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SUPPEMENTAL COMMENTS ON THIRD-PARTY PROGRAMS

Dear Chairman Nisbet:

This afternoon, *Business Week* published a lengthy article entitled "[Food Sickens Millions as Company-Paid Checks Find it Safe.](#)"¹ *Business Week* states that contaminated food kills 3,000 Americans annually. The Today Show covered this story in a five-minute segment called "[Are Private Food Inspectors Keeping You Safe?](#)"² which asserted that "going to the grocery store is more dangerous that you think" and "most inspections done to ensure that our food is safe are conducted by private companies." There has already been a great deal of secondary coverage, some referring to the delay of FDA rules.³

While these stories show the timeliness of the topic, they also reinforce the concern I expressed earlier this week: the Conference is not currently well-placed to make recommendations because it does not yet have a basis in fact. The most critical facts relate to understanding the successes and failures of existing private sector inspections. Although several of the individuals quoted in the *Business Week* article made themselves available to the Conference and its previous consultant last year, the draft report does not rely on these sources, nor on any other private-sector leaders.

My prior comments suggested that industry leadership in food safety has come from a small number of firms that had fatal outbreaks in the past. Both of today's news

¹ <http://www.businessweek.com/printer/articles/341726?type=bloomberg>

² Video version: <http://today.msnbc.msn.com/id/26184891/vp/#> Text summary: <http://todayhealth.today.com/news/2012/10/11/14349946-food-safety-why-going-to-your-supermarket-may-be-more-dangerous-than-you-think>

³ E.g., <http://www.examiner.com/article/private-firm-not-fda-gave-ok-to-food-that-made-people-sick-1> <http://www.kansascity.com/2012/10/10/3862196/as-food-recalls-mount-white-house.html> ("Two years [after FMSA], rules that require food producers to evaluate the hazards in their operations and that give the FDA access to such records have yet to be released.As the rules have stalled at OMB, outbreaks have worsened") <http://www.macon.com/2012/10/11/2209000/save-lives-now-implement-food.html> ("Save lives now: implement food safety rules"); <http://www.bloomberg.com/news/2012-10-11/private-food-inspection-firm-has-directors-from-its-customers.html>;

stories focus on the positive example of one of these leaders, Earthbound Farms. Another pioneer, Jack-in-the-Box, implemented a comprehensive safety program after E-coli O157:H7 led to four customer deaths in 1993. The *Business Week* story also cites Costco. Earlier this month, Costco telephoned 250,000 customers to recall smoked salmon produced in Greece and Holland because of a potential salmonella infection. This Monday, the FDA informed Costco that no U.S. illnesses had been linked to its product.⁴

It is significant to note that *effective* private safety programs act *more* quickly and *more* transparently than domestic inspections conducted by the FDA. Last year, Costco telephoned every cantaloupe purchaser immediately after a suspected salmonella infection. Sold for only 10 days, the product was statistically associated with 12 non-fatal illnesses. By contrast, the cantaloupe discussed in *Business Week* and *Today* was on the market for 46 days, leading to hundreds of illnesses and 33 deaths. It took the FDA eight days *after* Colorado informed CDC of the contamination to inspect Jensen Farms, at which time it confirmed listeria contamination. Colorado, not the FDA, publicized a warning, causing Jensen voluntarily to recall the cantaloupe two days later. It was *another* month before the FDA issued its warning letter. This year, the FDA delayed publicizing a voluntary recall of E. Coli-contaminated spinach for 39 days.⁵ In this case, the recall followed 8 days after an industrial customer discovered the contamination.

In conclusion, saving the government money is a *secondary* benefit from greater regulatory reliance upon private inspections. Properly standardized and accredited, private inspections can be more effective and less costly to producers and consumers.⁶

Sincerely,

A handwritten signature in black ink that reads "Scott J. Rafferty". The signature is written in a cursive style and is positioned to the left of a vertical line.

Scott J. Rafferty

⁴ <http://www.foodsafetynews.com/2012/10/costco-smoked-salmon-cleared/>

⁵ <http://www.foodsafetynews.com/2012/02/when-should-recalls-be-made-public/>

⁶ See Coase, "The Problem of Social Cost," 3 J. Law & Econ. 1 (1960)(private sector faces lower transaction costs in identifying and enforcing an appropriate response); Coglianese and Lazer, "Management-based regulation: prescribing private management to achieve public goals" (2003)

<http://hdl.handle.net/2047/d20000315> at 22 (government savings from third-party certification is less important than efficiencies and scale economies); Braithwaite, "Enforced Self Regulation: A New Strategy for Corporate Crime Control," 80 Michigan Law Rev. 1466-1507 (1982) (Kepone case study).