

R O U G H D R A F T

Joint Informational Hearing of the

**Senate Food and Agriculture Committee
Dean Florez, Chair**

and

**Senate Education Committee
Gloria Romero, Chair**

***How Safe Are You? An Investigation Into
California's Peanut Supply and
How Our State is Protecting You from Salmonella***

**Thursday, March 5, 2009
State Capitol, Room 3191**

SENATOR DEAN FLOREZ: We're going to start in a moment. We are waiting for a few members who are at a press conference with our pro Tem and a few other items so they'll be joining us. So let's go ahead and begin the hearing. I know everyone's very busy.

I'd like to call the Senate Food and Agriculture Committee together, along with the Senate Committee on Education. I know Senator Romero will be joining us shortly. I do want to thank Senator Liu for being here. Thank you very much. And I do want to thank everyone for participating in today's important hearing.

As most of you know, today we're focusing on the salmonella outbreak that raged across the country from contaminated peanut butter and peanut products. The impact of the outbreak, as you probably know, was very frightening. It originated in a plant in Georgia. There were almost 2,500 products. I checked the website today. I think that's up to 3,000 products, so

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this is an evolving list, as we speak, and the goal is try to pull these from the shelves. And today we're going to attempt to think about how we do that in California, what it means, and how ultimately we as a state are working with our federal government counterparts to deal with recall.

I will also say that the last report, at least I received, we had 654 people who were infected across 44 states, and salmonella contamination may have contributed at least to about nine deaths. For Californians, about 66 Californians as of this time have been at least in contact with salmonella, and the goal of it is to try to figure out how nursing homes and federal emergency food kits and cookies and crackers and cookie dough sold to fundraisers and those types of products, how they all could have been contaminated, and, more importantly, are they now put into some safe place where they're not in the reach of folks that shouldn't have them.

I should also say that this committee is a committee I've sat on, but we had a Select Committee on Food-Borne Illness, we still have that, and that we have been very interested in all sorts of outbreaks, whether they be spinach outbreaks or beef recall last year—you might remember. These are issues, I think, at the forefront of what taxpayers expect from their government. At the minimum, they expect their government to protect the food supply, and I think we'd be remiss not to review how we're doing in this state. And we absolutely want to make sure that people recognize that in many cases these are not isolated incidents. Outbreaks of food-borne illnesses continue to plague California, the nation, year after year, and we are very interested, at least from this panel's perspective, in trying to find out how we fix a very, very flawed food system.

I don't have to go through all of the incidents that have occurred in California and in the nation, but I can tell you that this particular recall with peanuts was very interesting, given that the outbreak—at least it's recorded as beginning somewhere in September of 2008—the recall wasn't issued until January of 2009, listing several hundred products at that time. And now, as I've mentioned earlier, the recall has grown to about 3,000 items. I venture to

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say that most Californians, when they walk into a grocery store, couldn't pick 3,000 items in terms of this recall. So I think for parents and everyone out there who is doing the right thing and going to the right websites and doing their best to try to figure out what to buy and not to buy, I think it will be very difficult for them to figure out that it's just beyond peanut butter. And I think, even in that case, I think our own state officials tell us, it isn't a bottle of peanut butter or a jar of peanut butter in our stores. These are all sorts of various items, from Power Bar to frozen foods to, in many cases, things that we might not even think are recalled, that have been recalled, at least according to the federal government.

And a little later in the committee, we're going to talk to some of our retailers in terms of what they might be able to do in terms of being, if you will, the last place a consumer sees a product before they walk out the door, how we might be able to merge some data with their current systems in order to provide one last leg of safety. And if indeed these are misplaced in the store or not pulled from the store or, more importantly, having some real-time information, I can tell you that the list was 2,500 products last week. Today it's 3,000. I think it's very difficult in many cases for our grocers and others to think about 500 additional products that they have to pull. And if we can merge technology to a point where we can get down to the product code and get those off the shelf or make sure consumers aren't moving through stores because they're stopped at the scanner, that's something that we're very interested in talking about today as well.

Today, we're going to try to get a better understanding about food recall protocols used by the state of California. We want to make sure that they're functioning, and we want to talk about the mechanisms in terms of notification for California consumers in these types of outbreaks.

I do know that Senator Romero will be joining us very shortly. I do again want to thank Senator Liu for being here. Senator Liu, I don't know if you have any comments that you'd like to make.

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SENATOR CAROL LIU: I just wanted to thank you and Senator Romero for putting this panel together. I'm very curious about how we perform in this area. I am also curious or alarmed, I would say, about the breakouts of contaminants in our food supply, and we need to learn more about how to prevent—not really prevent it but to educate folks about how to stop this in our food supply here in California and throughout the country.

SENATOR FLOREZ: Thank you, Senator Liu. I appreciate those comments, and we're going to learn a lot in a little bit in the next couple of hours, I think, in terms of trying to make this a much better system in California.

I am very thankful that we have Dr. Jeff Farrar who has been a regular visitor to many of our hearings. I always appreciate the information. He is the chief of Food and Drug Branch here in the California Department of Public Health, and I want to thank you for being here today. And if you can come on up, and your group or any folks you'd like to bring up with you, that would be wonderful.

As Dr. Farrar's coming up, I would say that the goal is to try to pose a series of questions that you're probably pretty familiar with, given the past hearings that we've had. Obviously the salmonella outbreak didn't come from a California company. It came from somewhere in Georgia. And so we're not going to take you all the way back to the distribution point in the peanut plant in Georgia, but we are going to hopefully get your impressions about how the product recall was implemented and get from your perspective how we might be able to improve that, or did it go well, and whether people were notified of these types of items.

I can tell you there were some pretty disturbing facts, as you probably know, from that Georgia plant that are still ongoing. And we want to make sure that we have some better understanding of how California differs in many cases from Georgia, how we may have operated differently, if whether we have protocols that don't exist, didn't exist, in Georgia that may have prevented something like this from occurring. So I have some pretty large questions that

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I'm going to try to narrow it down, if I could, and then I'd like to get your impressions overall, if that works for you.

MR. RUFUS HOWELL: Senator, that works very well. My name is Rufus Howell. I'm deputy director for the Center for Environmental Health in the Department of Public Health, and I will be presenting the formal testimony...

SENATOR FLOREZ: Awesome.

MR. HOWELL: ...today.

SENATOR FLOREZ: Great.

MR. HOWELL: So, again, thank you for inviting us, Members. Much appreciate the invitation.

Within the very recent past, there's been a series of high-profile national food recalls that have impacted California, including those involving baby formula and other consumer products contaminated with melamine, peppers and tomatoes contaminated with salmonella, leafy green products contaminated with E. coli, beef from improperly slaughtered animals, and now salmonella contamination in a wide spectrum of peanut products.

Moreover, based upon data derived from the U.S. Centers for Disease Control a decade ago, each year Californians are burdened with an estimated 9 million illnesses, 40,000 hospitalizations, 600 deaths, and 10.6 billion in annual costs resulting from contaminated foods. This includes illnesses caused by food prepared commercially and at homes, so it's the full gamut of contaminated foods. Nationwide and statewide food recalls and related illnesses persist and are likely to be increasing in scope with globalization of the food market.

It is important to remind the committee that science tells us that zero risk in foods and in virtually any other area is simply not attainable today. However, we continue to apply scientific advances and programmatic efficiencies to improve the existing system. We meet regularly with our partners at the California Department of Food and Ag, U.S. Food and Drug Administration, and local agencies to ensure and improve coordination, share resources and workload where appropriate, and share results of inspections.

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Most recently, CDPH and CDFA had begun discussion on ways to share technical and personnel resources. We're exploring mechanisms for identifying, coordinating, and applying for multi-departmental resources from federal sources, such as the Office of State Homeland Security. Specifically, these resources may be used to establish contract services for a call center to facilitate completeness and timeliness of recall notification and other emergency response needs, to establish contract laboratory capacity to strengthen and expand the state's laboratory search capacity during food contamination emergencies.

We welcome the opportunity to work with the committee in finding ways to improve this critical system. During these outbreaks, our staff works very hard to try and determine the causes of the contamination and to remove contaminated products as quickly as possible. In this peanut butter outbreak, CDPH staff worked closely with the U.S. Food and Drug Administration to identify and publish the list of recalled products, distributed it in California once contaminated food was identified. To date, more than 2,100 products in 17 categories have been voluntarily recalled in the U.S. by more than 200 companies, and the list continues to grow. California received more than 1,000 of these recalled products.

We continue to update these on our web page as new recalls occur. Additionally, we continue to work with FDA to conduct recall effectiveness checks within California. To date, 89 percent of the 117 firms contacted by CDPH were notified of recall by the Peanut Corporation of America or their upstream supplier. The remaining 11 percent included firms who may have received recall notices from their suppliers but the person in charge of recalls was unavailable, or the notice may not have reached the person in charge, or the recalling firm may not have current information for an infrequent customer who may have moved or changed company names. The investigation and recall has consumed thousands of hours of federal, state, and local agencies' limited resources, and we continue to receive additional recall notices. Thank you.

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SENATOR FLOREZ: Thank you. I'd like to ask you some questions, if I could. And I guess you both can answer as we go through this, but I think first and foremost, how do you get your handle around this as a state with such a large and difficult recall? Spinach was a challenge, but we knew it was spinach; it was one product. Beef, we kind of had a skew number; we kind of figured out how to get to that. You mentioned 2,100; the latest is 2,500; today's website is 3,000 different entries in terms of items that need to be pulled from the shelf are on the list. I found it amazing going through some of these things. You know, energy, chocolate bars, or you had frozen food with tofu in it that was recalled. You had Luna bars were recalled. You had Breyer's Ice Cream; it was recalled because of this. You had bags and bags of pet food at PetSmart that were recalled. And I think it's very difficult for consumers with such a large list to in essence try to figure out how that's done. And I find it mind boggling that we rely so much on the very companies in voluntary ways, voluntarily to call for their recall.

When this first started, I think it began with 500 products, and it's expanded almost every day, 300, 400. Today we're up to 3,000. I think what's scary about it—I went to the website, the FDA's website, this morning. And given the company, the Peanut Corporation, the PCA, that was the offender in this particular case, I found it kind of chilling because, given that they're giving the information, there's a note on the website that says the Peanut Corporation of America has announced that because of its bankruptcy proceedings it is no longer able to communicate with customers of recalled products. So I found that kind of chilling. You know, here's the company that was expanding the list every single day and yet, because now they're in bankruptcy, they're telling us that they're not going to be able to communicate with customers of recalled products. And this is the hard question of the day, given that statement, How do you folks handle that? I mean, it's the state who is responsible for a good portion of this from a public health perspective. I mean, how do we deal with an information flow that is in essence just cut off at this point, you know? And I would say that it wouldn't be a scary thing if the list wasn't growing every

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day. So how do we—you know, maybe we can start big and then go small, and I'd like to kind of get sequential thoughts on it from you on, when you have a situation like that, how do we narrow down, given your charge here in the state, how do we narrow down the product chain and distribution?

First, maybe we can just get an overall of what your role is in this. I mean, you have the FDA, you have CDC, you have folks that make findings. And then we're depending on companies themselves to notify or voluntarily recall products. Then down the supply chain, we're trying to figure out where that happens and then if it ends up somewhere in a retailer and we're trying to figure out how to deal with that. So I'd just like to know from Dr. Farrar or both of you, How do you play into this particular scenario? How does California do this?

MR. HOWELL: So you would like us to start with the out-of-state companies, from PCA?

SENATOR FLOREZ: I would like to know how you put all that together. I mean, it's always been—in spinach, we had a long discussion about it, but this is so many products and so many different items, I mean, from small crackers to Power Bars. I mean, yesterday my staff, we talked about the bill that we had introduced to stop some of these items with a scanner. One of my staff went to a store here in Sacramento and bought an item on the list, you know, and it scanned and went through. You know, these are the kind of scary things that you kind of—now it could have been misplaced. Maybe it wasn't in the right place; maybe the store missed it. But at the end of the day, these are complex issues for consumers. I think Senator Liu would know, would recognize that some of her constituents probably are web-savvy, could go to the website. But for us to figure out— if I were to give you ten items—and I won't—but if I were to give you ten items and I knew that eight of them or five of them were on the bad list and five of them were on the pass list, I guarantee you, you probably wouldn't know which ones because there's just such a complexity of items, whether it's cheesecake from Sara Lee or Breyer's Ice Cream, and it isn't peanut butter. It's Breyer's Ice Cream

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with the various type of flavor. So maybe you guys can give me a perspective on how you fit into all this and we'll kind of go from there.

MR. HOWELL: We'll be most happy to do that, Senator. But if your staff has bought a product that's on the list, feel free to notify so we can pursue that because that's...

SENATOR FLOREZ: I'd like to bring the company CEO and make him eat it (laughter), you know, because it's still out there and now they've declared bankruptcy and they're sitting somewhere trying to figure out how to reorganize. But the rest of us are trying to figure out how to get their products off the market and yet they're not notifying us at this point in time.

MR. HOWELL: Well, any product like that, that's identified...

DR. JEFF FARRAR: Senator, I'll take a shot at it. You've described some of the issues we've been through. These are very complex outbreaks and subsequent recalls. The Hallmark/Westland recall that you mentioned was the largest recall in the country, and the cost of those ground-beef products wound up as ingredients. And hundreds and thousands of other products very similar to the peanut butter recall. It proved to be very challenging for many similar perspectives.

You also alluded to the fact that this is a complex system overall, and I think that's a really critical point that we have to keep in mind, not just focusing on the recall part of this, which is extremely important, but also on all the other components, from the surveillance systems to the epidemiological studies that have to be done to identify food, to the lab methods and capabilities and resources, to the regulatory roles. It is a very complex system, and solutions will undoubtedly require addressing the system in its entirety, not just a single aspect of that, as you have described.

Also we hope, we're certain, that other states are doing the same thing that we are doing, along with FDA and CDC, reassessing this system and seeing where improvements can and should be made. Those discussions are occurring and will continue to occur, and I'm sure we'll be glad to continue to work with your committee in helping find solutions to it.

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SENATOR FLOREZ: Let me ask you, just from your perspective only, what happened in Georgia, could it have been prevented? I mean, that's a big question but, I mean, just a very big threshold question. I mean, are these types of things just systematic within the system, we're going to have these outbreaks? Are these the types of things that ultimately could have been prevented? I'm sure you've read, you know, in many cases, the amount of times this plant was inspected and not inspected? I mean, your big picture on that and then I'll ask you a few more questions.

DR. FARRAR: I think any system of this magnitude, Senator, certainly has a lot of room for improvement, and this one does as well. As well, we all know that any large, complex system such as this is never going to be fool proof. So there may be instances in the future in which every single item at every single plant is not addressed.

SENATOR FLOREZ: Right.

DR. FARRAR: Even with inspections—once a year, twice a year, four times a year, you're only in there a limited time period and you can't observe every condition on every day. So it's zero risk, as Mr. Howell mentioned, is going to be very difficult to obtain. But I think we should focus on what improvements we can make with the resources that we have.

SENATOR FLOREZ: In your thought, could that be happening with a California food producer, what happened in Georgia, given our own protocols?

DR. FARRAR: Senator, I wouldn't say it could not happen, but I'm very proud of the program we've got. We have some very dedicated, hard-working, experienced staff who are in these facilities on a regular basis doing what I think is an excellent job with these inspections. Is it absolutely full proof? No, sir, it's not. But we think we're doing a very good job here.

SENATOR FLOREZ: Where would you rank California's food safety system in terms of what you've seen? We've got Georgia. Now we have California, and we've had our own outbreaks with beef, with spinach, tomatoes, salmonella and on. We've got our own issues, but where would you put us?

MR. HOWELL: It's a good question, Senator. But if you ask me, I think we have one of the best systems in the state but it's not flawless. There's always need

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for improvement. That's why we're looking at efficiencies, how to do things better. We haven't really run a definite comparison with other states.

SENATOR FLOREZ: That's the question. Why haven't we done that, and what can we learn from other states?

MR. HOWELL: We're in communication with other states all of the time. It's not the type of comparison, are we better than another state? That's difficult. I think we have one of the best food-safety programs in the U.S. Dr. Farrar has performed commendable leadership, duties, in steering the program to address very critical issues. But in comparison to other states, we would have to spend resources to look at that. We take good information from other states; we share our information with other states. Dr. Farrar sits on several national committees, and the whole, part of him sitting on those national committees is to understand how other states carry out bad programs, and it serves to allow our program to work better.

SENATOR FLOREZ: Okay. And I appreciate that but our goal in the legislature is to push you to levels you've never gone to before when it comes to food safety. So let me simply say, I hope that you do look at the other states. I mean, the answer to the question I would like to hear is, we're absolutely the best, period. There's no other state better than California, without hesitation. And if we can't say that, I think then we are doing a disservice to our consumers, and I would say that I'm glad that you're continuing to push. But I would like to know how, in other states, people do things better. There are probably some powers in other states that we don't have here in California. We'd like you to come ask the legislature for more powers in terms of making sure that we have certain things that don't exist.

I know in Canada they have a different system where they can actually have the ability to mandate regular tests on produce. We learned that through our spinach hearings. But I would simply say, as you do look at those various states and other entities throughout the world, that you bring back the best to this Food and Ag Committee so we can give you the tools necessary, hopefully with the Governor's support, to make sure that we can say that we are absolutely—we have more powers than any other state; we're tougher than any other state; and we

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have the power to, you know, do a lot of things that other states don't have. And I think those are the kind of things that we are very interested in, in the big picture.

MR. HOWELL: Those are very good comments and we take them to heart.

SENATOR FLOREZ: Okay. Just a couple of questions, if I could, about this recall and getting back to how we fit in, in this process where you have a company that's bankrupt and information is probably not flowing at this point in time. They told us so on the website. So our number of recalled items has stopped, or do you see the FDA and others continuing to go down the distribution chain to get more products pulled off? And what's the role of our public safety folks in this? I mean, you're notifying folks; they're notifying folks? I mean, how do these two agencies, the state of California and the feds, work when we have such a large recall like this?

DR. FARRAR: Senator, over the last ten years, we've worked very hard to improve our relationships with the federal agencies. And I can say undoubtedly our relationship with the U.S. Food and Drug Administration has improved tremendously over the last ten years. We're in constant communication with the Food and Drug Administration, both with their local districts here—they have a San Francisco district and a Los Angeles district that cover the state of California. In fact, I met with both their district directors yesterday. I'll be meeting with them again today. We're in daily contact with their recall coordinators who work with other FDA recall coordinators in other states and districts to compile those distribution lists and send them to the states where the product went as quickly as possible.

In the event the firm that does go bankrupt, such as PCA that you mentioned, one of their facilities, I believe, it represents some challenges to regulators to get in those facilities, get the legal authority, use your legal authority that you have to get in those facilities as quickly as possible, get access to the records, understand those systems, the data systems that might be in place there or might not be in place, compile those lists as quickly as you can, and then get the notices to consumers. These are the extreme situations that, as Mr. Howell mentioned, we are absolutely looking for ways to put measures in place, to be able to respond quickly, should that occur here in California.

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SENATOR FLOREZ: Great. Let me thank Senator Romero who's co-chairing this committee. I had mentioned that you were at another event with the pro Tem.

And Senator Hollingsworth, thank you for joining us.

We were beginning to have the discussion, Senator Romero, about the fact that even though this recall continues to grow, that the company just declared bankruptcy and has told us that they would no longer be able to provide information because of bankruptcy on a growing number of products which is a little bit scary. I asked Dr. Farrar, How do you deal with that? And I know how Georgia is going to deal with it, but we're going to deal with it in another way. But let me ask a threshold question. I mean, Could this happen in California if this was a California producer, California product, and if indeed a California company said, we're going bankrupt, would we have the ability, your department have the ability, to garnish their records that you've mentioned? Do you have the legal ability to do that? Is this something the legislature should look at giving you, just in the event of something like this happening?

DR. FARRAR: Senator, as I mentioned, we're currently looking at our existing authorities to make sure we do have those authorities in place, should that happen here in California. There are legal mechanisms in place, broad legal mechanisms, that allow us to gain entry to a food facility in certain situations through the appropriate court process. Those sometimes can be a little bit time consuming, and we want to look at that issue as well.

MR. HOWELL: Senator...

SENATOR FLOREZ: Yes.

MR. HOWELL: That is a very good question. And as Dr. Farrar indicated, we are looking at that. We want to bring that issue to closure in regard to our authorities. We believe we have those authorities, but we need to move forward and make sure that we do have the appropriate authorities to take action.

SENATOR FLOREZ: Okay. Yes, I guess that's the issue for us, maybe to come back to the committee—is simply, in the event of this happening in California, if this had been a California company and the company had gone bankrupt and indeed you needed access to those records in order to notify

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consumers, I think Dr. Farrar mentioned, it's a very time-consuming process to go to court. We ought to be able to have in statute things that allow you readily the ability to go in and to begin deciphering those records and giving us some value-chain discussion for distributors. So I would ask you to come back and tell us if you need that. We want to work with you and give you the tools necessary. I do know at the federal level they are restructuring as we speak, so they're trying to figure out what they need to do, a couple of bills at the congressional level moving forward.

How do you, with these 3,000 products, how does your agency, how do you folks deal with getting these products that are contaminated off the shelf? I mean, what's the role there? I think that's the key critical question. Consumers aren't going to pick 3,000-plus items, you know, off the shelf. All consumers knew, I believe, was that it was peanut butter, and I think most consumers assumed it was the jars of peanut butter?

DR. FARRAR: Initially there were a lot of questions about the extent of the contamination, was it in the commercial Jif-, Skippy-type peanut butter products on the shelf. Very early in investigation, there was limited information, as there usually is, in these. It takes a little bit of time to figure out the scope of the contamination within the processing plant and how many products and how much production was affected. Once we and FDA began to understand the magnitude of this, it was clear that issuing a thousand press releases, you know, one for each product, was not the most effective way to try and deal with this. FDA's solution, as ours, in our attempt to get the information as quickly to the public, the media, and the consumers was to establish a website that consumers could go to if they had questions about products in their refrigerator or on their shelves.

As you mentioned, though, it's a fairly daunting task with this many products, to sift through 3,000 products. We in FDA are certainly open to any other ideas as to how to get this information to consumers without confusing them further in these large outbreaks.

SENATOR FLOREZ: At the end of the day, was it fair to say this is still an evolving list, that we really aren't quite sure what products are contaminated and may continue to grow? So in other words, what we might think as everything's off

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the shelf and we're okay, two weeks from now could expand an additional 1,000 products?

DR. FARRAR: As is the case in any of these investigations, the scope broadens as the investigation progresses. The second plant, they came under scrutiny in Texas, Plainview, Texas, and the subsequent recalls, mandatory recalls, that were initiated there considerably broadened the scope and resulted in this latest surge of products being recalled. I think it is fair to say that additional products will be recalled associated with that Plainview facility as the Texas regulators and the FDA regulators sift through those records.

SENATOR FLOREZ: Questions, Members?

Let me ask a question then, if I could. Given that this is an evolving list again, what is your role? What is the role that your department plays? Are you notifying folks? Are you making sure retailers are getting these off the shelf? Are we simply a repository for information for consumers? I mean, what ultimately does your agency do in these things?

DR. FARRAR: First and foremost, we want to make sure we have the most accurate, up-to-date information we have and get that in the hands of the media and consumers as quickly as possible for them to make informed decisions. Secondly, we work closely with our federal colleagues to make sure that the recalls that are conducted are done as expeditiously and as efficiently and quickly as possible. We do recall checks with firms, a sub-sample of firms. Obviously I don't think anyone has the resources to audit thousands of distributors, brokers, retailers, but we do a sub-sample along with FDA, and we look at those results to see if those recalls were done effectively. Where we have information that they're not, we work with the firm to remedy that as quickly as possible. So getting the information to the public, doing the recall effecting these checks, working with our federal colleagues to get that information as quickly as possible are all part of our efforts.

SENATOR FLOREZ: And how do we measure success? Is it 90 percent of these off the shelf, 100 percent off the shelf, 80 percent off the shelf? I mean, how are we in the legislature to measure success in these types of recalls?

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DR. FARRAR: Another issue that states and federal agencies are looking at now, we need to address that question. It's very difficult to come up with an objective measure. Even if we contacted 100 firms and 98 of them we feel did a very effective job, the two that didn't, if those two were the largest distributors of that product in the state, we couldn't say that was an effective recall. So it's very difficult to come up with cast-iron, concrete numbers. There's some subjectivity in that analysis.

SENATOR FLOREZ: Does California have any sort of food-safety powers that we could implement beyond what the FDA has? Because it seems as if FDA indicated that they were urging manufacturers and distributors of products from the plant to inform consumers. I mean, this was the big thing, that in essence we're asking if FDA is, urging, and I guess the FDA asking a company that knew a year ahead of time that they were sending bad stuff out the door and urging them to please inform consumers doesn't give me any confidence that this is the best food-safety system for this state.

What can we give you if indeed you find folks that you mentioned in the distribution chain? Are you urging them as well or can you do things other than urging which might be more powerful for consumers here in California?

MR. HOWELL: Senator, I think, again, you pose an excellent question and this relates in part to what we're doing.

SENATOR FLOREZ: Just so you know, my staff writes these great questions, so don't give me any credit. So I just want to make sure you know that.

MR. HOWELL: Oh, well, we should pass along our thanks to them.

We're reviewing our legal authorities relative to these recalls because, you know, what's happened over time, it's really a short space of time. We've had very large recalls, and so part of that, that process, we want to evaluate our authorities and determine what do we need; what additional efforts do we need to move forward with? Because, you know, as we're a public health agency, our concern is for the public.

SENATOR FLOREZ: I get it. You know, we're a very impatient legislature. So when do you think that might occur, so you can get to us to give you some powers that may not exist at the federal level that will—you know, Members, I

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want you to know, that when I read the recall statement issued by the FDA, I want you to know that actually the FDA's statement of recall had to be approved by the company that created the actual problem. This is nothing with the state. I mean, this is, you know, this is why we needed Gloria to run for Congress to get in there and do something here.

SENATOR GLORIA ROMERO: But I chose something different.

SENATOR FLOREZ: But she chose a higher calling here at the state. But why we are all still in the state. I guess the issue is, what can we do at the state that would, as you are handed this very, if you're handed, if you will, the football? You now have to go even deeper into the distribution chain and try to take what's going on in California. I mean, how can we as a state give you more powers, more teeth? I don't think anyone in this legislature would not want to give you what you needed. And the question is simply, What is it beyond what our very limited federal government has? I mean, any time the federal government is urging a company to do more in terms of notifying consumers, or it has to have their statement approved by the very company in order to issue their own recall, is very concerning to us here at the state. And I'm wondering, that's not something we have to do, right? In other words, you don't have to go to a company here in California and ask for their permission; is that...

DR. FARRAR: As I understand the question, let me just clarify it.

SENATOR FLOREZ: Sure.

DR. FARRAR: Currently we do not have mandatory recall authority, neither does FDA, or anything other than infant formula in the food category.

SENATOR FLOREZ: And could you in California? That's the question of the day.

DR. FARRAR: Could we...

SENATOR FLOREZ: ...have mandatory recall authority.

DR. FARRAR: I think...

SENATOR FLOREZ: ...above and beyond what the federal government has?

DR. FARRAR: That question came up in legislative hearings at the national level, as you know, with FDA, and certainly FDA and states and California are

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looking at that as one possibility. But again, I want to reinforce that this food safety system is so complex, that one answer is not going to fix our system here.

SENATOR FLOREZ: I got it.

Yes, Senator Romero.

SENATOR ROMERO: Can I just follow up on the question posed by the chair of Food and Ag? Are you saying you don't have the mandatory authority now?

DR. FARRAR: Correct.

SENATOR ROMERO: But you do not have a prohibition. Let me ask the opposite way. Is there a prohibition on the mandatory recall? Is it permissive; is it mandatory; is it just sort of silent in law and states can do what they feel is appropriate?

DR. FARRAR: Currently there is no authority at the state level for us to compel a firm to conduct a recall. In the past, throughout the last 14 years that I've been here, we've always been successful at persuading firms when we feel there is a need for a recall, persuading them and convincing them to do the right thing. That's always been the case in the past.

SENATOR ROMERO: But let me just be more specific. There's no authority but is there a prohibition?

DR. FARRAR: There is no prohibition that I know of, Senator, but without enabling authority to compel a recall, I'm not sure. It's a legal question, and I can't answer that. Without that specific enacting authority, I don't think we would be able to compel a firm to do that.

SENATOR ROMERO: Senator Florez, I would just think it seems as though it's silent. And so at a certain point, our departments, whether it's Food and Ag or Education, at some point—at what point do they perhaps just say, let me step up to the plate and do what we think is right for the consumers or children of California?

DR. FARRAR: And we have historically done that, Senator. We have had a lot of midnight, 3 a.m. calls with firms, weekend calls with firms when the evidence comes together to convince us that, yes, this product has to be recalled.

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And as I said, we've been successful in persuading them to do the right thing in the past.

SENATOR FLOREZ: Let me follow up on Senator Romero's question or the more specific question, Do you want this power? I know we asked this during the spinach outbreak, but I'm going to ask it again. (Laughter) I mean, is this something that we want?

SENATOR DENNIS HOLLINGSWORTH: ...for the legislature to decide what powers the various arms of government should have rather than asking them what they want? Shouldn't we decide what they need?

SENATOR FLOREZ: I think it's a question is, do they need it? The question is, Do they want it?

DR. FARRAR: Senator...

SENATOR FLOREZ: Would it give you an extra amount of, another tool for food safety in the state of California and have the ability? And let me just use a specific example. Given that you will do, urge companies, you work with companies and you're up at 3 a.m. and getting companies to do the right thing, what happens, like in this case, when a company flat out goes bankrupt and they say, in their own statement, the Peanut Corporation has announced, that because of its bankruptcy proceedings, it is no longer able to communicate with customers of recalled products? That's what the company says. So now there's no one to urge, no one to call at 3 o'clock in the morning. So what do you do? There, you would have the power. You would have some powers of hopefully beyond the powers we have now, and I think that's the question when these types of things occur, and I know that they can occur, particularly when you're a company that products people just don't buy and you can't just, you can't make it through.

MR. HOWELL: Senator, I don't think that we're prepared today to make a statement right off the cuff.

SENATOR FLOREZ: Okay. Can you think about it?

MR. HOWELL: I think that we should think about it.

SENATOR FLOREZ: Okay. Think quickly because I think we would like to definitely give you the impression that the expansion of your authority is something that many would debate, maybe on this committee. But if it is within

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the purview of making food safer and having more tools available, and particularly in the what-if scenarios of these bankruptcies where information no longer is flowing and you have to get in and get information without going to court and that taking two weeks to figure out ultimately where the distribution flows are for a product that's contaminated, I mean, these are the types of things that the legislature early on liked to work with you on without a bill at this point in time and trying to get some information from you.

SENATOR ROMERO: If I can follow up on that as well. The question was posed, if you should have the power, and maybe sometimes there's the reticence to perhaps assume power. But another word that could be substituted would be *responsibility*. I mean with power comes responsibility; and with responsibility, there is power or the absence of that. So as you're considering whether or not you want the power, I think both of us would like to also know, Do you want and should you want the responsibility to be proactive in notifications of these type of recalls and perhaps dangerous outcomes to consumers and children in California? So also just chew on that as you're thinking about your response.

MR. HOWELL: It's quite a bit to chew on, and of course we don't make legislation on this side of the table.

SENATOR FLOREZ: We do and that's why we're asking. On this side, we do and the question is, you know, how can we strengthen our food safety in a way that a program that gives you the tools—California's always in essence been way ahead of the rest of the nation on environmental issues, well beyond the threshold of the federal government, and that's been good or bad, depending on where you sit in the legislature. But I don't think anybody from any party would disagree that we can have higher powers when it comes to food safety. I mean, I think that we would all agree that if we have the highest powers and we go well and beyond the federal government, then I think ultimately it's going to be a much better place and I think ultimately for the integrity of the agricultural system and agricultural community. I don't have to tell you when, you know, one spinach company is a bad player what it does to the entire industry, and it would be much better to get right down to the core of the one company versus the entire agricultural

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community being hurt or the economy being hurt because consumers don't know ultimately as these investigations occur.

Dr. Farrar mentioned earlier, and I read some of the statements coming from your department on, you know, it's not the peanut butter on the shelf. It's a whole bunch of other things. And I think that was probably not what most consumers thought at the very beginning of this. They just walked right by, I guarantee you, the peanut butter aisle, and then they picked up a Sara Lee frozen food and they might have gotten some other, Power Bar, but yet these were the items that were contaminated, and the very item that they walked by wasn't. And that's the specific kind of information, in many cases, what we're looking for.

DR. FARRAR: Senator, can I just make a comment? I assure you, we take your comments to heart, and there is no one that wants to improve the food-safety system in California more than us at the program level. It is our calling. I do hope that in the discussions we can continue to focus additional effort as we are at the program level and looking at ways to prevent these events from happening. Responding to these events takes an inordinate amount of resources. If we can put the proverbial ounce of prevention in here and prevent a few of these or all of it, ideally, that's the preferred way to go obviously.

SENATOR FLOREZ: And let's just turn to that for a moment. And that is, at least in this case, it's been reported that when peanut butter was considered a low-risk food, as opposed to beef or fresh vegetables, at least according to some testimony to Congress, is that because peanut butter was in this category of low risk there was very little, if you will, oversight in this particular plant. In fact, it was reported that the FDA only inspected this plant—the last time it was inspected was 2001, and so here we found ourselves in 2008, because it was in a low-risk category.

Do we have any of those low-risk categories in California in any of our plants, or do we treat everyone equally on the same sort of food-safety paradigm? Everyone should be concerned no matter if it's peanut butter or spinach or beef or any of these other items.

DR. FARRAR: Our current statute, Senator, requires us to do inspections of food facilities, either on an annual basis or on a risk-assessment basis. We, like

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most other states and the FDA, have utilized a risk-based assessment for sometime now. We have high-risk, medium-risk, and low-risk firms; that depends on a variety of factors—previous compliance, history, type of products made, previous outbreaks linked to the commodity, and so forth.

The frequency of inspection that you mentioned, that FDA had not been in the facility since 2001, is pretty well documented in previous hearings with the Food and Drug Administration. Their resources allow them to get in food facilities on the average of once every—we've heard the figures once every ten years in these food facilities. Our goal is to get in high-risk food facilities at a minimum of once a year. And depending on other factors that I mentioned, more often than that occasionally; medium-risk facilities, we try to inspect every 18 months or so; in low-risk facilities, every two to three years.

SENATOR FLOREZ: Let me go through some of those expansion authorities that the FDA is asking for. I'd like to get your opinion on them. The one thing the new FDA folks are asking for under the Obama Administration, is that they'd like to have the authority to issue preventive controls for high-risk foods. And since they're asking for that, my question is, do we have that in California? Do we have preventive controls for high-risk foods?

DR. FARRAR: The reference to the preventive controls for high risk equates with a term called HACCP, Hazard Analysis and Critical Control Point. We do have mandatory HACCP, as the Food and Drug Administration does, for certain food commodities—for juice and for seafood products. It's not a mandatory requirement currently for all other commodities.

SENATOR FLOREZ: And would HACCP be helpful, given that the new administration is asking this power at the federal level, for you to ask this legislature for matching, or is this something that would basically preempt what you would do? Or do you need specific mandate from the legislature to take it to this other level?

DR. FARRAR: To compel a firm to have that specific system...

SENATOR FLOREZ: HACCP?

DR. FARRAR: ...in place would require specific enabling legislation.

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SENATOR FLOREZ: Okay. Okay. The FDA is also asking for authority for enhanced access to food records during routine inspections to ensure that inspectors have access to all information that bears on food-product safety. Do we have that as well here in this state? Do we have that same access to records that the new folks are asking for at the federal level?

DR. FARRAR: Access to records has been an issue with the federal agency for some time. Our state law is different than federal law in this area in that we do have access to records in a facility.

SENATOR FLOREZ: Okay. The last thing that they're asking for, at least of significance to this issue, is the authority to require food facilities to renew their registrations every two years. How often are food facilities in California asked to renew their registrations?

DR. FARRAR: On a yearly basis.

SENATOR FLOREZ: On a yearly basis. Okay. So that's helpful as well.

Let me ask just a couple more questions, if I could, in terms of the notification. And as you're going through this recall yourself, what does it mean to have an evolving list of products that are changing constantly? How do you deal with that?

DR. FARRAR: As discussed earlier, you know, especially in a large facility, the experiences and event, it takes a bit of time for investigators to determine the extent of contamination—was it a one-day event; was it a one week or one month; can they show us with scientific proof that the limits on the initial recall are sufficient? We have to evaluate that information and have test results. How can you convince me that you need to limit this recall to one week and not one month? And that burden is on the firm to convince us that they have sufficient data to do that. As the firm, as we get into the firm, as we begin to investigate, if we see evidence that, you know, this was likely a pervasive contamination over a longer period of time, then we'll relay that to the firm and say, your one-week production is not sufficient; you need to expand that. And that's why frequently you will see in these recalls expanded recalls that result.

SENATOR FLOREZ: Gotcha. Let me ask one of the things that was reported, at least in this particular case. There was contamination found earlier,

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as I mentioned, 2007, yet the product was shipped. And the question simply is, Do we in California, is there an obligation for production companies to, in essence, when they are tested positive to allow product to move through until the second test or some determination that it is contaminated? Do we have some sort of check that the federal government doesn't so that product isn't moving out the door if indeed it's first tested for, let's say, a food-borne illness?

DR. FARRAR: Currently in our statute, Senator, there's no requirement for a food processing/food manufacturing company to report positive test results to regulatory officials.

SENATOR FLOREZ: And that's a chilling statement only because it just sounds really bad. And I guess, Is that something we should change? I mean, for a company, not to have to require that they found a food-borne illness to you folks—you are the public-health folks. Why shouldn't we demand it the very first test, at least notify you so that we could, or hold the product until the second test gives us some determination? Because what happens, it's out the door and then there's a recall and then products are taken off and then it kind of hurts everybody. So I'm just trying to figure out how that works.

MR. HOWELL: Senator, part of this process is, we're reviewing this internally, and we want to share information with you that's accurate rather than just react to your questions without having some further consideration. So, you know, I'm not trying to be evasive. It's just we don't want to end up giving you information that's not good information.

SENATOR ROMERO: Senator Florez, if I might add, though, I hear your comment. But with all due respect, this is not the first time that something like this has happened. We've gone through a number of other food products in the chain. If this were the first time that this had ever occurred prompting you to go back—and I appreciate that you want to study this and have an intelligent dialogue, but we've sort of been there, done that.

MR. HOWELL: Well, we have been there and done that to a certain extent, and we're responding from the standpoint of evaluating the actions that we've taken, trying to explain to you. But we don't want to be putting forward statements that will in fact end up giving us a problem and some of these won't.

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But it's with any type of legislation, and you all know this far better than I do—it's the crafting of it that makes it work in the long run.

DR. FARRAR: Senator, could I just use an example? You mentioned the mandatory reporting, proposed mandatory reporting, if it had some positive test results that came out at some federal hearings as well. I think any solutions that are crafted, we collectively have to ensure that whatever those solutions are, don't make the problem worse. For instance, requiring firms to report positive test results, if there's an effort in that direction, we have to be sure that it doesn't result in firms simply stopping testing product to avoid having to report any positive findings.

SENATOR FLOREZ: Well I know, but I think the issue, just from a policy perspective is, and from a consumer perspective is, the following, and that is, if it is tested, the very first test gives us, say, food-borne illness report, to me, this question, Do they have to notify anyone?

DR. FARRAR: Currently they do not, sir.

MR. HOWELL: And certainly we can answer—I mean...

SENATOR FLOREZ: I'm just wondering, so your company, you know, in many cases, you have a batch of something to test positive for food-borne illness, and yet they don't have to notify anyone. Let me ask a follow-up question. Do they have to keep any of these test results on file? Are they required to at least to keep those results, at the minimum?

DR. FARRAR: I'm trying to recall a specific wording in statute for maintenance of records. As I recall, it's fairly broad wording of maintain complete and accurate records. I don't think there's specific wording that requires them to maintain positive test results or test results.

SENATOR FLOREZ: Okay. I'm glad Senator Romero's here because we made a big push to change the Ag Committee to the Food and Ag Committee. We have a lot of work, I think, to do on the food side.

Let me ask, given those two answers, so a company can consistently test positive; it can retest a sample as negative but you'll never know?

DR. FARRAR: Essentially there's no requirement for reporting those results, Senator.

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SENATOR FLOREZ: And I guess the question is, Should you know?

DR. FARRAR: As Mr. Howell mentioned, that's one authority that FDA and states are looking at. And again, this...

SENATOR FLOREZ: But doesn't the positive test results say something about the plant? I mean, doesn't the fact that they tested positive say anything to you folks that, red flag. But if they never have to tell you, then we're waiting for an accident to occur after the fact?

DR. FARRAR: Absolutely. Positive test results would be, would be a signal that something's wrong in the facilities.

SENATOR FLOREZ: And in your view, is there any reason companies should be mandated to contact your office with a positive test result? Here's one of those you've-got-to-think-about-it questions, right?

MR. HOWELL: Well, I don't know—again, you know, the answer to that question just, as you put it, yes.

SENATOR FLOREZ: Okay. That's a good answer.

MR. HOWELL: But again, I express my concern that it's the crafting of the legislation. We've seen legislation crafted in the past that has not had quite the desired outcome and there's...

SENATOR FLOREZ: Well, we're good at crafting on this side; trust us.

MR. HOWELL: I know you are.

SENATOR FLOREZ: You know, so we're not as bad as you think we are.

MR. HOWELL: No, no, no, and I don't mean to imply at all that you're bad so don't...

SENATOR FLOREZ: So how many times can a company retest a product? In other words, they can keep testing and testing and testing and they finally get a negative. But at the same time, after the first test, the product continued to go out the door. Is that the way it works, our food system here in California?

DR. FARRAR: There are currently no statutory requirements for a number of retests.

SENATOR FLOREZ: And that's a problem in itself. So under California law, a company can ship a product after it tests positive for salmonella, for example. Is that where we're at?

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DR. FARRAR: There are laws that deal with knowingly shipping adulterated products, Senator. Proving it after the fact, is the issue.

SENATOR FLOREZ: But it's after the fact. So in other words, they can—so they can test positive for salmonella and a company can ship it. There's no holding period requirements as well, right? So there's nothing that would require them to hold it? And we have to wait for them to get a negative result; then, yet, they'll put it in a file that we'll never see?

DR. FARRAR: As mentioned, I don't think there's any requirement in current statute for them to show us positive test results. This current statutory wording is fairly broad in maintaining and keeping timely and accurate records for a period of time.

SENATOR FLOREZ: Okay. So is it fair to say that the food-safety system in California—and even though we're pointing to Georgia—is an honor system at the end of the day?

DR. FARRAR: Well, those are your words, Senator. (Laughter) I wouldn't call it an honor system, but we do inspections of food facilities. We take enforcement actions against facilities when we can show that they're violating statutes or regulations. We've taken a number of enforcement actions each year. So I understand what you're suggesting, but there is some structure in place.

SENATOR FLOREZ: Yes.

MR. HOWELL: And I think it's worthwhile to point out, Senator, that Dr. Farrar's program issued 5,300 notices of violation in '08. They embargoed or quarantine. There were 320 embargoes or quarantines and there were 192 voluntary condemnation and destructions. He operates a very strong enforcement program, and I wouldn't want the committee to...

SENATOR FLOREZ: We're not doubting—we've had Dr. Farrar in front of our committee many times—in terms of his resolve. What we're trying to do is give Dr. Farrar an appropriate budget, the amount of people that he needs, and the right statutes that allow him to do his job. And that's what we're here for in the legislature, and I know that the Department of Finance doesn't run all the policies here in the state of California and so, you know, our job is to make sure that we make priority choices. And we're going through this particular example in Georgia

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in peanut butter to figure out how we might be able to create legislation that in essence provides for the tools necessary and, as Senator Romero says, in the absence of silence on the issue, it's how to give California the appropriate tools.

Do you think our system, given that protocol issue that we've just mentioned, should be more transparent? We need more transparency in this process?

DR. FARRAR: In what way, Senator?

SENATOR FLOREZ: Records, tests, re-tests, product goes out the door, allowing you to have more? I mean, I personally think they should report it to you, even you keep it in your file. And I just would think people would feel more comfortable with reporting to our newly formed public health folks in terms of this issue, that you had some indication that something tested positive. I think Californians would be shocked to know that we could send any product out contaminated until such time the company had a negative test, and we don't know how many times they run for a negative test, and we don't know ultimately because we won't know until there's an outbreak, and then we'll go back and figure out an investigation that this occurred a year ago, and then the committee will convene and we'll ask you a lot of tough questions. And I think the question is simply, How do we make that a more transparent system? And so we would enjoy working with you on trying to figure this out from a perspective of what happened here.

Members, are there any—Senator Liu.

SENATOR LIU: Two things. You've been talking to us about your process and how many times you investigate, et cetera. Is there, to your knowledge, any other state that does best practices better than what we do here in California? And then we talked about—Senator Florez has really been pressing you on changing behavior or changing practices to make your job better for you and you've come back and said, well, you know, you really like these things to be considered. Is there a timeframe where you would like to report back your concerns or comments or delivery of how you can best improve your practices?

MR. HOWELL: We don't have a timeframe worked out. We'll leave that up to the committee.

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SENATOR FLOREZ: Okay.

Senator Romero.

SENATOR ROMERO: I think just listening to the answers to this line of question underscores to me, Senator Florez, how significant this hearing is and why we need to do some additional oversight and think about legislation as we move forward.

We talk about it being a global economy and that's true. It's also a global food chain, and in California we pride ourselves on being health conscious. We say, you know, you are what you eat. I think Californians would be shocked to know that we don't know what they're eating. In this legislature we've seen other members carry bills that deal with genetic modification of the foods, labeling, et cetera. I mean, we are what we eat. And so I'm going to urge you to go back and consider your responses.

But, Senator Florez, I wish they would have walked in and said, Senator Florez, you had us at hello. So I'm going to urge, really, take a look at it; work closely. The whole point of Senator Florez's leadership on this committee was to really link consumer protection, consumer safety, food and agriculture. We're in a time and day where we don't just want to put food into our mouths without knowing that food chain. And if I were to go to my HMO and take a test, whether it's for HIV or pregnancy or anything that's for my health—diabetes, high blood pressure—they notify me. And if there is a question, we retest. But there's notification, just the consumer's right to know.

I appreciate you being here, Senator Florez. I just really want to thank you for—it's frightening really, actually, listening to the answers we've heard today.

SENATOR FLOREZ: We have a lot of work to do and I do appreciate—and let me simply say to Dr. Farrar who I always have—we've had a lot of time with each other on various issues from beef to spinach and you name it. But I don't doubt the resolve. I think the issue here, as Senator Romero says, is that consumers, which is a part of the focus now of the Food and Ag Committee, a very vital part of this, they just want to know that their food went through the best regulatory process in the world, period. And I think that's our role, to try to work with you to make sure that the produce and food and things that go through the

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system are ultimately safe as possible and to give you the tools that maybe no other state has, given that. So we look forward to working with you.

I think that Senator Romero says, at the end of the day, if we're in a system where our product can be sent out, tested positive, and California law doesn't prevent this product from going out and doesn't even require records to be held and put forward to our public health folks, that's a problem. And so we look forward to working with you both, and thank you for your testimony.

DR. FARRAR: Thank you.

SENATOR FLOREZ: Okay. Let's move on to our second panel. This won't be very long because we want to get to our school section as well.

Could we have Keri Bailey from the California Grocers Association come up and Mark Schlosberg—that's right; I'm sorry—from the Food and Water Watch come up and then go ahead and take some testimony? Thank you for being here.

MS. KERI BAILEY: Thank you.

SENATOR FLOREZ: Can I just ask some questions and maybe we can submit the testimony for the record? Is that possible?

MS. BAILEY: Sure.

SENATOR FLOREZ: Let me just first ask you the threshold question, and that is, How does a grocer first learn that a food product is recalled? I mean, what's your first—we talked about the problems in terms of the production side of this thing. But now it's down all the way—it's in the truck. It's out; it's on your floor. I mean, how do you first learn that a food product is recalled?

MS. BAILEY: Sure. And, Senator, again, I'm Keri Bailey and I have the privilege of representing the California Grocers Association. Just really quickly, we've been the voice of the grocery industry for over 120—110—years here in California. We currently have about 500 retail members representing more than 6,000 individual stores in California. So as you can imagine, the answer to probably all of these questions today needs to be prefaced by, it depends.

SENATOR FLOREZ: Okay.

MS. BAILEY: A lot of our stores work directly with the manufacturers. They have great relationships with the manufacturers that they use. They receive word directly from the manufacturers. Sometimes they receive word directly from

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the FDA. Many of our members do participate in a national program run by some national associations that is then kind of a third layer. In the case of some folks who have franchise relationships, those companies have systems set up so that the home office receives information and distributes it directly to their franchises.

SENATOR FLOREZ: Okay. So tell me, how do you first learn a food product is recalled? You've just heard me say that the company that created this is bankrupt. They're no longer putting information forward. The list has grown. At the beginning of this, from 500, to 800, to 1,000, to 1,200, to 2,500, 3000, as of today, and all of a sudden the company puts out a notice saying, we're bankrupt; we can't provide consumers with any more information. So how do you as a grocery store figure all this out in terms of the product on your, that's coming through your door?

MS. BAILEY: Yes. Our response to these types of situations is only good as the information we receive. And unfortunately, if the information does not reach us, you know, there's not a lot we can do about it. I'm not sure on a going-forward basis what happens if PCA decides they want to stop communicating. You know, we would look to the FDA. We would look, quite frankly, to the state agencies, you know, to continue to provide what information they can.

SENATOR FLOREZ: Okay. Would you look to the folks who were just here, the panel earlier, most likely?

MS. BAILEY: Our folks generally look to both the FDA and the state agencies—FDA, I believe, primarily.

SENATOR FLOREZ: Has there ever been a recall that the retailers didn't know about under the system?

MS. BAILEY: I'm not aware of one. My understanding is, at least with regard to Class I recalls, which are the most serious that the FDA estimates there's 188 of those a year, I would assume everyone knows about them.

SENATOR FLOREZ: So do you believe that the current notification system is sufficient?

MS. BAILEY: The one issue that I did hear from our membership in discussing this issue is that there—sometimes there's a time lag, that sometimes the processes that manufacturers go through with regard to the FDA in getting

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approved wording and those sorts of things can sometimes be a little frustrating for them. But in general, I think they think the system is fairly timely.

SENATOR FLOREZ: And I think, Members, the timeframe lag, as you look at the timeline of these types of recalls, is always long because we actually are waiting for FDA to get approval from the very company that began the recall itself. And so our FDA is constantly urging a company to pull product or notify folks. It's not as though FDA says you shall and you will. And so, as we know, those are changes being asked for in the current administration through Congress.

Let me ask a specific question in terms of the standards. I mean, are there—all of your stores have some protocols when it comes to items that are recalled? In other words, how does everybody...

MS. BAILEY: That I am aware of, yes. Everyone has protocols in place because, as you can imagine, grocers, they take their responsibility to their customers very seriously. Food safety is a top priority, not only because, you know, they've spent years building up loyalty and trust and confidence; but quite frankly because those of us that work in the grocery industry, we feed our own families food from grocery stores. There is no incentive for us, economic or personally, to take this issue of food safety as anything but a top priority.

SENATOR FLOREZ: Gotcha. And how do I—yesterday, one of my staff members went to buy a Clif Bar that was on the list. How was I able to walk out the store with that?

MS. BAILEY: I don't know the specifics of that...

SENATOR FLOREZ: I mean, how in general do you to stop those types of things from occurring?

MS. BAILEY: We get information. Sometimes that information is specific down to a lot number, a date of manufacture, a plant, a specific plant. I don't know if the product you're talking about may have a dozen different manufacturing plants. It may have been manufactured in one that wasn't involved in a recall. So I think, you know, it could have been a date range that was outside. I mean, there are a lot of factors. I wouldn't begin to venture a guess on what happened in that situation.

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SENATOR FLOREZ: Okay. And I should say in full disclosure for members, we have introduced a bill, SB 550, that would require at the scanner that any recalled product, no matter how large, where it's at, not be scanned and stopped right there at the system. Is that a workable system from your perspective? I mean, I know some of your members have it; some don't?

MS. BAILEY: My understanding is no. Nobody currently has that system. I'm aware of some systems that use loyalty programs. And when a customer returns, it will make a notation on a receipt that you may have purchased a product, but I'm not aware of anyone that—and I'm not aware of the technology—no one that I spoke with is aware of the technology that would allow that real-time kind of transaction.

SENATOR FLOREZ: Okay. Well, let me tell you that there is a technology. It's used to—Kroger uses it. And in fact, there are stores that use this here in California. Ralph's uses it in Southern California that, where items are stopped. The Safeway here stopped a couple of items and can stop a couple of items. I mean, how are you not aware of it if you're representing the Grocer's Association?

What has been represented to me is, as the scanner systems that are used in stores use a different set of coding numbers than what is actually used, the information that is contained in a recall. So if you have a recall, that is, every product manufactured by a particular company without regard to date, without regard to plant location, without regard to some of those factors, you know, you may be able to implement a system like that. However, most recalls are much more narrow in scope, and so the barcode that you would be scanning wouldn't include information like date of manufacture, plant location of manufacturer, so you would end up with a situation where if, you know, for instance, Keri Bailey Cookies manufactured at Plant X have been recalled but Plant Y and Z are perfectly fine, there are no health risks, that you may end up with a situation where you would have to recall everything or stop the sale of everything. So I did speak with...

SENATOR FLOREZ: I'm wondering—let me interrupt you. I mean, I just handed Senator Romero a list of some recalled items—and that's yours, Gloria. You can hold onto it.

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But I'm not sure, number one, that there is a very simple technology. I'm not trying to promote any technology. It's just simply a lot of the fanfare on software ability to take what the FDAs put out and merge that data so indeed when you are at the code, it is stopped. In fact, my staffer was stopped yesterday in Safeway with the very same scan code and said, this is a recalled item. So what's concerning to me about that, if I'm looking at the Food and Drug Administration's website, they provide code product down to specific and they provide lot numbers down to the specific. And I'm wondering why we couldn't merge that from a software perspective in terms of specific lots. You said it could come from anywhere. We'd have to look at the manufacturing plant. But at the end of the day, these are very specific information that is provided from the FDA all the way down to stock numbers, product codes, and lot numbers. I mean, these are very specific. This would allow you to pull these items from the store, and I'm just wondering why we couldn't merge that with the data that is actually scanned in your facility. I'm sure if they wanted to make a price change, it would be very easy, right? You would just simply go to the code and say that's going up a penny or a penny and a half. But when it comes to food safety, why couldn't we in essence match that so that in essence it's real time? So when the FDA does say, this is absolutely on the list—it's on our website, you have to find it—but why couldn't the stores download this, merge that with software? So by the time I'm running through a Clif Bar, it stops and it says this product is being recalled and so you can't buy it or—I mean, why couldn't we, given some stores are doing that?

MS. BAILEY: Again, my understanding, and I have actually discussed the issue with some of the same folks that you have. And my understanding of their systems is, quite frankly, different.

My understanding, again, is that the code that is used to scan the product calls up the price but that the information required in recalls is not necessarily included on that code. So my understanding of the situation is, you would have to create California-specific code that a manufacturer located in, say, Georgia, would have to use for the portion of product being shipped to California because currently with most recalls the information that is on the barcode is not the same information. It's not as expansive. So I may know that this is Keri Bailey's peanut

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butter cookies; but by the barcode that's used to scan it at the checkout, I don't know what plant they were manufactured in. I don't know. So our understanding is, the systems are not necessarily compatible that way.

SENATOR FLOREZ: Okay. Well, our understanding is a real life being stopped at the checkout yesterday and saying this is a recalled product. So somehow, we'll have to come to some conclusion with you on that because there are some stores that obviously do it and some stores that don't do it. And I'm just wondering because, from the grocer's perspective, you're really the last stop for most people walking out the door. Would you agree? I mean, in other words, you're walking out with something, most likely, that is going to make you sick or not and we still are trying to figure out how to make recalls work better. But you're the last, you know, place that somebody would find that information. I mean, do you find some sort of a thought process where the grocers should participate more in this food-safety notification process other than some of the things that it's currently doing?

MS. BAILEY: Again, grocers take food safety as a top priority. By the time an adulterated product reaches a consumer, there are many, many processes and issues that have failed that occur before shipment of that product even to the grocery store. The best way to protect consumers is to ensure that manufacturers are manufacturing safe food products and...

SENATOR FLOREZ: Did you get any sort of sense of security listening to the last panel that that's, you know—it seems as though they're saying, that after the first batch is out and the second tests are done months later or weeks later, it's already in your store. And then it's a recall where Senator Romero's bought an item. She's probably bought it and gone. But if she did, she ran her club card probably through whatever store it's at. I mean, you have that information. I mean, could you not notify Senator Romero that we noticed that you bought this particular item; we'd like you to also pull it from your shelf? I mean, are you doing these kinds of proactive programs?

MS. BAILEY: Some folks do. As you know, not all grocers have club cards.

SENATOR FLOREZ: Yes.

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MS. BAILEY: And information that is obtained through the club-card program is very—it's dependent on the consumer. For example, in my household, we have two club cards—one from before we met and merged households. However, we still use them both. If someone tried to contact us as a consumer, they've got the wrong address and phone number if he happened to use my card.

SENATOR FLOREZ: What if somebody wanted to opt in? What if somebody wanted to opt in to your club and want to be notified about food recalls? So in other words, there's a box that says, I want to opt in to a program that says, if any item is recalled, that I can...

MS. BAILEY: I certainly can pose the question. I can, you know, obviously for our members that don't run loyalty programs of that nature, that would not have any impact unless, you know, you would anticipate requiring every grocer to set up that type of...

SENATOR FLOREZ: No, I get it. But it has an impact on the one sick person that has to do dialysis for the rest of their life because they've walked out with a product that's not your fault. It's because of in essence some manufacturer not producing something in the right way. So our goal here in the committee is to go through the entire value chain and say, Where are there modes where we can stop some of these things from occurring? And I do know that some are notified even on a receipt. I mean, there have been some stores in California where it actually will tell you that you may have bought a product.

MS. BAILEY: Yes, they use their loyalty programs to do that. And as consumers of grocery products, folks in the grocery industry would much rather see that consumer, you know, not have adulterated food shipped to a grocery store than have these issues. I think, you know, really, the panel prior to our panel illustrates a lot that potentially there is room to do on that, on that arena, to prevent these problems, an ounce of prevention, you know, is worth...

SENATOR FLOREZ: No. I've got it. But this is an entire food chain where we're trying at the beginning. But at the end, if you can do more—I mean, I don't think there's a Californian out there that wouldn't want their products scanned, stopped before they walk out the store, as marked *recall*. I can guarantee you that I don't think there's 2 percent of Californians who say, no, I want to walk out with

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a recall product and I really feel that this is an infringement on my personal privacy.

MS. BAILEY: And given that the bill was introduced just a few days ago, and we had a discussion with you just a few short weeks ago, you know, it's obviously an issue that we can look into further, information that you've been given. Speaking to the same people that I've been speaking to doesn't seem to—at least our understandings of that information—don't seem to mesh up. So, you know, we can continue to talk about the issue and we'll be happy to do that.

SENATOR FLOREZ: Great, great. And I'm not going to debate the bill. I'm just simply asking the question, Do you feel there's value in having technology, of you being the last point before somebody walks out this door, of having that check?

MS. BAILEY: I wouldn't want to make a value statement on any specific technology to be implemented. However, members that I've spoken with, you know, did say, as technology has advanced, the entire system has improved.

SENATOR FLOREZ: Right. And I guess our question is—we're trying to create a technology solution that would not require the legislature from having a food-safety bag checker before they walk out the door, which probably you wouldn't like either. So we're trying to find a cost-effective way for you to do this but at the same time recognize, that with this information constantly changing so quickly and with FDA putting out their items, I've given, for example, very specific types of skew numbers in many cases and product codes. It seems to me that there is a way, and it should be way for you folks for you to participate in a program that would in essence allow the last check, if you will, before people walk out the door with a tainted product.

MS. BAILEY: Well, I think...

SENATOR FLOREZ: And want to have a willingness to do that. That's really what I'm trying to gauge, that you really feel that there's some value in that. And I think you'd see more, we're not sure.

MS. BAILEY: Because again I think we're not entirely convinced that the technology exists to do what you seek to do.

SENATOR FLOREZ: Okay.

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MS. BAILEY: I think...

SENATOR FLOREZ: Kroger put out a very large press release on their wonderful technology and how it's helping in the food-safety arena. I mean, call Kroger. Are they a member of yours?

MS. BAILEY: Yes.

SENATOR FLOREZ: Call them because they put the press release out—we didn't—touting their technology. I'm just wondering, if they're doing that, why wouldn't everybody else be doing that?

MS. BAILEY: My understanding of their program is that it is tied to their loyalty card and that it is an after-the-fact program.

SENATOR FLOREZ: Okay. Let's move on. Do you have any other items that you would like to—Senator Romero, do you have any questions?

SENATOR ROMERO: No.

SENATOR FLOREZ: Okay. Great. Okay. Mark, why don't you go ahead and give us your testimony?

MR. MARK SCHLOSBERG: Good morning, Chairs Florez, Romero, Members of the Committee, and staff, my name is Mark Schlosberg. I'm California Director for Food and Water Watch, a national nonprofit consumer organization with offices in Washington, D.C., and California offices in San Francisco, Los Angeles, and San Diego.

I welcome the opportunity to address the recent salmonella outbreak, flaws in the food-safety system that it illustrates, and some things that this committee and the California Legislature can do to address the problems that have arisen as a result of this outbreak.

I'm not going to go into the detail about the peanut outbreak and how it developed, although I do think there's a few points that need to be raised in order to understand the solutions that we need to seek.

The first point, which was raised earlier, is that the FDA last inspected the facility in Georgia in 2001, and it's been mentioned that the facilities are inspected by the FDA once every ten years. This is a dramatic drop off in the rate of inspection from the 1970s when plants and facilities were inspected once every two years on average. There's been a marked decline in the number of inspectors.

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At the same time, there's been a marked increase in the number of facilities that need to be inspected. Just domestic facilities have skyrocketed. In addition, there's an incredibly large number of imports which the FDA is also responsible for. Only 100 of those import foreign locations are actually inspected by FDA, and only 1 percent of imported food is inspected.

Second point is that between 2001 and when it's outbreak occurred, contract inspectors from the state of Georgia did inspect the facility, found problems with the facility, and if the facility continued to function in a way that was improper.

Third is that between 2007 and 2008 the PCA had 12 positive salmonella tests for their Georgia facility, yet Georgia inspectors were not able to request that information and the company was not obligated to disclose it.

The final point is that the way that these recalls have happened—well, actually, I should say, that after the Georgia facility was inspected by the FDA, its facility in Texas continued to operate for a month before it was eventually shut down.

Finally, the way that these recalls have happened has been impossible for consumers. As has been mentioned, these recalls kind of trickle in every single day. They continue to mount. It's very difficult for consumers to keep track of it all. I'm sure it's difficult for groceries to keep track of it all in terms of pulling everything properly off the shelves. And the way that it's been talked about has left consumers in the dark in some ways. There's been public opinion surveys that have been done on this. And a study that was done by, I believe, Harvard, showed, that while 93 percent of those surveyed knew that peanut products were subject to recall, less than half of the people who were surveyed knew that it included things like cakes and brownies and cookies, and less than a quarter knew that it applied to some ice cream brands and the types of roasted, dry-roasted nuts. So the consumer is really in a bad position when it comes to this particular outbreak and with regard to knowing what's recalled and what's not and being able to police things for themselves.

To address these and other systemic problems with our food safety system, Food and Water Watch recommends the following:

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First, as it was mentioned, there's several federal efforts that are going on to strengthen our food safety system. As most of the food safety system is driven by the FDA and things at the federal level, it's important that the legislation that comes out of Congress is the strongest and most robust possible to protect the consumer. We're supporting Congresswoman Rosa DeLauro's Food Safety and Modernization Act, which is HR 875. This important piece of legislation would do several things to strengthen our food safety system, including the following: It would create a new food safety administration within Health and Human Services Department. The FDA, as you know, is focused not just on food but also on drugs and other products. Second, it would set minimum frequency of inspection for all domestic food facilities at one time a year. That's the most robust out of all the pieces of legislation being considered in Congress.

Third, it would grant the FDA the power—and this was raised by you, Chair Florez—to initiate mandatory recalls of unsafe food, not simply relying on cooperation from manufacturers and processors to do a voluntary recall. This is something that's been recommended on a number of occasions by the federal government Accountability Office. It's something that the FDA needs to have.

Second, with regard to inspections in California, there's more money that's becoming available at the federal level for FDA and for inspections. And to the extent that California contracts with the FDA, California, of course, should aggressively seek a piece of that to help with inspections here in California.

Third, Senator Florez, we thank you for the introduction of SB 550 and our support of it. Consumers should have an expectation that when they walk out of a grocery store they're not going to walk out with something that has been contaminated or subject to recall, and we believe SB 550 goes a long way toward providing a safety valve at the end of the system. Of course, as we mentioned, it shouldn't get to that point to begin with. But if it does, consumers shouldn't have to walk out of the grocery store with a product that has been subject to recall.

Finally, while California is ahead of many in granting the right of inspectors to request company records, even the FDA can only obtain records based on—test results—on reasonable suspicion. It still should go further by placing affirmative

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obligation on food producers or manufacturers to disclose to the public health, to the health officials, positive test results.

I was frankly a little troubled to hear the responses from our health officials who were unsure whether they would want to have that information and want to have that authority. I think that health officials should have that authority; they should want to have that authority, and they should use that authority to determine where they should be doing their inspections, whether things are low risk, medium risk, or high risk. A low-risk product can quickly become a high risk when an outbreak happens. And so I think it's important that these test results be given to the health officials.

In conclusion, most of the issues around food inspections ultimately must be addressed at the federal level. But through this hearing, through SB 550, through support from the state, and urging our state and our representatives in Congress from California to support Senator DeLauro's Food Modernization Act, California can show leadership on this important issue. Thank you.

SENATOR FLOREZ: Thank you. Just one question. In terms of the notification of consumers, I mean, what do you suggest California do beyond, what it's currently doing, in terms of website? Is there other notification aspects you think we should be utilizing as a state?

MR. SCHLOSBERG: I mean, a lot of it's a question of funding and a question of how you can give money to distribute information. Obviously a place where consumers interact with their food the most is in the grocery store because that's where they purchase things. So to the extent that more outreach can be done in that capacity, SB 550 being an example, but also there was mention of notification of consumers after they purchase product. Those were all things that I think should be looked at. I don't have a specific legislative proposal to deal with that, but I think that that's the point where most consumers interact with their food, and I think that's something that should be explored.

SENATOR FLOREZ: All right. Okay. Thank you both.

MR. SCHLOSBERG: Thank you.

SENATOR FLOREZ: Appreciate your testimony.

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Okay. Let's move on to our third panel. Phyllis Bramson-Paul from Nutritional Services Division, Department of Education, and you can introduce your folks with you and then we'll get some questions.

MS. PHYLLIS BRAMSON-PAUL: This is Stephanie Bruce who's the president of the School Nutrition Association, and I'm joined by Jennifer Stokes who's a child nutrition consultant in our Food Distribution Program, in case you ask me a question that I can't answer.

SENATOR FLOREZ: We hope you can answer all our questions. That's our hope.

First and foremost, the role of the Department of Education during our recall, I saw the press release by Superintendent O'Connell, and I'm just wondering, is that the extent—is that it? Do we do a press release, or what do we do in these things? I didn't see anything else other than that. So maybe you can fill me in on all the things that occurred, given that this hit our schools, I imagine. Maybe you can give us some indication of what had occurred.

MS. BRAMSON-PAUL: Absolutely. We work very closely with USDA, as well as with the State Department of Public Health. So as soon as we receive notification, we send out an email blast to our food service directors. Frankly, within this year, it was, I think, maybe an hour or two from when we received the notice from USDA, so we're keeping our food service directors absolutely up to speed. We then had information posted up on our department website also, sometimes within hours, sometimes it might have been a day later. We also work directly with the superintendent, and he held a media advisory with a bunch of radio stations to get the word out. So we worked very, very closely and aggressively to get the information out, not only to food service directors, because those were the primary stakeholders that we were working with, but certainly the general public as well.

SENATOR FLOREZ: Okay. Let me ask a threshold question, Is there still tainted product in our schools today?

MS. BRAMSON-PAUL: There is some product that...

SENATOR FLOREZ: It's a very slow, scary, rolling into an answer. The answers should just be no.

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MS. BRAMSON-PAUL: The good news is, about 63 percent of the commodity peanut butter is on hold in districts or is being destroyed which means the flip of that, 37 percent, was already consumed.

SENATOR FLOREZ: Okay.

MS. BRAMSON-PAUL: This goes back obviously to, the recall went back to a product that was delivered back in January of '07. So here we are two years later and schools—we think it's great that 63 percent of the product is still there.

SENATOR FLOREZ: Is on hold.

MS. BRAMSON-PAUL: Is on hold.

SENATOR FLOREZ: Okay. And of course most parents in California would say it's horrible that 37 percent of tainted products was actually consumed by their children who don't have a choice at lunch. It's whatever's in front of them, correct? So what kind of protocols do we have in place to prevent that? Is this just what happens, after the fact? We went through this in the beef recall as well, you know. What protocols are in place to get this ahead of the curve from the Department of Education's perspective?

MS. BRAMSON-PAUL: Well, looking at what happened last year with the beef recall, we're frankly very pleased. We're very committed to continuous improvement. We learned a lot from that situation in terms of the imperative of us getting information out quickly and that's why I'm sharing. We got the information out within hours this year as opposed to—you know, last year, it might have been, you know, a day or two. We're really—there's no—when we get the food from USDA, we just assume that it's safe. Districts order it. They get it; they use it. So there's no way for us really ahead of the curve. When districts receive a product two years ago, they use it and there's no way for us to—we get recall information after the fact two years later.

SENATOR FLOREZ: I get it. Are you saying that it's just USDA dictates our entire food policy for the department, for you folks?

MS. BRAMSON-PAUL: We don't...

SENATOR FLOREZ: I mean, we're just a captive of USDA?

MS. BRAMSON-PAUL: We take our guidance on recalls.

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SENATOR FLOREZ: No, not guidance. In terms of the food that we're buying, is this all coming from USDA, all of it?

MS. BRAMSON-PAUL: No. What foods are—the commodities that are offered to schools are determined by USDA. It's then up to the schools to decide which commodities they might purchase...

SENATOR FLOREZ: Right.

MS. BRAMSON-PAUL: ...and then which products they might purchase outside of the commodity system, but the assumption is that the food that's offered through the commodity system has been reviewed for food safety and that it's safe to purchase and consume.

SENATOR FLOREZ: Got it. Are you saying that peanut butter, particularly the peanut butter, or any of these items that were pulled, that 63 percent that you pulled thus far—tell me what those are. Tell me what that 63 percent is. Give me an indication of the types of products. Is it just peanut butter? That's it? What is it?

MS. BRAMSON-PAUL: That's peanut butter, about 308 of the approximately 2,500 cases that were recalled. So about 308, a little over 10 percent, were shipped to a processor already by districts for further processing into what might be a pre-made peanut butter and jelly sandwich. Or it might be—Stephanie, you could give me an idea as what might be a process end product using peanut butter.

MS. STEPHANIE BRUCE: Well, it could be trail mix; it could be little peanut butter crackers.

SENATOR FLOREZ: If you pulled 63 percent off and we're proud of that, then tell me what the 63 percent is. Give me the actual—how am I to know that you've got 63 percent of what?

MS. BRAMSON-PAUL: Well, it's either raw peanut butter...

SENATOR FLOREZ: Okay. Raw peanut butter.

MS. BRAMSON-PAUL: ...or about 300, about 10 percent of that is processed end product. I didn't bring with me—I can get back to you—which specific end products they might be—Jennifer, do you—no?

MS. JENNIFER STOKES: There was...

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SENATOR FLOREZ: You guys didn't know you're going to come testify, right?

MS. STOKES: Yes.

SENATOR FLOREZ: We're talking about things that are recalled and pulled off the shelf. I mean, we want to know and I would like to know—let me not speak for my colleagues—I would like to know, what are the products that you actually have that are the 63 percent?

MS. BRUCE: I can tell you in the surrounding districts where I am.

SENATOR FLOREZ: Sure.

MS. BRUCE: It was raw peanuts.

SENATOR FLOREZ: Okay. Raw peanuts.

MS. BRUCE: It was peanut butter and jelly sandwiches and it was peanut butter crackers.

SENATOR FLOREZ: Okay, okay. And that is indicative of what other school districts have pulled, most likely?

MS. BRAMSON-PAUL: And raw peanut butter.

SENATOR FLOREZ: Okay. And in the announcement by—you say that you're constantly updating the consumers, right? So in other words, who are your consumers? Are those the parents? Are those the students? I mean, when you send out a release, who's that aimed at? When a superintendent puts out a release saying, I want you to know that we're on top of this, who is that sent to? Who gets it? I know it's on the website.

MS. BRAMSON-PAUL: The Department of Education has a wide distribution list for who gets press releases. It would be mostly media, and there was a lot of media that would then be read by parents. We then also provide that information directly to food service directors who then can provide information to parents in their districts.

SENATOR FLOREZ: Okay. Let me just say, I think that's the missing link for me here because I think the real consumers here, they need to know the information before anyone, are the parents. So I know it kind of sounds as though we put a press release out, we wait for the media to react, and we expect that

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parents are watching the media and so therefore the parents' reaction is, I hope my school's not serving this.

So how do we get a more direct—this is what we've pulled; these are the items that we pulled. We want you to know that we—I mean, I'm a parent. I have a third grader. I've never gotten a notice for me saying, in the Richland School District, we have pulled 57 percent of the product and these are the products that we pulled and we want you to be assured that we will continue to continue to pull products. I mean, these are the things that make me feel better. But if not, everybody starts taking their—you know, kids start taking their lunches to school, like mine did, for a little bit.

So I'm just asking from a protocol perspective, from the superintendent's perspective, I mean, is there a better way to notify, and ultimately who's your customer? I know who the grocery stores' customers were; I know who the manufacturers' customers were. I mean, you're a very critical piece in this because, as in the beef recall, kids are captive eaters. They're there. They go through a cafeteria, they put something in front of them. Hopefully they eat half of it, in the short time that they have. So in this pillar, how do we know—how do you give assurances that the parents themselves know exactly what's going on? Not through the media—you know, a lot of people are at work; a lot of people go to work and come home at 4:00 and then go back out to work again. A lot of people don't read the newspaper. So how do we—I mean, couldn't this be something—I don't know...

MS. BRAMSON-PAUL: So you raised some very good points. What we can certainly make sure that we're doing in the future is including PTA in some of our information alerts. And what many food service directors do because they absolutely want parents to know that the food is safe and to keep purchasing, many food service directors do then, once they get information from us, send something out to their parents. There are 1,200 school districts. Not all do. Something we can take into consideration in terms of continuous improvement is work with the School Nutrition Association and craft a boilerplate parent alert that would then be made available to food service directors statewide. So, as busy as they are, they would have, oh, this is something that I can take, I can insert some

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information specific to my district and get that out to parents. I think that's something that we absolutely can work on with the School Nutrition Association.

SENATOR FLOREZ: Senator Romero.

SENATOR ROMERO: The magnitude of this is enormous. Senator Florez is absolutely correct when he talks about who really are the consumers—the parents and the over 6 million children in our public school system. California has one of the largest free and reduced lunch programs in the nation, and free and reduced should not translate to free and tainted. So that's why I think we're very concerned and wanted to have this joint hearing looking at food safety and especially in our school system because oftentimes we think about kids—peanut butter and jelly sandwiches. California, we're supposed to be healthy. Okay. Let's get the celery but you still have peanut butter on top of it. So this is why it's so critical for us.

Let me ask, you mentioned something, that, “as soon as we receive notification.” Pinpoint that for me. When do we receive notification and by whom? I'd like something more specific because the response was, “as soon as we receive the notification.” It might have been after the rest of us already heard it. So can you specify, on this peanut butter recall, when specifically did you receive notification and by whom?

MS. BRAMSON-PAUL: Absolutely. On Wednesday, prior to Wednesday, January 28th, the recall had been contained to products that we were told were not in the commodity, the USDA commodities. So at 2:57 on January 28, USDA informed us that there were some truckloads of commodity peanut butter that came to California that contained some of this tainted product. So that's the first time we knew it posed any threat to the commodity program. And by 3:15, we notified our Pomona distribution center as well as the processors where we believe this product was contained. By 3:38, so about half an hour later, we had an email sent out through our distribution list to all of the districts that used commodities. So about half an hour after we were notified. And the next morning, we were able to, by 9 a.m. the next morning, we had identified specifically which districts throughout California had received some of the tainted product. The superintendent held a media advisory and released a press release, and we had

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things up on our website by about 2:30. So less than 24 hours later. We then were sending out more information alerts later on that day.

SENATOR ROMERO: And I appreciate that detail in terms of giving this information to me.

In the district that I represent, there are probably 100 different languages that are spoken by children. The media advisory, the press release, how many languages did that go out in?

MS. BRAMSON-PAUL: I will check with the press office. I'm assuming in English, and I will go to the next step with your question and think that for these types of issues in the future, we would need to make sure that those information is translated into other language for more of the ethnic press.

SENATOR ROMERO: I appreciate the future but, remember, it's been there, done that with beef, with spinach—I don't know if broccoli was involved, maybe at some point. I just want to reiterate, that of the 6.3 million children in California, almost half are Latino children, significant pockets of English Language Learner students. In some parts of the district that I represent, it can be as much as 67 percent who are non-English speaking. So I want to reiterate that this is something, quite frankly, we should have done, whether it's Tagalong, Mandarin, whether it's Cantonese, Spanish obviously, but there are a host of languages.

Let me continue on, on these questions. The 62 percent on hold but 37 percent was consumed—and this was even with—and the part that concerns me though is, this is with the immediate—and again, too, I give credit on that in terms of looking at what appears to be a very quick response, but the 37 percent was already consumed. Do you have a roster of where those foods were consumed? Thirty-seven percent is a significant amount that was not held back; 37 percent of kids, depending on our school system too? I mean, to educate, to house? Remember, we got free and reduced lunch program so we are responsible here. Do you have a roster and a listing of the schools where these tainted products were consumed? I'd like to see that.

MS. BRAMSON-PAUL: We can get that to you.

SENATOR ROMERO: Do you know offhand where? Is it regional? Is it sporadic throughout California?

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MS. BRAMSON-PAUL: The product, the vast majority of the product, was distributed to Southern California.

SENATOR ROMERO: We got it—Senator Florez, Senator Liu.

SENATOR FLOREZ: That’s your district.

MS. BRAMSON-PAUL: So we do have—we know exactly how much product went to every district, and we know exactly how much, by district, product had already been consumed versus it was on their shelves in storage, not yet—so that is something that we can get you.

SENATOR ROMERO: I would like to get that information. And were the superintendents of those school districts—and of course there’s a big one in Southern California which I partially represent, but there are many throughout Southern California. How soon were they notified that, excuse me, you may have had your children fed these lunch programs through our school system and they may have been tainted?

MS. BRAMSON-PAUL: Thankfully the timing was right. Superintendent O’Connell sends out an email to every district and county superintendent once per month on key things he wants them to be aware of. And I mentioned that this had been expanded to the commodities on January 28, and his email goes out about the first. So around the first of March, an email went to every district and county superintendent with a hyperlink to the CDE website that would say, here are exactly the districts that received the product.

SENATOR ROMERO: Why wait for March 1?

MS. STOKES: I think it was February 1.

MS. BRAMSON-PAUL: Oh, okay. I’m sorry. Thank you.

MS. BRUCE: It’s February 2.

MS. BRAMSON-PAUL: I missed 30 days there. So it went from January 28th to February. It might have been the 29th or the 30th but certainly by February 1st.

SENATOR ROMERO: Okay. February 1st. But on the 29th—on January 28th again to prompt action, 2:57 p.m., 3:15 p.m., why not go ahead and alert these districts? I have 2:57, 3:15, or on the morning of the 29th. I think there’s a January 30th. I don’t know if there’s a January 31st. Probably. Why wait for

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February 1st to alert the direct consumers? Because it's not going to be the county superintendents probably who are going to be eating that tainted peanut and jelly sandwich; it's going to be those little kids eating that. So why wait till February 1 to notify school districts, hold on, to some extent that it's almost understandable that 37 percent of the children ended up eating tainted food? Why wait?

MS. BRAMSON-PAUL: We made sure that the entities in the district who have direct responsibility for the food, the food service directors, were notified right away. And we certainly will make sure that superintendents get that information...

SENATOR ROMERO: I think the missing link—and it's probably something that Senator Florez and I are trying to emphasize is, the direct entities are the mouths of those little kids that are eating the crap. We heard on television there were fried, dry-roasted rats going out with the peanuts. I mean, why wait until February 1 to notify truly the direct entity, the mouths of the little children that we send to school, and we get money for, for free and reduced lunch programs? Why wait? That's again to go back and we'll take a look at it.

Let me just ask just one last question.

In terms of fundraisers as well, again, too, in times of declining funding for education and we need more resources, of course, for our children—a lot of the parents and others, childcare centers, preschools, et cetera, fundraisers—how were they notified of contaminated products that were being incorporated and used as part of the fundraising efforts associated with our schools?

That raises frankly a larger question for us in terms of a policy issue. We don't have a distribution list of all of the different entities on a school campus that might do fundraising, an issue around food. A larger policy question is, Should there be food fundraisers, from an obesity-prevention standpoint and frankly from a food-safety standpoint? Because you raise an excellent point—we don't have a way really of getting to the band boosters or those—we just don't have all those—or the chorus boosters. And something as a department we have been bringing up is for all, as I mentioned, for obesity-prevention reasons, raising money, which is very much needed, through food fundraisers—it's not really where we want to go,

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and there have been more and more steps taken from a food-safety standpoint—that it's really not a good idea to be raising money by selling food.

SENATOR ROMERO: We'll look forward to what comes from those policy discussions.

SENATOR FLOREZ: Thank you, and thank you, Senator Romero. I think those were excellent questions, but let me follow up a few on Senator Romero's thought process. And that is, I started the discussion with the press release from the superintendent, and the reason I mention that is that the notification and who is the ultimate recipient of notification. It is important because, unlike those of us who can go to a grocery store and make choices—right?—we can choose not to buy things that have peanut butter in it—you're sending in many cases items to be mixed and to be served, and not knowing, of course, in some of these cases. But then we have a very captive audience. And as you know, I believe there were 32 truckloads of roasted peanuts that were fed to children in the free and reduced lunch program which also—I can send my kid to school with a lunch, but other kids don't have that luxury. So I think, as Senator Romero said, this is an equity issue about who gets sometimes the brunt of some of these items that aren't caught, and I can tell you that there's, you know, still kids taking their lunches to school until we can kind of figure this out. And I also want you to know that the reason I also mention this is that in one case in my district, there have been times when the parent has to notify—would you be surprised?—the cafeteria that there's a recall going on. And when the parents are notifying the cafeteria there's a recall, and the cafeteria worker isn't necessarily sure what they're serving, and they have to go up the principal and the principal has to ask the question, it's the chain of information that Senator Romero mentioned that's concerning. The lunch—you know, the person that runs the cafeteria didn't get the press release from the superintendent's office. They don't get that and so it's an issue of that.

And the 37 percent that did, in essence, get fed to the children, was there a press release on that? I mean, did we tell parents that 37 percent of what their kids actually ate was bad? I mean, do we notify parents? I mean, it's not good news. Nobody likes to tell people the bad news, but why shouldn't parents be notified? Are there any notification requirements in law, for example, that would

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tell us, to tell parents, by the way, because of the peanut recall 37 percent of your kid may have eaten this. I mean, what's wrong with allowing a parent some running chance of thinking, well, I better check into that. I better see if maybe a kid that you might assume has some of the symptoms of salmonella poisoning, diarrhea, a parent has no idea because it may be weeks later; it might be a month later. But the parent might have an idea if indeed we told them that 37 percent of the product that was served to them in a given year contains salmonella. Did we do that?

MS. BRUCE: May I answer that on a director level?

SENATOR FLOREZ: Yes.

MS. BRUCE: You know, as a director of Nutrition Services, it's my moral obligation to notify those parents what's happening, especially within my district. And, you know, I am beholden to the information that I get from USDA and CDE as well, and my frustration is the process is absolutely flawed. It's more reactionary instead of precautionary. And what I don't understand is, when we do find out this information, the beef recall alone, it took USDA seven days to notify of a hold. And, you know, when you're serving 18,000 meals a day—and I've got 18,000 hamburgers or 18,000 peanut and jelly sandwiches prepped, I need to know immediately to pull that product because the last thing we want to do is harm any of our children and it's important that we get that information out there. Unfortunately, that's not the way the system works. It took about 11 days for this peanut recall to get the information correct.

The first notification we got in districts was January 12th, and we were told that it was not—part of the commodity program was not affected. Two days later, we got another email stating that, oh, it may be part of the commodity program. The first email we got was in bold, absolutely not part. The second was not in bold and just an afterthought. It wasn't, like Phyllis said, until January 28th that the actual information did come forward. But when I get information like that, I pull it all. I am not about to take a risk with any of my children. And I would hope that USDA and the Department of Ed would do the same. I don't think it's a bad thing to say there might be a problem, let's hold off.

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SENATOR FLOREZ: Right. And I understand that particular—there is an issue with direct, immediate notification. I think the fact that we're waiting for people to retest and understand whether or not they're actually going to call a recall is a complete flaw in the system. So now that you do know, and given your moral obligation—and I absolutely believe that—do you also have a moral obligation to tell parents, your parents, that their kid ate tainted products?

MS. BRUCE: I believe so.

SENATOR FLOREZ: And have you done that?

MS. BRUCE: I have done that. It is on our website. We luckily did not get any of the product. We're a semi-peanut-free district, so we don't take any commodity peanut butter. We did have Smucker's Uncrustables, which we did hold.

SENATOR FLOREZ: Okay. I know it's not a popular press release for anyone to put out to say, by the way, you know, our school children, 37 percent of them, could have eaten tainted product. But I think it gives, you know, parents some running thought of, well, maybe I should keep my eye out on this.

Senator Romero.

SENATOR ROMERO: Exactly. Let me ask a couple of follow-up questions too. You know, in California we like to raise standards. We keep raising standards. Is there a way or has there been discussion within the department or in the education circles in California to talk about the raising of standards of the type of food that we will buy, similar to what Senator Florez had spoken about, in terms of food safety? I mean, we are a major purchaser, 6.3, I think, million kids in our school system. Why can't the Department of Education say, we won't buy food from you unless we see that this food is free of taint? Is there some way—I appreciate your talking about being proactive. Why can't we just say, show us the proof; show us that this is toxic-free, taint-free, salmonella free? Can we do that? Do any states do something like that? You know, California's the leader. We always raise standards. Why not raise the standards with the quality of food that we put into the mouths of those little children in our school system?

MS. BRUCE: It's a good question. I mean, as a cooperative purchaser, I belong with many districts where we bid cooperatively, and we do put some of

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those standards in our bid language. We do require certain health inspections. We actually go inspect the facilities ourselves. We would not know, nor would we know what to ask for, if I'm going to go to a beef-processing facility, what kind of reporting I should be asking for to ensure that that product is safe. If they're a USDA facility, we put our faith in USDA that they're doing that job for us.

SENATOR ROMERO: But when they say that they test and if it's contaminated they don't tell us, is there some way to say, hey, you know what, we want to know. And we haven't even spoken to the process of, what's the reimbursement at this point? Because that's a major cost, I would just imagine, as well as coming out of already strained education resources in California. How much money has this cost our schools, and do we get reimbursed? Have we asked for it? Is it just gone?

MS. BRAMSON-PAUL: USDA has provided instructions to districts to go ahead and dispose of the product they have, the roughly 63 percent, and has said they will reimburse districts for the destruction costs of that product. Districts are required to get their claims for those costs in to us by February 28th. We need to have the information submitted to USDA by the end of this month. As of yesterday, we received about, a little less than \$4,000 in claims from districts, a little more—we'll be getting more than that.

SENATOR ROMERO: How much?

MS. BRAMSON-PAUL: Four thousand.

A larger question then is, USDA will need to reimburse districts for the value of the destroyed product. So the \$4,000 that I mentioned is just the destruction costs. The replacement cost of that product is a larger question. We don't have information yet from USDA. We have every reason to believe they'll replace the product. We're not sure if it's going to be of the same product or if it's going to be a dollar value. So if the district said, well, instead of buying more peanut butter—parents in my district are a little nervous—I'd instead rather take the amount of money that represented and buy chicken. We don't know yet what approach USDA will be taking.

SENATOR ROMERO: Just one last question, if I may. I had asked, When were we notified? We started with January 28, okay, at 2:57 p.m., 3:15 p.m., et

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cetera. But, Stephanie, when you testified or presented, you indicated January 12. There's a bit of a discrepancy there. I understand that the recall then was issued around, I was told, the 13th; you mentioned the 12th. Apparently CDC reported there was an outbreak as far back as September of 2008. But going back to this January 12th, you got information on January 12th. But, Phyllis, you indicated that you didn't know until January 28.

MS. BRAMSON-PAUL: Let me expand upon that. What I spoke to was when we were notified that it extended to the commodity program. You are absolutely right that around January 12 we were told of the problems with the peanut products. But at that point, we were told they were not in the USDA commodity programs, and it was the type of product that, in terms of schools, would or could have been used by fundraising entities. So I can share with you the timeline around that. The 28th was when we were then told by USDA that it was in the USDA commodity program.

SENATOR ROMERO: You understand that?

Jennifer, if you could indicate, what were you told? Honestly, I don't understand.

MS. BRUCE: You mean Stephanie?

SENATOR ROMERO: Stephanie. I'm sorry.

MS. BRUCE: I just have the emails from the food distribution, from CDA, CDE, that went out to all of us.

SENATOR ROMERO: On January 12th?

MS. BRUCE: January 12th we received an email, subject, King's Nut Peanut Butter Recall, and it spoke to the salmonella outbreak. And in bold, it said: No peanut butter product from this manufacturer has been distributed through USDA commodity programs.

On January 14th, from the same food distribution from CDE, entitled Peanut Butter Recall, it did say: You may have received this product through commodity program or purchased it commercially.

SENATOR ROMERO: It was on January 14th?

MS. BRUCE: That was two days later on January 14th, yes.

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SENATOR ROMERO: Can I ask—sorry—what was the response from the School Nutrition Association that you may have?

MS. BRUCE: Well, I called Jenny and asked her about it, and she said the reason that that had gone out is because they had heard that there were districts that had product in their sites that pertained to this specific recall.

SENATOR ROMERO: So if we knew on January 14 that there may be but we didn't notify until January 28 or the 29th, are we not surprised that 37 percent of our kids consumed tainted products? I'm not surprised. I'm disappointed but I'm not surprised, unfortunately.

MS. BRAMSON-PAUL: We had notified USDA that, because back at January 12th, the recall at that point was limited to products that were distributed after July...

SENATOR ROMERO: We're talking about January 14th, and I haven't seen these emails so I'm relying on your testimony. Now I appreciate the testimony. But January 14th, apparently there is an email that says, you may have received products. On the part where *you may have received products*, what do we do?

MS. BRAMSON-PAUL: At that point, we were working very closely with USDA to confirm whether or not the products in the commodity program were affected.

SENATOR ROMERO: And as we later learned, they were. We learned that for sure—what?—do my math here—a week and a half later. But at the point where we were just told, a red flag goes up, we're talking about little children, especially in the state of California where we find too many of our kids without healthcare insurance. We know that there may have been.

What do we do to begin to perhaps say, hold on, send the alert out? We don't do this—I mean, I'm pleased with the response on January 28th, but I'm very disappointed with the response, knowing that the alert was given on January 14th and that's where I think we had an opportunity to be proactive, to be cautious, to really also to, I think, also to be bold, not even to be cautious, to be bold, to say, we run one of the largest free and reduced lunch programs in the nation. These are our kids. Parents are not going to know, so what do we do to stand up and say, alert; consider it. But schools can't make a choice. The cafeterias don't know

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until—and at that point, it's February 1st. I think there's a timeframe here—there's a gap—that doesn't, that quite frankly I just don't understand.

SENATOR FLOREZ: Go ahead. I'm sorry.

MS. BRUCE: I think one thing that would help, I mean, Food Nutrition Services only has the authority to report what USDA tells them. If they have the authority to be proactive, then this would have been, I think, a much better outcome, you know. But Phyllis and her team only have the authority to report what USDA gives them, and that's exactly what was happening at the time.

SENATOR FLOREZ: Right. But I guess the question is, and this is the push of the hearing, as soon as you have information, the way it's supposed to work is, your notification system is supposed to get to the end consumer which is the parent. And, you know, I began this by simply saying, a press release isn't probably going to cut it in terms of—and the reason I say that is...

SENATOR ROMERO: In English.

SENATOR FLOREZ: And in English. But let me give you a real life, how important this is from a parental perspective, particularly on food recalls this large and peanut butter, of all things, peanut butter paste. It's just made into a bunch of other products. There isn't a time that I can remember that my daughter, now in the third grade, when I don't get an automated phone call at home saying tomorrow is a minimum day. Now I'm wondering if the automated phone call could say there's been a food recall. Please see or if interested. I mean, why don't we do automated notifications when something that severe occurs; so then if some parents, and I think Senator Romero said, unfortunately those in the low-income category who may not be able to bring a lunch to school—well, they're just out of luck. But I think for the rest of the parents who may want to say, until this thing is fully vetted, because there are still continual products coming out of this, I choose to send my kid to school with a lunch that I take responsibility for. Why couldn't that notification again from this level get to the parent directly?

MS. BRUCE: I agree with you, and there are many districts that do that. There are also districts that don't have the capability of the phone system to call home. And a lot of the feedback...

SENATOR FLOREZ: How about a note?

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MS. BRUCE: A note could be a website. We all have websites.

SENATOR FLOREZ: But lot of parents—I mean, how about just the note that goes home in the backpack?

MS. BRUCE: I can tell you, a lot of the frustration we get from our members is, when they do speak up, nobody really listens to them. We're not really considered a partner in education, which is very unfortunate. And so when items like this do come up, we're not considered the professionals on campus to provide them that information, the Department of Education is. And if we could bridge that gap, this information would get out much more quickly.

SENATOR ROMERO: We look forward to your ideas and proposals on how to do that.

MS. BRUCE: Absolutely.

SENATOR FLOREZ: Yes. I think that particular _____ back to the Ed Committee. I mean, this is the aspect that people, when you have a recall, when we went through it with beef and it was reimbursement issues. But this is really much more detailed on notification in terms of parents understanding what isn't the case and even parents understanding what the worst-case scenario was which is, in one sense, as Phyllis said, it's good, and I think it is good that 63 percent is being held. I want to ask you what we're doing with that yet. What are we doing with that?

MS. BRAMSON-PAUL: It's being destroyed.

SENATOR FLOREZ: Okay. How is it destroyed and what's the cost to districts to do that and who reimburses them to do that?

MS. BRAMSON-PAUL: That's the \$4,000 so far.

SENATOR FLOREZ: Okay.

MS. BRAMSON-PAUL: And USDA will ultimately give the money to us and we'll give it to districts.

SENATOR FLOREZ: Okay.

MS. BRAMSON-PAUL: There are specific instructions around destruction. If it's 25 or fewer cases, they can destroy it, I believe, on site. If it's more than 25 cases...

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MS. BRUCE: They can destroy on site but they have to make it inedible or in a manner that someone can't go—they can't put it into a dumpster. So the only way we can really dispose of it is at the landfill and properly, no matter what the case size is.

SENATOR FLOREZ: Okay.

MS. BRUCE: And that can be an issue as well. Many of the landfills will not take this product.

SENATOR FLOREZ: Right. And we don't get reimbursed for the 37 percent of the products already been consumed, right?

MS. BRUCE: I don't believe so.

SENATOR FLOREZ: Okay. Other than nothing bad happening hopefully, right?

MS. BRUCE: And we may never know.

SENATOR FLOREZ: And it is a long period when these things occur, so that's why I think it's important to notify parents, even in the worse case.

MS. BRAMSON-PAUL: So in terms of the reimbursement, if I may...

SENATOR FLOREZ: Yes.

MS. BRAMSON-PAUL: In terms of learning from last year's experience with the Westland beef recall, we got the money from USDA but we lacked state-expenditure authority to get the money to districts. And last year, of course, it was caught up in the budget. This year we have submitted a budget amendment saying, you know, over the last couple of years there are recalls, there are settlements. Rather than us coming each time saying, may we have expenditure authority for this, we've come in and our department has a request for \$650,000 in expenditure, reimbursement authority. So when things like this happen, we can get the reimbursements out to districts very timely. So I'm just bringing that up to you because that will be something, hopefully that will be heard in the budget subcommittees and would certainly help us get money out very quickly.

SENATOR ROMERO: And I appreciate that. I also am your chair of the Subcommittee on Budget Fiscal Review. This is actually the first time that I'm hearing this, so I appreciate your bringing it forward, and I think it's certainly

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something that we should—I would be supportive of—but it’s the first time that I’m actually hearing this.

MS. BRUCE: It would be helpful too if the money could be directed back to child nutrition. Much of the money from the beef recall went into district general funds, and the Food Nutrition Services never saw the money.

SENATOR FLOREZ: Okay. Let me just say one other thing that Senator Romero mentioned earlier about the USDA, not USDA. But in the ideas that we do have some discretion on, I think it should be a policy that we not buy from companies who have a very shady past. And we did learn in Westland, in the beef recall, that this is a company that had been visited a couple of times and had some violations, and I think that there should be some thought, that if a company continues to fall in the violation category, particularly when it comes to food, we’ll have to just find the next company because I don’t think we should probably be taking risk when indeed some of these companies have been fined in many cases. And that’s a rarity because we never catch them until after everyone’s sick, unfortunately. That’s the way our system works.

Let me just say thank you to all of you. And Phyllis, I always appreciate the candid discussion. It always makes sense to me and we always push you to—we always raise the bar four notches for you and say, Can you keep doing it? And so I appreciate you doing these hearings.

I’m going to say a few words in closing. I’m going to have Senator Romero close the hearing, but I would say thank you for coming. What I think we’ve learned today, from everyone’s perspective, is that we have a lot of work to do. That food safety is, and the purview of the Food and Agriculture Committee—we’re going to have to draft Senator Romero to get on our committee because I think it proves that the consumer issues are—food issues—and food issues are consumer issues—there’s no difference between them—and I think the consumers have a lot to educate, in many cases, the industries which feed them. It isn’t the other way around. It’s a dual system where consumers have to get the feedback necessary.

I also can tell you that I think we’ve learned some very disturbing facts about how scary our system is, the fact that things can get out the door with a salmonella test and that isn’t caught until someone gets sick. Bottom line, we

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have no records; we have no negative tests or we don't know even when those occur. And we do have some new goals to meet. I think we obviously have enough here to piece together some very strong pieces of legislation that I would ask Senator Romero to joint author with me, if we could do that, because I think we have some real holes in our food system. And I think at the end of the day we really don't have any assurances that we have the best system for our consumers in California and even in this case, our school children. When USDA says, stamped USDA, tried and tested, everyone should say, that's the final issue. And when our government can't assure that it truly is safe, then we're not in a very good place because the government may not have the tools necessary to get it done, and I applaud the congressional legislation but I think California has to have our own standard when the feds don't step in to get these things done.

I will tell you that the overall impression of where we're at from a public health perspective is disappointing. There's no other word for this. This isn't a hearing, we walk out and say, wow, that was a good hearing. This is one of those things, I think, where Senator Romero and I shake our heads in the member's lounge and go, oh, my gosh; we have so much work to do. And so I do want to thank Senator Romero for jointly holding the hearing with us and I'll go ahead and let her close the hearing.

SENATOR ROMERO: And thank you so very much.

This is so timely because just last week the California Association of Student Councils presented to the Education Committee from 6th graders, 11th graders, 12th graders, very articulate students. And one of the issues they raised was, and it's the perennial issue—bad food, bad food in the cafeteria. They talked about brown peas and wilted spinach. They didn't talk, though, about tainted peanut butter products. They really had no idea. But I think part of, you know, just reflecting back on those little faces that were there advising us on the Senate Education Committee, what we should do to improve their educational opportunities, food and nutrition was a part of that formula as to how they could succeed in that school system.

We want to work with you. We thank you for coming forward. We do think there's a lot of work to be done. I do think that perhaps the ball was dropped at a

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critical time when notification was issued. We've got to figure out now who paid the price for that and what is the status of where these products were consumed. But I think more importantly, we have seen a number of recalls in the past that deal with food products that are served in our school lunch program, not to mention the lunches that our little children bring into our school setting.

So I look forward to working with you, working with Senator Florez, other members of the Committee, to think proactively as to not only legislation but also oversight, looking for funding, granting authority, and really extracting and expecting the responsibility that I feel we owe, and want the nation's largest school systems to make sure that when we educate our children that we also are satisfied that these children are here and addressing the nutritional and basic food needs that these children need to have.

So Senator Florez, thank you for extending the opportunity to allow us to co-host this hearing and, yes, we have our work to do.

MS. BRUCE: Thank you.

MS. BRAMSON-PAUL: Thank you.

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