

*Fighting for the U.S. Cattle Producer!*



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September 9, 2009

United States Senate  
Washington, D.C. 20510

**Re: R-CALF USA's Position Regarding U.S. Senate's Efforts to Improve Food Safety**

Dear United States Senator:

R-CALF USA<sup>1</sup> represents thousands of independent farmers and ranchers who raise and sell cattle and we appreciate your efforts to address the increased incidences of food-borne illnesses that have recently plagued our nation. The frequent outbreaks of food-borne illnesses reveal that the U.S. food system is now systemically and fundamentally flawed.

We are deeply concerned that Congress does not recognize the systemic and fundamental nature of our food safety problems and, therefore, is overlooking the problem's root causes as it proceeds to enact remedial legislation. We urge the U.S. Senate to identify the root causes for our current food safety problems before joining with the U.S. House of Representatives to impose onerous conditions on independent U.S. farmers and ranchers that would give the government more control over such farmers and ranchers without achieving the food safety improvements that Congress seeks.

We have carefully reviewed the Food Safety Enhancement Act of 2009 (H.R. 2749 or House Act) recently passed by the U.S. House of Representatives. We find that even though the House Act exempts our segment of the food industry by exempting livestock, farms that raise livestock, and meat products regulated by the U.S. Department of Agriculture (USDA),<sup>2</sup> the House Act will exacerbate the nation's food safety problems and damage all segments of the industry, including ours.

The House Act does not address or even acknowledge the root causes of our nation's food safety problems. The House Act attempts to mitigate the increased incidences of food-borne illnesses by expanding the failed components of our current food safety system. Instead of improving our food safety system, the House Act perpetuates current failures and hampers genuine food safety reform.

**A. FOOD SAFETY PROBLEMS WILL PERSIST UNLESS CONGRESS ADDRESSES THEIR ROOT CAUSES**

The root causes of our failed food safety system, as evidenced by the increased incidences of food-borne illnesses during the past decade, are unique to the United States and are three-fold:

- 1. Current Food Policies Promote and Facilitate the Continued Consolidation and Contraction of Independent Farmers and Ranchers and This is Inherently Dangerous to Both Food Safety and Food Security.**

The people whom for over a century have literally dedicated their lives and livelihoods to producing the safest, most wholesome food on the face of this earth have and are being systematically

driven from their farms and ranches and replaced with industrialized production units that have an inherent propensity to cut food safety corners to maximize profits – all because our national food policy has long failed to recognize the invaluable contribution to food safety and food security made by independent farmers and ranchers.

Industrialized food production units have systematically eliminated independent farmers and ranchers by using food production methods that are unsound from the perspective of food safety. Specifically, these methods increase the likelihood that harmful contaminants will be introduced into food. As U.S. state and federal governments have tried to impose effective food safety standards, the industrial food producers have successfully lobbied for regulations that impose additional costs on all producers, including farmers and ranchers, but do not interfere with the industrial food producers' ability to continue to use the unsound production practices which are the cause of the food safety problems in the first place.

The replacement of farmers and ranchers with industrialized production units is starkly exemplified by the ongoing trend in the number of U.S. livestock operations. Since 1980 the number of U.S. hog operations has declined 90 percent, from 667,000 to 64,760 operations; the number of U.S. dairy operations has declined by 80 percent, from 335,270 to 67,000 operations; and the number of beef cattle operations has declined by 53 percent, from 1.3 million to 757,000 operations.<sup>3</sup> In addition, the number of cattle feedlots likewise has declined, resulting in the ever-increasing concentration of the feeding segment of the live cattle industry.<sup>4</sup> Since 1996, the U.S. lost 25,000 small farmer-feeders – those with feedlot capacities of less than 1,000 head.<sup>5</sup> During this same period, the number of large feedlot operations with capacities of over 50,000 head increased by 29 percent.<sup>6</sup>

Adding *any* additional regulatory burdens and costs on independent U.S. farmers and ranchers without first correcting the failed national policies that are driving these independent farmers and ranchers out of business at an alarming rate would be woefully irresponsible and would immediately put food safety and food security for U.S. citizens in serious jeopardy. The unabated consolidation and contraction of independent farmers and ranchers in the U.S. is inherently dangerous to our food supply and food security as is now clearly evidenced by increased incidences of food-borne illnesses.

**2. Sound U.S. Food Safety Standards were Weakened When Congress Acquiesced to International Standards that Prohibit It From Targeting Food Safety Problems Originating in Foreign Countries with Stricter Standards – *Unless* Congress First Applies Such Stricter Standards to the Entire U.S., Regardless of Whether Such Stricter Standards Are Even Applicable to the U.S. Food Production System.**

Rather than to first determine and address the precise sources of food contamination through a scientific risk and hazard analysis of the various sources of food available in the U.S., i.e., raw food grown by independent U.S. farming operations, raw food grown by industrialized, corporate farming operations, processed food from independent U.S. food processing operations, processed food from industrialized, corporate food processing operations, and raw and processed food from importing countries, Congress, beginning in the mid-1990s, already has uncritically accepted and adhered to international food safety standards that have severely restricted Congress' ability to effectively address U.S.-specific food safety problems at their source. For example:

*The United States can no longer require foreign countries wishing to export meat and poultry products to have meat and poultry inspections that are ‘at least equal’ to those of the United States; instead, foreign inspection systems must be [only] ‘equivalent to’ domestic inspection systems.<sup>7</sup>*

*FSIS, acting as a regulatory agency of the United States, may not impose import requirements on inspection systems or establishments in an exporting country that are more stringent than those applied domestically.<sup>8</sup>*

These self-inflicted limitations are the direct result of Congress’ unwitting passage of the Uruguay Round Agreement Act of 1994, which was drafted for the purpose of bringing the U.S. into compliance with the General Agreement on Tariffs and Trade (GATT),<sup>9</sup> and which subsequently led to the United States’ entry into the World Trade Organization (WTO). These limitations also are the result of the U.S. Department of Agriculture’s (USDA’s) unwitting attempt to harmonize once sound safety standards with the agency’s perceived obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).<sup>10</sup> The effect was clear – Congress lowered our essential safety standards to allow higher-risk imports into the United States.

As a result, the United States is currently unable to limit imports from countries that – using similar types of industrial food production and processing units that are creating problems in the U.S. – practice even more unsound and unsafe food production measures than those used here.

Congress has effectively stripped itself: 1) of its needed authority to protect the U.S. food supply from food imported from countries known to practice inadequate food safety measures; 2) from being able to increase inspection of foreign processing plants; and, 3) from being able to otherwise strengthen import inspection measures to more thoroughly evaluate the safety of imported foods.

An annual inspection of foreign processing plants – which now emphasizes the adequacy of the plant’s written Hazard Analysis and Critical Control Points (HACCP) plan to declare it “equivalent to” the U.S. system – provides no assurance that the plant is meeting food safety standards 365 days each year or that food entering the U.S. is safe. The House Act perpetuates this failed approach to food safety. It imposes additional burdens on the independent farmer and rancher while protecting the use of unsound practices by the industrial production units in the United States and globally.

Unless Congress first reclaims its sovereign right to protect U.S. citizens from unsafe food, Congress’ only recourse for ensuring the safety of imported product, as is clearly evidence in the House Act, is to encumber the entire U.S. food production system with a regulatory regime designed to address food safety problems in foreign countries with highest-risk food, e.g., food from countries that lack an adequate veterinary and food inspection infrastructure and those that may still use chemicals and antibiotics banned in the United States.

This internationally established, universal approach to food safety totally ignores proven domestic food production practices and is patently unfair to U.S. food producers. It also represents a colossal waste of government resources including taxpayer dollars. Treating the entire U.S. food industry as if it were the lowest common denominator in the food safety equation in order to prevent

the introduction of tainted food from importing countries is unthinkable – but that is exactly the premise that underpins the House Act.

A clear example of how the House Act treats U.S. farmers as if they are the lowest common denominator in the food safety equation is its directive to impose upon them the international concept of food traceability. However, even the principles for traceability established by the international Codex Alimentarius state:

*An importing country should consider that a food inspection and certification system without a traceability/product tracing tool may meet the same objective and produce the same outcomes (e.g. regarding food safety, provide the same level of protection) as a food inspection and certification system with traceability/product tracing.<sup>11</sup>*

It is unconscionable that Congress would choose to encumber U.S. farmers with a traceability regime recognized globally as nonessential in countries where other, less obtrusive but equally or more effective means of achieving food safety is practiced. Has Congress lost so much faith in its own ability to restore our nation's once exemplary food safety system that it is now resorting to penalizing farmers and ranchers with a nonessential and onerous traceability system?

Tracing contaminated food to its source will never be as effective as preventing food contamination. While there is an exemption for our segment of the industry at the outset under the House Act, once such an encumbrance is forced upon one segment of agriculture it would likely be applied to all segments of production agriculture in short order. The panacea over tracing food from the farm or ranch will give the public a false sense of security while doing nothing to prevent tainted food from entering our nation's food system.

The traceability requirements imposed on fruit, vegetable, nut and fungus farmers by the House Act are nearly identical to the requirements proposed in USDA's National Animal Identification System (NAIS), which have been vehemently opposed by the nation's producing farmers and ranchers for several years. R-CALF USA views the implementation of traceability requirements on U.S. farmers and ranchers as completely unacceptable. R-CALF USA supports the tracing of contaminated food products from the affected consumer to the processing facility where the contamination has most likely occurred.

Congress must understand that international standards, such as those unnamed but nevertheless referenced in the House Act, do not emphasize food safety. The stated goal of the WTO – the international organization that administers the international agreements that deal with food safety and animal and plant health and safety – is to “help producers of goods and services, exporters, and importers conduct their business, while allowing governments to meet social and environmental objectives.”<sup>12</sup>

Thus, it is the WTO's objective to facilitate the importation of food into the U.S., which is the world's largest consuming economy. The U.S. Congress and the 50 states are the only government organizations vested with the responsibility and authority to protect U.S. food and the U.S. food supply, and this responsibility and authority should not be delegated to any international governmental body or organization. Congress must not abrogate its and our states' exclusive responsibility and

authority to protect our nation's food and food security to international governmental organizations as the House Act has accomplished by demanding and/or encouraging compliance and consistency with international standards.

Congress must not adopt international standards in its attempt to mitigate the very food safety problems that are the result of Congress' previous acquiescence to international standards. Such action would do nothing to improve food safety, but would result in a direct loss of individual, state, and federal sovereignty. Instead, Congress must restore our previously relaxed food safety standards and insist that all food entering the U.S. meet or exceed U.S. health and safety standards.

### **3. Congress' Adoption of the Internationally-touted HACCP Food Safety Inspection System Severely Hampers Congress' Ability to Ensure that Even Existing Food Safety Requirements Are Properly Followed Either Here or Abroad.**

Rather than to authorize and empower state and federal food safety officials to directly inspect, monitor and enforce existing safe-food processing standards in the U.S., beginning in the mid-1990s Congress uncritically adopted a radical, hands-off approach to food safety inspection and enforcement by implementing the internationally recommended Hazard Analysis and Critical Control Points (HACCP) system. The HACCP approach replaced direct state and federal inspection, oversight and enforcement with essentially an honor system that presumes food safety practices are consistent with a company's written intentions to practice safe-food procedures.<sup>13</sup>

This system, as evidenced by massive meat recalls originating in meatpacking plants presumed compliant with HACCP safety standards, has unequivocally failed to meet Congress' objective of ensuring safe food processing, packing and manufacturing. Continued reliance on the experimental HACCP system, which is now proven to produce fatal food, would be irresponsible and self-defeating for any food safety reform effort.

## **B. RECOMMENDATIONS**

The three destructive components of our current food safety strategy listed above – 1) the replacement of independent farmers and ranchers with industrialized food production units; 2) the uncritical acceptance of and adherence to international standards; and, 3) the uncritical adoption of the international-based HACCP strategy, which is now proven to produce fatal food – are the root causes of today's food safety problems. *Any* attempt to remedy our food safety problems by merely building upon these failed components as was done in the House Act would result in complete failure.

R-CALF USA implores the U.S. Senate to take immediate steps to correct and reverse the three above-listed fundamental deficiencies to our current food safety policies. Once these deficiencies are corrected, Congress must reestablish the food safety standards previously weakened when Congress acquiesced to international standards and then direct the agencies responsible for food safety to immediately begin hands-on inspection and enforcement of U.S. food safety standards for all imported food products, as well as for both domestic and global food processing facilities where food contamination is known to frequently occur.

Congress should accord international standards no more weight than is accorded other food safety standard recommendations, such as those established in studies by U.S. land grant universities . Under no circumstances should the U.S. Senate presume that international standards – which are specifically designed to facilitate trade – are appropriate standards to be imposed on U.S. farmers and ranchers or that HACCP is an acceptable means of restoring food safety at processing facilities where food safety problems are known to originate. International standards should be viewed as no more than an available reference for Administrative agencies and should not be referenced or cited in U.S. food safety statutes.

The U.S. Senate should not take any action to impose any additional regulatory burdens on any U.S. farmer or rancher, including any requirement to register their farms and ranches with the federal government or to participate in a federally mandated food traceability program.

If the U.S. Senate suspects that a particular segment of independent farmers and ranchers is contributing to food safety problems (as was obviously the case in the House Act that proposed new regulatory burdens for farmers that grow fruits, vegetables, nuts and fungi), then the Senate must conduct a comprehensive risk and hazard analysis to determine the specific practice(s) that caused or contributed to the food safety problem and the specific type of farming operation involved in that practice (i.e., an independent farming operation or an industrialized food production unit) to determine the specific corrective actions needed.

Individual U.S. farmers and ranchers deserve no less from Congress than to be presumed careful, conscientious, and law abiding food producers – a reputation earned by them while feeding this great nation during the past two centuries. The House Act is void of this basic respect.

R-CALF USA firmly believes that H.R. 2749 or any comparable legislation would exacerbate our mounting food safety problems because it builds upon, rather than corrects, the three fundamentally flawed components of our current food production system. R-CALF USA has conducted a section-by-section analysis of the direct and indirect affect H.R. 2749 likely would have on U.S. cattle farmers and ranchers and we invite you to view that analysis on our Web site at [www.r-calfusa.com](http://www.r-calfusa.com) under the food safety link.

Sincerely



R.M. Thornsberry, D.V.M  
President of the Board

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<sup>1</sup> R-CALF USA stands for the Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America.

<sup>2</sup> See H.R. 2749, The Food Safety Enhancement Act of 2009 (hereafter H.R. 2749), Sections 5, 101.

<sup>3</sup> See Farms, Land in Farms and Livestock Operations, U.S. Department of Agriculture, National Agricultural Statistics Service, February 2009. Data for 1980 obtained also from USDA NASS but in its earlier species reports for cattle and hogs.

<sup>4</sup> See, Structural Changes in Cattle Feeding and Meatpacking, Clement E. Ward and Ted C. Schroeder, Managing for Today's Cattle Market and Beyond, Oklahoma State University and Kansas State University, respectively (in 2002 there were 41,365 feedlots that fed 23.4 million of cattle); see also Cattle on Feed, USDA National Agricultural Statistics Service, Feb. 20, 2009, at 14 (in 2008 there were 2,170 feedlots that fed 22.5 million cattle).

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<sup>5</sup> The number of U.S. feedlots with a capacity of less than 1000 head shrank from 110,000 in 1996 to 85,000 in 2007. *See* Cattle Final Estimates, 2004-2008, USDA NASS, March 2009, at 75, available at

<http://usda.mannlib.cornell.edu/usda/nass/SB989/sb1019.pdf>; *see also* Cattle Final Estimates, 1994-98, USDA NASS, January 1999, at 81, available at <http://usda.mannlib.cornell.edu/usda/nass/SB989/sb953.pdf>.

<sup>6</sup> The number of U.S. feedlots with a capacity of over 50,000 head increased from 45 in 1996 to 58 in 2007. *See* Cattle Final Estimates, 2004-2008, USDA NASS, March 2009, at 74, available at

<http://usda.mannlib.cornell.edu/usda/nass/SB989/sb1019.pdf>; *see also* Cattle Final Estimates, 1994-98, USDA NASS, January 1999, at 80, available at <http://usda.mannlib.cornell.edu/usda/nass/SB989/sb953.pdf>.

<sup>7</sup> 60 Federal Register, at 38,688.

<sup>8</sup> 69 Federal Register, at 51,195.

<sup>9</sup> *See* 60 Federal Register, at 38,688.

<sup>10</sup> *See* 69 Federal Register, at 51,195.

<sup>11</sup> Principles for Traceability/Product Tracing as a Tool Within a Food Inspection and Certification and Certification System, Codex Alimentarius, CAC/GL 60-2006, at 1.

<sup>12</sup> Understanding the WTO, World Trade Organization, Chapter 1, Third Edition, Revised February 2007, at 9, available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/utw\\_chap1\\_e.pdf](http://www.wto.org/english/thewto_e/whatis_e/tif_e/utw_chap1_e.pdf); *see also* Understanding the WTO, World Trade Organization, Chapter 1, Third Edition, Revised February 2007, at 30, available at

[http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/utw\\_chap2\\_e.pdf](http://www.wto.org/english/thewto_e/whatis_e/tif_e/utw_chap2_e.pdf).

<sup>13</sup> *See*, e.g., 61 Federal Register, at 38,806 *et seq.*