

AMERICAN PUBLIC HEALTH ASSOCIATION ◊ CENTER FOR FOODBORNE ILLNESS
RESEARCH & PREVENTION ◊ CENTER FOR SCIENCE IN THE PUBLIC INTEREST
CONSUMER FEDERATION OF AMERICA ◊ CONSUMERS UNION ◊ FOOD & WATER WATCH
NATIONAL CONSUMERS LEAGUE ◊ THE PEW CHARITABLE TRUSTS
SAFE TABLES OUR PRIORITY ◊ TRUST FOR AMERICA'S HEALTH

April 20, 2010

Senator Jon Tester
724 Hart Senate Office Building
Washington, DC 20510-2604

Re: Amendments to S. 510, the FDA Food Safety Modernization Act

Dear Senator Tester:

The Make Our Food Safe Coalition, comprised of consumer and public health groups, as well as groups representing those who have been sickened by or died from foodborne illness, respectfully writes to you regarding our serious concerns about your proposed amendments to S. 510, the FDA Food Safety Modernization Act.

As you know, the laws governing the food safety functions of the U.S. Food and Drug Administration (FDA) have not been updated in more than 70 years. S. 510 would, for the first time, turn the FDA from an agency that *reacts* to foodborne illness – trying to contain the damage after contaminated food has entered the marketplace – to an agency focused on *preventing* foodborne illness before it even happens.

Our coalition shares your concerns about local, sustainable and organic agriculture, and we have supported modifications to the bill aimed at ensuring that the new rules do not unduly burden this important agricultural sector. In our opinion, the best approach to achieve this goal is a combination of grants for technical assistance and training, such as those provided in Senator Stabenow's legislation, and provisions in S. 510 that specifically direct FDA, when developing regulations, to ensure that they are scale appropriate and that it considers the impact on organic practices.

We believe that food should be safe, whatever the source – a big farm or a small one, an organic or conventional operation, a domestic or a foreign company, a large processor or a small business. A careful analysis of your proposed amendments reveals that they would create overbroad exemptions that will seriously undercut the ability of the legislation to improve food safety.

Our concerns about your proposed amendments are as follows:

The proposed amendment to exempt from safety standards any farm that sells direct to a wide range of customers puts American consumers at risk.

Produce – everything from spinach to tomatoes, berries to peppers – has been implicated in countless foodborne illness outbreaks in recent years. Of the top ten riskiest FDA-regulated foods identified by the Center for Science in the Public Interest in a recent report, four were produce items.¹

Your proposed amendment exempts any farm – no matter the size – from safety standards when it sells its produce to a wide range of customers – not just directly to consumers, but also to hotels, restaurants, or institutions. These institutions could include schools and nursing homes, and, as a result, children and the elderly, populations most susceptible to serious complications and death from foodborne illness outbreaks, would be put at greater risk. If one grower, exempted from meeting produce safety standards by your amendment, provides contaminated produce, there is nothing to stop its products from being commingled with other produce and thereby cross-contaminating it. When that commingled produce is widely dispersed, it could make hundreds – even thousands -- of people sick.

Moreover, current trade agreements would require that the same exemption granted to domestic growers also be provided to foreign growers. Therefore, a large foreign grower that sells direct to a large U.S. restaurant chain could be exempt under this amendment, an outcome that you – and most American consumers – would reject.

The proposed amendment to exempt certain food facilities from traceability, recordkeeping, and preventive controls requirements would create too great a loophole in these important safety protections.

The preventive control requirements in S. 510 are a cornerstone of the new approach to food safety established through this legislation, and no food processor should be totally exempt from these requirements. The language in Section 103 of the bill requires the FDA, in developing its preventive control regulations, to provide sufficient flexibility to ensure that they are “scale appropriate” and can apply to all types of operations – large or small, simple or complex.

¹ See: <http://www.cspinet.org/new/200910061.html>

Your amendment would also result in the exemption of many foreign facilities from the preventive control requirements of S. 510. Not only would such an exemption be problematic from a food safety standpoint, but it would be extremely difficult from a pragmatic perspective: FDA may be unable to verify a facility's gross income in many foreign countries that export food to the U.S. Official sources of such information may not exist or may not be reliable. Furthermore, any exemption for foreign processors could also make it even more difficult for domestic producers to compete.

In terms of traceability, it is important to emphasize that the initial traceability provision included in S. 510 only establishes a pilot project. A final rule for enhanced traceability requirements would not go into effect for *several* years. Before such a rule could be finalized, FDA is required by the legislation to seek public input on its proposals and to conduct several pilot studies. The agency is also required to take into consideration the needs of small businesses when determining which traceability methods to adopt. Furthermore, the legislation forbids the agency from prescribing particular traceability technologies. All of these protections are in place to ensure that any new traceability requirements are not overly burdensome to small businesses. In light of these provisions, our coalition strongly believes that the existing language in the bill adequately protects small facilities from onerous traceability requirements.

Our coalition applauds your concern for small and local farmers but urges you to reconsider your proposed amendments aimed at protecting them from the allegedly undue burdens that will be placed on them by S. 510. Again, because of their wide reach, these amendments will seriously undermine the bill's goal of strengthening our food-safety system.

The MOFS coalition would like to continue discussions with your office on the issues affecting small farmers and processors.

Respectfully,

The Make Our Food Safe Coalition