contaminated fresh sprouts. And these cases are just the tip of the iceberg—for every reported illness, there are far more that the CDC never knows about.

In the hearing room today are representatives of three families for whom the foodborne illness numbers are crushingly real. Jeff Almer has come here from Perham, Minnesota. Jeff's mother Shirley Almer had run the family business for years after the death of her

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<sup>2</sup> CDC, "Preliminary FoodNet Data on the Incidence of Infection with Pathogens Transmitted Commonly Through Food—10 States, 2008" *MMWR*, 58(13), 333-337, April 10, 2009

<sup>3</sup> Roberts, Tanya (2007) "The Economic Costs of Long-term Sequellae of Selected Foodborne Pathogens," Invited Speech, International Association of Food Protection, Orlando, Florida.

husband in 1990. When she retired, she remained active in her bowling league, continued to garden and bird watch, and spent time with her five children and four grandchildren. In October last year Shirley was declared cancer free after fighting off both brain and lung cancer. Two months later, on December 21, 2008, she was dead at age 72. Cancer did not kill Shirley Almer. According to the Minnesota Department of Public Health, the woman who fought off cancer died as a result of eating *Salmonella* contaminated peanut butter.

Robyn and Jeff Allgood have come here from Chubbuck, Idaho. Their son, Kyle, was a mischievous and energetic two-year-old whose favorite T-shirt read, "I do all my own stunts." Eager to meet her children's nutritional needs, Robyn often mixed fresh spinach and other vegetables into fruit smoothies. In September 2006, she unknowingly used spinach contaminated with *E. coli* O157:H7. Kyle became sick the next day. A week later he was dead from a heart attack after the *E. coli* poisoning developed into Hemolytic Uremic Syndrome (HUS).

Nancy Donley's only child, six-year-old Alex, also died of *E. coli* O157:H7 poisoning he contracted after eating contaminated ground beef. After Alex's death, Nancy decided to invest the time she would have spent raising Alex in comforting other victims, informing the public about HUS and educating public officials about the need to make basic changes in the nation's food safety system to prevent others from suffering the same loss.

These are four courageous Americans. None is a public person. None has great resources. They decided not to take the easy way out and nurse their grief in private. You hear every day from representatives of the food industry and farm organizations. Today, the Almers, Allgoods and Donleys are here to ask you to consider the millions of foodborne illness victims whose concerns they represent. All bring you the same message. Congress must act now to prevent more and more illnesses and deaths.

They would welcome the opportunity to meet with members of the Committee after the hearing to respond to your questions and will take questions from the media and interested people, as well.

The problems that robbed the Allgoods and Nancy of their children and the Almers of their mother and grandmother have caused Americans to become increasingly aware of and anxious about the weaknesses of our current food safety system.

Two weeks ago the technology giant IBM published the results of a new survey they sponsored, showing:

- *60 percent of consumers are concerned about the safety of the food they purchase.*

- *Less than 20 percent of consumers trust food companies to develop and sell food products that are safe and healthy for themselves and their families.*
- *83 percent of consumers were able to name a food that had been recalled in the last two years. 63 percent confirmed they would not purchase a food until the source of the contamination was found, and 57 percent said they had stopped purchasing foods, even for a short time, within the past two years because of safety considerations.<sup>4</sup>*

The failure of our food safety system and the increasing loss of public trust and confidence is bad for the food business and for farmers. The CEO of Kellogg's told the House Energy & Commerce Committee that the Peanut Corporation of America recall cost the company \$65-70 million.<sup>5</sup> Although no major brands of jarred peanut butter sold at retail were involved in the PCA outbreak, sales of those products also plunged after the outbreak became known.

Foodborne illness outbreaks can be disastrous for farmers who grow the crops implicated. Florida tomato farmers were devastated by the connection of their product to the *Salmonella* Saintpaul outbreak that came at the height of their growing season. Spinach and lettuce farmers experienced a drop in demand after their products were implicated in 2006 outbreaks and, three years later, sales of these products have yet to recover.

Perhaps the greatest tragedy here is that foodborne illnesses are almost completely preventable if farmers, food companies and government exercise some care. Congress can reduce the toll – both physical and economic - by substantially modernizing outmoded laws that are part of the problem, starting with passing H. R. 2749.

### Congress Must Begin Now to Create a 21<sup>st</sup> Century Food Safety System

The need to revise the Food Drug and Cosmetic Act has been documented in reports to Congress by the GAO, in studies by the National Academy of Sciences, and in a dozen hearings before the Energy and Commerce Committee.

Nearly a dozen bills to improve food safety have been introduced this year, some by members of this committee. All the bills embrace at least some of the common elements identified by the NAS and GAO as necessary for securing the safety of both domestic and imported foods.

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<sup>4</sup> IBM, Food Safety Awareness Survey, June 2009.

<sup>5</sup> Statement of David Mackay, President & CEO, Kellogg Company, before the House Committee on Oversight and Investigations, "The Salmonella Outbreak: The Role of Industry in Protecting the Nation's Food Supply." U.S. House of Representatives, March 19, 2009.

H.R. 2749, reported unanimously by the House Energy and Commerce Committee, includes the key elements most frequently noted by experts as essential to an effective food safety system. The bill:

- Focuses on preventing FDA regulated foods from causing foodborne illness.
- Requires food companies to develop and implement process controls to assure that the food they sell is safe.
- Requires the FDA to establish and enforce microbial performance standards that will reduce pathogens to a minimum and assure an acceptable level of public health protection.
- Assures the integrity of the food system and the food supply through comprehensive enforcement, including regular oversight (inspection) conducted by public officials and based on the risk presented by the product; sampling and testing for pathogens and reporting; access to company food safety records; and mandatory recalls of contaminated food.
- Ensures the food we import is as safe as that produced and processed here.
- Provides a research capacity to develop the best means to address current and emerging pathogens.
- Assures continuing revenue to support part of the program costs by instituting a \$500 annual registration fee for all food processing companies, with no company required to pay more than \$175,000 annually. While some of us have long harbored reservations about any kind of fee to support food safety activities, we are convinced that, given large budget deficits for the foreseeable future, this fee is a modest request and justified by the pressing need for stronger federal oversight and the benefits of reduced illness and death.

We think the legislation would be more effective if it included detailed language and resources to ensure data collection, sharing and analysis necessary for developing robust food attribution models.

In recent weeks some concerns have been raised about H.R. 2749, many on the Internet, suggesting almost apocalyptic outcomes for farmers if the bill becomes law. While our groups originally had some disagreement about the impact that the discussion draft might have had on small farmers, the Energy and Commerce Committee amendments went a long way to addressing concerns that provisions would disadvantage small farmers, especially organic farmers. We also have chosen not to oppose some provisions, made to address farmer concerns, that we think compromise the bill's ability to fully protect consumers.

Further, before reporting the bill, your colleagues on the Energy and Commerce Committee met with members of this Committee and with farm and industry groups and

made numerous changes to address the concerns raised by farmers and food processors. These changes:

- Exempt from provisions of H.R. 2749 the parts of food facilities and farms regulated by USDA.
- Provide that nothing in this bill changes existing jurisdictional lines between FDA and USDA.
- Require the Secretary of HHS to coordinate with USDA and the states in setting commodity-specific standards for the safe growing, harvesting and packaging of fruits and vegetables.
- Require the Secretary of HHS, before issuing any proposed regulations establishing new traceability requirements, to conduct information gathering to determine the feasibility and cost/benefit of the system. Previous prescriptive requirements have been moved to the information gathering process.
- Exempt farmers who sell direct to consumers, such as at roadside stands, from the traceability requirements of the legislation.
- Limit the FDA's authority to restrict the movement of food in interstate commerce only if the food presents an imminent threat of serious adverse health consequences or death. The language was changed to address farmer and processor concerns by limiting the FDA's actions to situations where there is an imminent threat and providing that the authority can only be exercised by the Commissioner. It cannot be delegated to lower officials.
- Require the FDA to consider the impact of regulations on small businesses and organic farmers.
- Require the FDA to take into account the impact of produce regulations on small-scale and diversified farms, wildlife habitat, conservation practices, watershed protection efforts, and organic production methods.

Mr. Chairman, your committee has oversight over the USDA's meat and poultry inspection program, which emphasizes inspection, requiring the USDA to be in every meat and poultry processing plant at least once a day and to examine all slaughtered carcasses to assure they do not have animal disease or visible problems that would make them dangerous to serve the family for dinner. Our groups tend to support the far more intensive inspection regime that USDA applies to both domestic and imported meat and poultry products. The FDA, notably, does not conduct regular, onsite inspection of the companies it regulates. We believe intensive inspection by federal officials, coupled with appropriate corporate process controls and federal standards, offers the best protection for the future.

Despite the fact that the Energy and Commerce Committee has made changes to address legitimate concerns, the Internet and some print media are full of specious charges against the bill. It is clear the legislation has become a target for people who are angry and frustrated about a multitude of other problems that would not be affected by the law.

For example, on Monday, July 13, the *San Francisco Chronicle* ran a long article charging that farmers are being forced to dismantle important conservation practices and destroy wildlife habitat. The article was passionate, but not accurate, in suggesting that H.R. 2749 is responsible for these changes. H.R. 2749, of course, has not passed Congress and is not in effect. Moreover, provisions of H.R. 2749 protect against the gross actions described in the article. The bill requires the FDA, if it promulgates produce safety regulations, to use science based standards that take into account the impact the regulations would have on small-scale and diversified farms, wildlife habitat, conservation practices, watershed protection efforts, and organic production methods.

The problems cited by the *Chronicle* reporter and the people she interviewed arise from private, not government, actions. Private customers—food processors and supermarkets—have imposed contractual requirements on their suppliers to create sterile borders. If the farmer wants to sell to the companies, he has to meet his customer’s requirements. Private contractual requirements do not have to be science-based or consider environmental impact.

Some who oppose efforts to improve food safety law have larger concerns about the global and industrial nature of our current food system. The IBM survey shows that people increasingly want to know where their food comes from. Other polls indicate people would like to buy locally produced food. That yearning is reaching levels that may require Congress to address these more basic issues.

However, it has taken many years for the current system to build to this point. The changes that many seek would alter farming and food processing completely. That kind of change is not likely to come quickly or easily. Today we have a global food system and most of us, now and for the foreseeable future, will continue to purchase at least some mass produced food from enormous corporations at major supermarkets, many of them owned by foreign corporations. The immediate need, therefore, is for Congress to take steps to make our existing food supply safe. This requires giving the FDA the authority and the resources to address the problems created by a modern, mass production, international food system.

The need is now and the need is urgent. While we are sympathetic to the concerns of those in the food industry who may indeed have to make some changes in the way they do business, it is clear that H.R. 2749 has been structured to assure it does not place an undue burden on small farms or businesses. On behalf of the families here today and all the others who have suffered because of an outmoded food safety law that has failed to protect American consumers, we suggest that a reasonable and appropriate balancing of interests has been worked out in H.R. 2749.



The time has come for Congress to act responsibly, consider the interests of those who consume food as well as those who produce and process it, and pass the Food Safety Enhancement Act promptly.

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**Supporting Organizations**

**Center for Foodborne Illness Research & Prevention** was founded in 2006 to promote science-based solutions for the food safety challenges of the 21st Century. CFI is a national, non-profit health organization dedicated to preventing foodborne illness through research, education, advocacy and service. CFI's co-founders, who have advanced degrees in biostatistics and education, were personally impacted by foodborne illness and have dedicated themselves to improving food safety for the past seven years.

**Center for Science in the Public Interest**, founded in 1971, has been a strong advocate for nutrition and health, food safety, alcohol policy, and sound science. Its award-winning newsletter, *Nutrition Action Healthletter*, is the largest-circulation health newsletter in North America, providing reliable information on nutrition and health. CSPI manages *Outbreak Alert*, the most comprehensive foodborne illness attribution database, listing over 5,000 outbreaks.

**Consumer Federation of America** is a nonprofit association of 300 local, state and national consumer groups, consumer cooperatives, public health organizations, farm groups and trade unions, representing more than 50 million Americans. CFA was established in 1968 to advance the consumer interest through research, education and advocacy. The organization's policy positions are established by vote of member representatives attending the annual meeting or by the board of directors elected at the meeting.

**Consumers Union**, publisher of *Consumer Reports*, is an independent, nonprofit testing and information organization serving only consumers. Consumers Union is a comprehensive source for unbiased advice about products and services, personal finance, health and nutrition, and other consumer concerns. Since 1936, CU's mission has been to test products, inform the public, and protect consumers.

**Food & Water Watch** is a nonprofit consumer organization that works to ensure clean water and safe food. Food & Water Watch works with grassroots organizations around the world to create an economically and environmentally viable future. Through research, public and policymaker education, media, and lobbying, FWW advocates policies that guarantee safe, wholesome food produced in a humane and sustainable manner and public, rather than private, control of water resources including oceans, rivers, and groundwater.

**Government Accountability Project** was founded in 1977 in response to White House scandals in the United States. From the beginning GAP has focused upon the unique contributions of employees of conscience within governments, large corporations, and international institutions. GAP's mission is to protect the public interest by promoting public accountability at workplaces and advancing the rights of employees to speak out

about serious problems. These employees are often the most credible witnesses to corruption, public health dangers, and environmental threats.

**National Consumers League** seeks to protect and promote social and economic justice for consumers and workers in the United States and abroad. NCL is a private, nonprofit advocacy group representing consumers on marketplace and workplace issues. It is the nation's oldest consumer organization.

**The Pew Charitable Trusts**, an independent nonprofit, is the sole beneficiary of seven individual charitable funds established between 1948 and 1979 by two sons and two daughters of Sun Oil Company founder Joseph N. Pew and his wife, Mary Anderson Pew. Pew applies a rigorous, analytical approach to improve public policy, inform the public and stimulate civic life. Pew's Health and Human Services Policy program seeks to improve the health and well-being of all Americans. Based on research and critical analysis, the program advocates policies that reduce unacceptable health risk, focusing on areas that include consumer, medical and food safety.

**Safe Tables Our Priority (S.T.O.P.)** is a national non-profit public health organization dedicated to preventing illness and death from foodborne pathogens. S.T.O.P. supports its mission by advocating public health-based changes in public policy, educating and conducting outreach and providing victim assistance. S.T.O.P. was founded in 1993 in the aftermath of the Jack in the Box *E. coli* O157:H7 epidemic.

**Trust for America's Health** is a non-profit, non-partisan organization dedicated to saving lives by protecting the health of every community and working to make disease prevention a national priority.

**United Food and Commercial Workers International Union** is the largest private sector union in North America. With over 1.3 million members, UFCW represents workers in every state and community in the United States. The majority of UFCW members work in the retail food stores and meatpacking and food processing sectors. The UFCW is committed to continuing and building upon its long history of involvement in food safety and regulatory issues.

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