

TESTIMONY

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Accelerating Agriculture: How Federal Regulations Impact Small Farmers

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Mr. Chairman, ranking member Velázquez, and members of the committee, I appreciate the opportunity to testify today before the committee on how regulations to ensure human health and safety can go hand-in-hand with supporting the growth of small farming and food production operations.

I direct the Center for Agriculture and Food Systems at Vermont Law School and am a member scholar at the Center for Progressive Reform. Previously, I served as a senior counsel at the USDA for twenty years. In my current role leading a center for sustainable agriculture, I have had the opportunity to work with and help support small farms and food production in New England and across the country. In fact, one of my key goals as director has been to support small and midsized sustainable farming and food production by creating law and policy tools to help those producers thrive.

In my testimony today, I will make the following key points:

1. Regulation of the agriculture sector is essential to safeguard public safety and health.
2. At the same time, in some cases, regulations may be better tailored to small farmers and food producers by taking into account their different production methods and associated risks in a way that ensures health and safety while allowing for local innovation.
3. Producer financial and technical assistance as well as public research dollars that assess production methods and associated risks are needed to help level the playing field for small and midsized producers.

Based on these three points, I will conclude that the question is not whether to regulate, but how to do so in a way that protects the public while fostering innovation at different scales of

agricultural and food production. To that end, I offer several practical suggestions for how government can improve regulatory design and outcomes for small farmers and food producers.

Regulations are Essential for Protecting the Public and Creating New Markets

A key area where agriculture is regulated is food safety. Indeed, the federal government's police power has long been used in the area of food safety to protect the health and welfare of our citizens, often preempting state and local laws and creating a one-size fits all regulatory regime.

Although the American food supply is among the safest in the world, the Food and Drug Administration (FDA) estimates there are over 48 million cases of food borne illness a year.¹ Disease causing organisms are found in raw meats, uncooked vegetables, fecal contaminated water, and unpasteurized dairy products.² Those at greatest risk for food borne illness include the elderly, caregivers, pregnant women and cancer patients.³ A 2015 study by the Ohio State University estimates the annual cost of food borne illness at approximately \$55.5 billion.⁴

A recent example showing the scale of modern food borne illness outbreaks given the concentration and consolidated of our food system is the recent E. coli outbreak caused by contaminated romaine lettuce. One hundred and ninety-seven people in 35 states were sickened. The contaminated lettuce was eventually traced to Yuma, Arizona, a major growing region of leafy greens in the United States.⁵

The Food Safety Modernization Act⁶ or FSMA, which was passed in 2011, is the first major overhaul of our food safety regulatory system since 1938. FSMA is designed to address the type of food borne illness exemplified by the romaine lettuce outbreak. In particular, FSMA attempts to prevent food borne illness in the first place by requiring farms and processing facilities to improve record keeping and sanitary practices associated with producing, handling and distributing fresh fruits and vegetables. This new regulatory framework has the effect of allocating much of the cost of food safety to the beginning of the food supply chain.

It is important to note that regulatory regimes can also help develop new markets and increase profit margins for business. This is what has happened with the passage of the Organic Foods Production Act of 1990 and the subsequent establishment of the national organic standards. Compliance with USDA certified organic standards means that producers can affix the USDA certified organic label to their agricultural products and that consumers can trust that those products were produced consistent with federal standards. Importantly, consumers are willing to pay more for organic products like produce⁷. Since the adoption of the organic standards in the

¹ <https://www.fda.gov/food/foodborneillnesscontaminants/foodborneillnessesneedtoknow/default.htm>

² <https://www.fda.gov/food/foodborneillnesscontaminants/foodborneillnessesneedtoknow/default.htm>

³ <https://www.fda.gov/Food/FoodborneIllnessContaminants/PeopleAtRisk/default.htm>

⁴ <http://fortune.com/food-contamination/>

⁵ <https://www.fda.gov/Food/RecallsOutbreaksEmergencies/Outbreaks/ucm604254.htm>

⁶ 21 USC 301 et seq.

⁷ <https://www.ers.usda.gov/amber-waves/2009/march/consumers-willing-to-pay-a-premium-for-organic-produce/>

early 2000s, organics have grown dramatically. In 2017 alone, the organic food market grew 6.7% while the food market as a whole only grew 1.1%.⁸

Supporting Small Farms and Food Producers while Protecting Health and Safety

While federal regulatory regimes create national, uniform standards benefitting public health and safety, they can have unintended consequences for small farmers and food producers, making market entry challenging or too costly. The public's growing interest in local, healthy food and related support of farmers, farmers markets and Community Supported Agriculture is a bright spot in America's agricultural economy. To support the continued growth of small farms and improve the health of rural economies, it is important to assess the impact of regulations in terms of how they support or hinder small food and farm businesses and then tailor policy, where health safeguards may be assured, to this growing sector.

For example, under the Tester-Hagan amendment to FSMA, small farming operations serving only local markets were exempted from FSMA's requirements out of concern regarding the regulatory burden and based upon the argument that small producers do not make large numbers of people sick. However, there has been debate, and an apparent lack of data, regarding the actual magnitude of food borne illness risk associated with small farm produced food.⁹ One survey of farmers and farmers market managers showed many good food safety practices, but room for improvement in production, handling and transportation practices.¹⁰

The Tester-Hagan amendment reflects a larger debate in which local food advocates and producers have questioned the need for across-the-board application of federal health and safety regulations. For example, raw milk food advocates and producers disagree with the FDA's safety concerns regarding disease causing microbes in unpasteurized milk¹¹, and the agency's related requirement that milk is pasteurized when intended for interstate commerce. Lack of USDA inspected slaughterhouses in some areas, also required for interstate commerce under federal law, can be a market impediment for small livestock producers. In response, some producers have advocated custom slaughter or mobile slaughter facilities. Yet, these laws were put into place during the last century to address very serious safety issues in our food supply.

Beyond health and safety regulations, there are on-going debates about the National Organic Program, concerns about the evolution of those standards, and certification costs. A subset of small producers are foregoing certification because of the cost, negative perceptions of federal certification, and bureaucratic requirements of certification, among other reasons.¹²

⁸ <https://www.ota.com/resources/market-analysis>

⁹ <http://www.foodsafetynews.com/2011/11/powerful-coalition-gains-exemption-for-small-farmers/#.WyU1AadKhPY>

¹⁰ <https://www.foodsafetymagazine.com/magazine-archive1/junejuly-2014/food-safety-and-farmers-markets/>

¹¹ <https://www.fda.gov/Food/ResourcesForYou/Consumers/ucm079516.htm>

¹² <https://www.purdue.edu/newsroom/releases/2018/Q2/farmers-drop-organic-labels-over-certification-process,-access-to-markets,-study-says.html>

Policy Strategies to Support Small Farms and Safe Food Production

Fortunately, there are a number of strategies that policymakers can employ to help better align critical federal regulatory regimes to ensure health and safety with supporting the growth and innovation of small farmers and emerging food economies.

- 1. Outreach.** In developing legislation and implementing regulations, outreach to small farmers and food producers and subject matter experts is critical to understand the policy needs of these groups and regulatory risks. As was seen with the FSMA roll-out, traditional avenues, such as notice and comment, may not be sufficient to engage these stakeholders in the policymaking process. Effective engagement of stakeholders is the cornerstone of informed policy approaches, which, in turn, have a greater chance of success.
- 2. Publicly Funded Food Science Research.** Agri-business and large food producers have the resources to pay for research to support their product lines. Small and mid-sized producers do not. Accordingly, small farmers and producers who need scientific support for the safety of their production processes must largely rely on existing research, to the extent it is available. Accordingly, public research into the safety and efficacy of food and agricultural production methods is critical to help grow sustainable and diversified food markets and ensure public safety.
- 3. Financial and Technical Assistance.** Compliance with regulatory regimes is, not surprisingly, more burdensome for smaller producers who have less resources to leverage. Consequently, both financial assistance to help pay for the cost of compliance as well as technical assistance to help with the mechanics of compliance is key. One prime example where such assistance has been needed is FSMA compliance, which, as I discussed earlier, requires a new set of requirements and related costs for agricultural producers in order to prevent food borne illness.
- 4. Improved Regulatory Design.** One of the fundamental hurdles for producers posed by regulation is simply access to information. Making information regarding when compliance is triggered and how to comply more accessible and easier to understand reduces the burden of compliance. Further, policymakers can streamline regulatory compliance by creating and adequately funding public resources that connect the dots among different categories of regulatory compliance for different stakeholders. For example, the dynamic potential of digital technology and user friendly applications could be better harnessed by government in designing its online resources in order to reduce compliance barriers.

Thank you, I would be pleased to answer any questions you have.