

**Alliance for Natural Health U.S. * Citizens for Health * Dakota Resource Council *
Dakota Rural Action * Farm and Ranch Freedom Alliance * Idaho Rural Council *
Innovative Farmers of Ohio* Madras (OR) Saturday Market * Montana Farmers
Union * Mvskoke Food Sovereignty Initiative * National Family Farm Coalition *
Nebraska Sustainable Agriculture Society * Northeast Organic Farmers Association
– Massachusetts * Northern Plains Resource Council * Oregon Rural Action *
Organic Consumers Association * Portland Farmers Market * Powder River Basin
Resource Council * Small Holders Alliance (Massachusetts) * Western Colorado
Congress * Western Organization of Resource Councils * Willamette Farm and
Food Coalition**

One Size Does Not Fit All When Regulating Food Safety

October 2009

RE: S.510, Food Safety Modernization Act

Dear Senator Durbin:

The undersigned organizations represent consumers, small farmers and ranchers, and local food producers that have serious concerns over pending food safety legislation, specifically S.510, the Food Safety Modernization Act, and H.R. 2749, the Food Safety Enhancement Act as passed by the House on July 30, 2009. We urge you to support amendments to these bills to address their serious flaws.

Food safety is a priority shared by all. The growing trend toward healthy, fresh, **locally sourced** vegetables, meats, fruit, dairy, and value-added products improves food safety by providing the opportunity for consumers to know their farmers and processors, to choose products on the basis of that relationship, and to readily trace any problems should they occur.

The food safety problems in the industrial food system, with its long, multi-sourced food supply chains that extend across thousands of miles and even international borders, can and should be addressed without harming the local food systems that provide an alternative for consumers.

The attached fact sheet states our concerns in more detail. The following is recommended amendment language:

- 1) **Categorical exemptions from the Act for:**
 - Direct farm-to-consumer operations, including those adding value to their products and those selling to institutional buyers, retailers and restaurants; or
 - Local food processors that satisfy either of the following:

a) a market radius of 200 miles if the processor is located east of the 98th meridian or a market radius of 400 miles if the processor is located west of the 98th meridian, or

b) greater than 50% of sales made at retail, including to institutional buyers and restaurants, and gross annual sales under \$1 million.

If a ‘categorical exemption’ as requested is not granted, then:

Exempt the smallest processors from any registration fee and establish a sliding scale for the larger facilities to ensure small and medium sized processors are not bearing the brunt of funding for the FDA’s regulatory oversight.

- 2) **Establish clear and limited parameters regarding FDA’s authority over farm growing and harvesting practices**—including an exemption for farms selling direct to consumers.
- 3) **Hold FDA accountable for its actions:**
 - a) Preserve the language in S.510 that requires the agency to meet a specific burden prior to accessing records;
 - b) Add a provision for judicial oversight;
 - c) Add a provision to indemnify producers for wrongly recalled food or goods.
- 4) **Clear language that livestock and poultry are not subject to the requirements of S.510.**

We appreciate the concern for a safe food supply. Unfortunately, we believe H.R. 2749 and S.510, while purporting to increase food safety, will actually make our food system less safe and less secure. We urge you to amend the bills as outlined above.

Thank you for your consideration.

For more information please contact Margie MacDonald, 406.252.9672, mmacdonald@worc.org; Judith McGeary, 512-484-8821, Judith@FarmAndRanchFreedom.org; or Tami Wahl, 202.467.1986, tami@healthfreedom.net.

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**S.510 and H.R.2749 Present Serious Hurdles to Newly Emerging
Local Foods Producers and Small Businesses
One Size Does Not Fit All**

1) The failure to address differences in scale and distribution.

History demonstrates that the major food-borne illness outbreaks and recalls originate within the large, industrial food system. *Small, local food producers have not contributed to the highly publicized outbreaks.* Yet both bills subject the small, local food system to broad federal regulatory oversight. Increased regulations, record-keeping obligations, increased penalties and fees created by these bills will have chilling, possibly fatal, impacts on the re-emergence of small businesses built around food in rural and urban America. Protecting local food producers from excessive FDA fees, paperwork requirements (including HACCPs), and on-farm regulation will still promote food safety, as well as local economies.

H.R. 2749 has a mandatory \$500 per year fee for all facilities regardless of size, including small local businesses processing local food for local markets. S.510 does not include a registration fee. Any fee should be on a sliding scale with a clear exemption for the smallest processors.

2) The increase in FDA's authority to regulate farming practices.

Both bills allow FDA to adopt rules to govern how farms of any size grow and harvest their crops. While H.R. 2749 limits the authority to "high risk products," once the FDA has determined that the product is a risk – such as leafy greens – the agency would be empowered to regulate *all* farms growing that product. We are concerned that the proposed additional FDA regulation over farming practices will *discriminate against small and diversified farms*. A "science-based standard" for a large industrial farm would be completely inappropriate for an organic or biologically diverse farm. Although H.R. 2749 directs FDA to consult with USDA and to consider the impact of its rulemaking on small-scale and diversified farms, there are no enforceable limits or protections for small diversified and organic farms from inappropriate and burdensome federal rules.

3) Extensive reliance on HACCP.

The Hazard Analysis Critical Control Point (HACCP) system, along with accompanying requirements to develop and maintain extensive documentation and records, has proven to be an *overwhelming burden* for a significant number of small regional meat packers and processors across the country. In the meat industry, HACCP has not eliminated the spread of E-coli and other pathogens and has resulted in fewer independent inspections of the large slaughter plants where these pathogens originate. At the same time, small regional processors have been subject to sanctions due to paperwork violations, *not* due to actual incidents of

food borne-pathogen-induced illnesses. Despite these flaws, both food safety bills would extend HACCP to a broad range of processors regardless of size and market range.

4) Lack of oversight of the agency’s action and potential errors.

Under H.R. 2749, the Secretary is provided *carte blanche access* to people’s records. Fortunately, under S.510, the Secretary must meet a burden, specifically, “a reasonable belief ...that an article of food will cause serious adverse health consequences or death,” prior to having access to records. However, neither bill provides for judicial review of the Secretary’s rulings, decisions and actions.

As learned from the tomato debacle in June of 2008, food producers can be financially destroyed if wrongly subjected to a recall order. Neither S.510 nor H.R. 2749 provides any *safeguards against an erroneous recall* or offers reparations.

5) Harmonization with international standards.

Although international standards are an inevitable part of international trade, the agriculture and supplement industry’s experience has been that international standards are all too often used to restrict domestic production. S.510 explicitly references Codex Alimentarius—an intergovernmental body that deals with global food trade issues—in developing the food industry of foreign governments. Discussion around “*harmonizing requirements*” raises concerns for the potential loss of control over U.S. food safety standards and continued access to higher doses of dietary supplements.

6) Overlapping jurisdiction and oversight.

H.R. 2749 included a categorical exemption for foods, livestock, and farms raising livestock that were subject to specific *USDA-jurisdiction statutes*. S.510 lacks any such provision.

In addition, neither bill fully accounts for the extensive requirements included in organic certification overseen by the *National Organic Program* in USDA in proposing FDA oversight of certain farming practices.

7) The 98th Meridian and Eastern and Western markets

The distinction between eastern and western local food markets is based on the ecological and demographic differences between the more humid, lush and densely populated Eastern and Midwestern ecosystems and the semi-arid to arid Western ecosystem. The 98th meridian is often used to draw the line between the two. There are a couple of precedents for such distinctions in federal law. The 98th meridian was used as a demarcation in the federal surface mine and reclamation act (1976) to require additional protections for alluvial valley floors in the West. The Homestead Act allotment was adjusted over time to reflect the

difference in land base to sustain a family, from 160 acres to 320 acres as the settlements pushed further west.