



Consumer Federation of America

**Written Testimony of Consumer Federation of America
Submitted to the
Homeland Security and Governmental Affairs Committee
Field Hearing: From Crop to Craft Beer: Federal Regulation's Impact on America's Food and Agriculture
Dubuque, Iowa
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Consumer Federation of America (CFA) is pleased to submit testimony to the Homeland Security and Governmental Affairs Committee for consideration in the Committee's Iowa field hearing on federal regulations' impact on America's food and agriculture. CFA is an association of nearly 280 nonprofit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy and education. CFA also coordinates the Safe Food Coalition, which is dedicated to reducing the burden of foodborne illness in the United States by improving government food inspection programs.

CFA has long supported regulatory reforms to prevent food safety threats, rather than react to them after people get sick. That is why CFA supported passage of the Food Safety Modernization Act (FSMA), and the U.S. Food and Drug Administration's (FDA's) promulgation of regulations under the law. Because the source of foodborne illness often remains unknown, market forces and traditional tort liability are poorly suited to create adequate incentives for ensuring food safety. The cost of lapses in food safety is substantial. According to the Centers for Disease Control, each year Americans suffer 48 million foodborne illnesses, 128,000 hospitalizations, and 3,000 deaths. The economic impact of these illnesses is estimated to be \$77 billion annually. FSMA and its implementing regulations are sorely needed to reduce the burden of foodborne illness in the United States.

Consumers and Industry Support Greater Food Safety Oversight

FSMA passed through Congress with strong bipartisan support in large part because consumers and industry supported it. American consumers across the political spectrum want better government controls to ensure food safety. A 2014 poll of 2,236 adults found that 73% agreed with the statement that "there should be more government oversight in regards to food safety" and a majority agreed that "food safety issues are an inevitable side effect of low food costs."¹ Prior to passage of FSMA, a poll by the Leafy Greens Marketing Association found that 89% of respondents favored "mandatory farm inspections by the government to verify compliance with the food safety practices,"² a reform that has been made reality by FDA's produce safety rule.

¹ The Harris Poll. "Nearly Three-Quarters of Americans Looking to Government for More Food Safety Oversight" Feb. 5, 2014 available at: http://www.theharrispoll.com/politics/Nearly_Three-Quarters_of_Americans_Looking_to_Government_for_More_Food_Safety_Oversight.html

² See Scott Horsfall. "Survey Says: The People Want Government Food Safety Oversight." available at: <http://www.lgma.ca.gov/2014/02/survey-says-people-want-government-food-safety-oversight/>

Industry support for FSMA and adequate funding to support FDA’s implementation of the law has been similarly widespread.³ This is because food producers understand that bad actors can undermine consumer confidence in an entire product class. A 2006 outbreak of *E. Coli* in spinach is estimated to have resulted in over \$400 million in lost sales across the leafy greens industry.⁴ More recently, after unsanitary conditions and fraudulent practices at Peanut Corporation of America (PCA) caused an outbreak of *Salmonellosis* among consumers of the company’s peanut paste, rural peanut farmers suffered an estimated \$1 billion in lost production and sales.⁵ Those losses were in addition to the costs incurred by PCA’s victims, including nine who died, and by the company’s clients—such as the Kellogg Company—who footed the bill for extensive product recalls and are still struggling to repair the damage to trusted brands.

In general, most foods have a high “elasticity of demand,” meaning that consumers will not hesitate to make a substitution when they lose confidence in a particular food product. For this reason, food companies have an interest in strong food safety controls across the industry. Indeed, FSMA bred unlikely alliances between consumer groups and industry lobbying organizations such as the U.S. Chamber of Commerce and the Grocery Manufacturers Association. This broad support has continued and has included calls for adequate funding as FDA implements FSMA.⁶

The Benefits of Food Safety Regulation Justify the Costs

Prior to FSMA, FDA operated under an antiquated legal structure. The Federal Food, Drug and Cosmetic Act of 1938 established a reactive posture, which gave FDA authority to act principally when food was found to be adulterated or misbranded. Numerous congressional oversight and legislative hearings on food safety identified flaws in food companies’ processes and in FDA’s regulatory regime.⁷ As a result of these analyses, Congress required that food companies develop food safety plans and other prevention-based controls, and it gave FDA the authority to enforce those requirements, at home and abroad, through tools such as expanded recall authority. Many if not most of these regulatory reforms had been specifically recommended by the Government Accountability Office, food safety advocates, and industry, for years.

Arguments that FSMA fails to address real problems do not withstand scrutiny. Richard Williams argues, for example, that the intentional adulteration rule represents the “best illustration” of how

³ See, e.g. Quality Assurance & Food Safety. “21 Organizations Send Joint Letter to Congress to Support FDA’s FSMA Funding Request.” (May 4, 2015) available at: <http://www.qualityassurancemag.com/article/21-organizations-send-congress-letter-support-fsma-funding/>

⁴ Huifang Zhang, Thomas L. Marsh, Jill J. McCluskey. “A Generalized Event Analysis of the 2006 E. coli Outbreak in Spinach and Lettuce” available at: http://www.impact.wsu.edu/MarshFiles/E.coli_paper_V1.pdf

⁵ Associated Press. “Peanut industry: Recall price tag \$1 billion” (March 11, 2009) available at: http://www.nbcnews.com/id/29634279/ns/business-going_green/t/peanut-industry-recall-price-tag-billion/#.V7M-ZJgrKUK

⁶ See, e.g., U.S. Chamber of Commerce. “Multi-Organization Hill Letter to Appropriators on the Food Safety Modernization Act” (Feb. 19, 2015) available at: <https://www.uschamber.com/letter/multi-organization-hill-letter-appropriators-food-safety-modernization-act> (“Federal food safety programs and inspections conducted by FDA benefit all American consumers and should be funded through appropriated funds.”).

⁷ See, e.g., Gov. Acct. Off., *FDA Could Strengthen Oversight of Imported Food by Improving Enforcement and Seeking Additional Authorities* GAO-10-699T, May 2010; Gov. Acct. Off. *Improvements Needed in FDA Oversight of Fresh Produce*, GAO-08-1047, Sept. 2008; Gov. Acct. Off., *High Risk Update: Revamping Federal Oversight of Food Safety*, Rep. No. GAO-09-271, Jan. 2009.

FSMA has resulted in unnecessary regulatory additions. He reasons that the rule must be superfluous because the occurrence of food terrorism and other acts of intentional contamination is currently very rare in the United States.⁸ This argument is flawed for at least two reasons. First, terrorists are currently targeting American citizens, as attacks like the December 2, 2015 massacre of 14 people in San Bernardino make clear.⁹ Thus far, terrorists have tended to rely on guns and bombs to wreak havoc, but researchers have shown that the food supply could be a particularly effective medium as well.¹⁰ Second, the extent of harm caused by intentional adulteration outside of the U.S.—particularly in China, where baby formula contaminated with melamine sickened over 300,000 infants in 2008—caution against adopting a “wait-and-see” approach.¹¹ Efforts by Williams to impugn the validity of FDA’s other FSMA regulations similarly falter, relying on “mischaracterizations, cherry-picked facts, and mistaken assumptions.”¹²

To be sure, many American families struggle to make ends meet and to put nutritious food on the table. However, these families are also particularly vulnerable to foodborne illness and its associated costs, such as medical bills and lost pay due to sick leave or time off from work to care for a sick child.¹³ Trying to save money for American families by scrimping on food safety regulation is a penny-wise, pound-foolish strategy. Americans spend roughly \$1.46 trillion on food and beverages each year.¹⁴ Even assuming that FDA has grossly underestimated the cost of implementing FSMA, it amounts to less than a tenth of one percent of these expenditures. If Congress wants to increase poor Americans’ access to food, underfunding the food safety system is not the way to do it.

⁸ Richard A. Williams. “Regulations Implementing the Food Safety Modernization Act.” Mercatus Working Paper (Aug. 2015) available at: <http://mercatus.org/sites/default/files/Williams-FSMA-Regulations.pdf>

⁹ <http://www.foodsafetymagazine.com/enewsletter/food-defense-in-the-age-of-domestic-terrorism/>

¹⁰ See, e.g. Wein and Liu. “Analyzing a bioterror attack on the food supply: The case of botulinum toxin in milk.” *PNAS* vol. 102 no. 28 (July 12, 2005) available at: <http://www.pnas.org/content/102/28/9984.full>; Manning and Soon. “Food Safety, Food Fraud, and Food Defense: A Fast Evolving Literature.” *Journal of Food Science*, (March 2016) available at: <http://onlinelibrary.wiley.com/doi/10.1111/1750-3841.13256/full>

¹¹ See, e.g. Yanzhong Huang, “The 2008 Milk Scandal Revisited.” *Forbes* (July 2014) available at: <http://www.forbes.com/sites/yanzhonghuang/2014/07/16/the-2008-milk-scandal-revisited/#612215354428>

¹² See David Plunkett. “Who Should Bear the Costs of Making Our Food Safe?” *Food Safety News* (Sept. 2015) available at: <http://www.foodsafetynews.com/2015/09/who-should-bear-the-costs-of-making-our-food-safe/#.V7MmCZgrKUK>

¹³ See Consumer Federation of America. *Child Poverty, Unintentional Injuries and Foodborne Illness. Are Low-Income Children at Greater Risk?* pp. 10-13 (June 2013) available at: <http://www.consumerfed.org/pdfs/Child-Poverty-Report.pdf>

¹⁴ USDA Economic Research Service. “Food Prices and Spending” available at: <http://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/food-prices-and-spending.aspx> (2014 estimate).