



June 12, 2009

The Honorable Henry Waxman, Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Waxman:

The International Warehouse Logistics Association (IWLA) supports the House Energy and Commerce Committee efforts to develop comprehensive food safety legislation (H.R. 2749). The legislation approved by the Subcommittee is a positive step forward. Before the full committee mark-up next week, however, we urge you to direct your attention to several areas that of concern to IWLA members.

It is important to understand the role of our members – warehouse-based third-party logistics (3PL) providers. A typical 3PL facility operates anywhere from 10,000 to 1,000,000+square feet of warehouse space where inventory of our customers is held for distribution at the direction of our customer – generally a U.S. manufacturer, distributor or retailer. A 3PL never takes title to or ownership of the products in the warehouse – rather he serves as a logistics intermediary in the supply chain. **For our members who store food products, it should be understood: these are packaged, sealed foods that are not exposed to the environment.**

IWLA members who store food products have a role to play in the food safety supply chain, but that role is materially different than the role of a food manufacturer, processor or packager. For IWLA members, who are only handling sealed packages or containers often in pallet-sized increments, the risks are far less, as is our knowledge and control over the contents of the food containers. We do not believe that H.R. 2749 appropriately reflects these differences. For the most part, the legislation adopts a one-size-fits-all strategy that sets necessarily high standards, responsibilities and penalties for food producers and processors, but overreaches when it comes to entities in the supply chain, like the warehouse-based 3PL, who are not in the same position to impact the safety of the food supply.

We were encouraged by a change made before Subcommittee approval on page 27 of the bill that gives the Secretary authority to exempt or modify the rigorous requirements for facilities to develop written food safety plans if a facility's only activity with regard to food is the "storage of packaged foods that are not exposed to the environment." This is the right approach that shows a real understanding of the supply chain. ***This same concept should be applied throughout the bill, including the following areas:***

- \* **Annual Fee:** If a \$500 fee is appropriate for a facility that manufactures or processes food products, then it only stands to reason that a warehouse facility storing packaged foods that are not exposed to the environment should be assessed some lesser amount for its annual fee. The critical point for food safety rests with the entities that actually touch and handle the food ingredients. The fee structure should reflect this fact.

The Honorable Henry Waxman

June 12, 2009

Page 2

- \* **Inspection Schedule:** The legislation does recognize the comparative risks of various facilities in its tiered inspection schedule. Facilities that hold food are subject to an inspection at least every 3 or 4 years. In line with this risk-based inspection schedule, we think the bill would be improved by adding another category: facilities that hold no other food products but packaged foods that are not exposed to the environment. The bill should authorize the Secretary to set reduced inspection schedules or alternatives to inspection for these facilities.
  
- \* **Penalties:** The civil penalty provision does not differentiate between material violations that pose a threat versus harmless, inadvertent errors, nor does it distinguish between knowing violations and violations that are outside the scope of a company's knowledge and control. This kind of all-encompassing, stringent and highly discretionary penalty authority is a heavy-handed enforcement club that must be more carefully structured to reflect the relative degree of risk and responsibility of the various entities in the supply chain.

Finally, on a related and equally important issue for IWLA, in both the recall section of the bill and the traceability provisions, the legislation should better reflect the limited role of a warehouse-based 3PL. Currently, for example, the Secretary of HHS in certain circumstances can order any person who "distributes" an adulterated or misbranded product to cease distribution and to notify any person to whom the article was distributed. Yet, nowhere is the term "distributed" defined. If it is limited to distribution in the commercial legal sense of the word – those who have legal title and ownership over the product – that is appropriate. On the other hand, if it encompasses any entity, like a warehouse-based 3PL, that physically receives and ships the product at the direction of the customer, then the legislation overreaches, asking a 3PL to notify recipients with which he does not have a legal relationship and to take action that is beyond the scope of his authority. **IWLA therefore urges the committee to clarify that "distribute" in the context of this legislation does not include a transportation intermediary, such as a 3PL, handling packaged food products that are owned by another party.**

Although the committee spent many long hours conferring with food manufacturers, processors and retailers, the same attention was not given to other "intermediaries" in the supply chain, like 3PL providers. As such, the bill lacks a full understanding of the many facets of the supply chain. The result is inappropriate and disproportionate regulation of intermediaries in the supply chain. We urge your help to remedy this situation.

Thank you for your consideration of IWLA's views.

Sincerely,

A handwritten signature in black ink that reads "Joel D. Anderson". The signature is written in a cursive, flowing style.

Joel D. Anderson  
President and CEO