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# WILL CONGRESS WIPE OUT HOME GARDENS, GROWERS MARKETS?

By Sarah Foster  
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The Internet's buzzing about a bill in Congress its sponsor and supporters say is vital for protecting consumers from food-borne illnesses, but critics claim would place all U.S. food production "from farm to fork" under control of federal bureaucrats, effectively destroying family farms and farmers markets in the process and hijacking the burgeoning organic food movement.

"This bill will not just sweep up commercial food operations," warns Tom DeWeese, who heads the [American Policy Center](#) in Virginia, in a [Sledgehammer Alert](#), "[It] will subject hobby gardeners, home canners, anyone with a few chickens, or anyone who 'holds, stores, or transports food' ... to registration, extensive management, and inspection by a huge new bureaucracy, the Food Safety Administration, even if the food items will only be consumed personally."

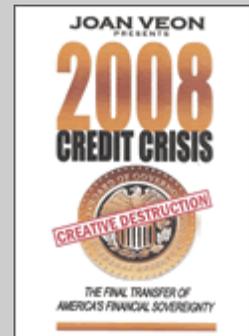
"The truly chilling language lays out civil and criminal penalties of up to \$1 million per day, per infraction, and imprisonment of five or 10 years, or both, depending how serious the violation(s)," De Weese adds, characterizing the bill as "over-the-top in its overreach."

Critics like Cohen-Cole, Scott and DeWeese say HR 875 has little or nothing to do with food safety and everything to do with government and corporate control of the food supply, and ultimately over the population.

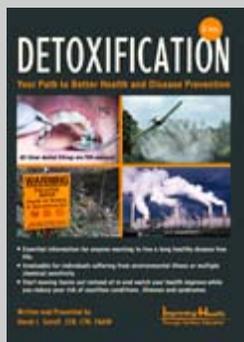
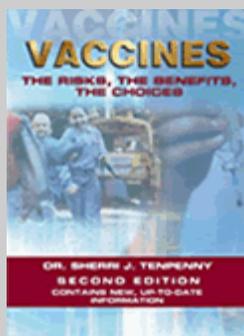
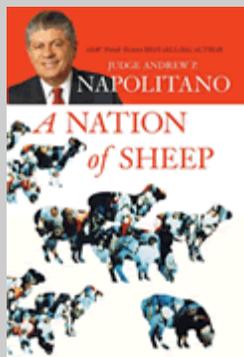
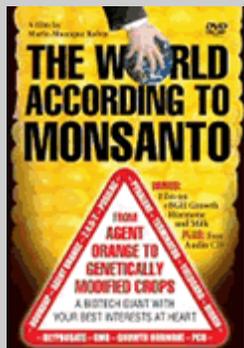
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Particularly attention grabbing: the bill would bring in the National Animal ID System through the back door, opponents claim.

Introduced Feb. 4 by [Rep. Rosa DeLauro](#) (D-Conn.), in the middle of the peanut-product recall, the [Food Safety Modernization Act of 2009](#) (HR 875) was assigned to both the House Committee on Agriculture and the Energy and Commerce Committee. It has 41 co-sponsors. Although not yet scheduled for a hearing, proponents have been forced into damage control mode because of public outrage coming from a politically diverse opposition.



Spokesperson in DeLauro's office offer assurances: "The bill does not apply to vendors at farmers markets, and therefore will not change the way this business runs. It is meant to address food sold in supermarkets."

The non-profit [Food and Water Watch](#) weighs in: "There is no language in the bill that would result in farmers markets being regulated, penalized by any fines or shut down. Farmers markets would be able to continue to flourish under the bill. In fact, the bill would insist that unsafe imported foods are not competing with locally grown foods."

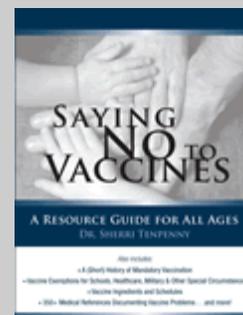
**A "Major Threat" to Local Food**

But in an extensive [analysis](#) the [Farm-to-Consumer Legal Defense Fund](#) – a DC-based advocacy group that champions locally grown and organic food production – foresees HR 875 fueling "a tremendous expansion of federal power, particularly the power to regulate intrastate commerce" and warns:

"While the proposed legislation tries to address the many problems of the industrial food system, the impact on small farms if the bill becomes law would be substantial and not for the better HR 875 is a *major threat* to sustainable farming and the local food movement." [Emphasis added]

If enacted, there would be a reshuffling within the Department of Health and Human Services. The Food and Drug Administration, a division of HHS, would be split into two agencies – one to deal with food, the other with drugs and medical devices. This second agency would be titled the Federal Drug and Device Administration and keep the acronym FDA.

Food-safety functions would be transferred to a new Food Safety Administration, headed by a food tsar (Administrator of Food Safety) appointed by the President for a five-year term,



with Senate approval. The Center for Food Safety and Applied Nutrition (CFSA) and the Center for Veterinary Medicine – both presently part of the FDA -- would move into the new Food Safety Administration, along with the National Marine Fisheries Service from the Department of Commerce.

That's for starters.

The shakeup at Health and Human Services would be accompanied by tremendous expansion of federal regulatory power over the nation's food producers, with mandated surveillance and monitoring of all farming, processing, transporting, and selling operations. The new agency is to "modernize and strengthen Federal food safety law," making certain that food establishments are able to guarantee "that all stages of production, processing, and distribution of their products under their control satisfy the requirements of this law."

The food tsar is tasked with developing and implementing a national food safety program, one that can ensure "that persons who produce, process, or distribute food meet their responsibility to prevent or minimize food safety hazards related to their products."



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This nationwide program is to be based on a "comprehensive analysis" of "hazards" – including identification of "the sources of potentially hazardous contamination or practices extending from the farm or ranch to the consumer that may increase the risk of food-borne illness." The Administrator will also set up a national system for the registration of food establishments and foreign food establishments.

Defenders of H.R. 875 insist it wouldn't overburden small farming operations; that the law is aimed at "Food establishments" – facilities where food is actually processed and packaged, where food-borne illnesses begin. Indeed, there's a subsection under "Definitions" (Section 3) that at first reading appears would exclude farms from the onerous regulatory provisions of the law. Specifically:

"(13) FOOD ESTABLISHMENT (A) The term 'food establishment' means a slaughterhouse (except those regulated under the Federal Meat Inspection Act or the Poultry Products Inspection Act), factory, warehouse, or facility owned or operated by a person located in any State that processes food or a

facility that holds, stores, or transports food or food ingredients.

“(B) EXCLUSIONS: For the purposes of registration, the term ‘food establishment’ does not include a food production facility as defined in paragraph (14), other retail food establishments, ...

“(14) FOOD PRODUCTION FACILITY – The term ‘food production facility’ means any farm, ranch, orchard, vineyard, aquaculture facility, or confined animal-feeding operation.”

The devil’s in the details, and these are in Section 206 which deals with Food Production Facilities. According to FTCLDF, the only thing farms and the other food production facilities *don’t* have to do is register with the FSA as food establishments must. The agency has sweeping powers to regulate farming practices, and is directed to issue regulations establishing “minimum standards related to fertilizer use, nutrients, hygiene, packaging, temperature controls, animal encroachment, and water.”

“The Feds would control to a much greater degree the inputs farmers can use as well as the products farmers can produce (raw milk). Unannounced federal inspections of small farms will be the order of the day, reducing the level of protection provided by the Fourth Amendment.”

Here’s a taste of what farmers and other food producers can expect from H.R. 875 if it becomes law:

- Each food production facility – no matter how small – would have to have a written food-safety plan describing “the likely hazards and preventive controls implemented to address those hazards.”
- Farmers selling directly to consumers would have to make their customer list available to federal inspectors.

Federal inspectors would be authorized to:

- inspect food production facilities to make sure the producer is “operating in compliance with the requirements of the food safety law;”
- conduct “monitoring and surveillance of animals, plants, products, or the environment, as appropriate;”
- access and copy all records to determine if food is “contaminated, adulterated, or otherwise not in

compliance with the food safety law *or to track the food in commerce.*”

FTCLDF stresses that these regulations and requirements apply *even if the farm is engaged in only intrastate commerce* – that is, within state boundaries. Under the existing Federal Food, Drug and Cosmetics Act, the FDA can only inspect farms that produce food destined for commerce across state lines. HR 875 changes this – all production and commerce becomes “interstate.” Section 406 provides: “In any action to enforce the requirements of the food safety law, *the connection with interstate commerce required for jurisdiction shall be presumed to exist.*”

### **“Traceability” and the National Animal ID System**

Under Section 210 – “Traceback Requirements” – the Food Safety Administration is charged with setting up a national traceability system requiring farmers to keep extensive records that would enable inspectors to track “the history, use, and location of an item of food.”

This system is to be “Consistent with existing statutes and regulations that require record-keeping or labeling for identifying the origin or history of food or food animals,” including “The National Animal Identification system (NAIS) as authorized by the Animal Health Protection Act of 2002 (AHPA).”

The problem is that NAIS was not authorized by the AHPA; it’s never been authorized by congressional legislation.

Jim Babka, editor of [DownsizeDC.org](http://DownsizeDC.org), a political action website, regards this as a “bureaucratic initiative,” a “de facto authorization” of NAIS.

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“This false assumption gives NAIS the aura of congressional approval,” he writes. “Instead, this is another step on the road to converting NAIS from a voluntary program to a mandatory one. This is exactly what we predicted three years ago when we launched our [anti-NAIS campaign](#).”

### **Could “Raw” Milk Take a Hit?**

Many critics are wondering whether they’ll be able to buy “raw” milk if HR 875 becomes law. According to the FTCLDF it’ll depend on the regulations, but the future doesn’t look good. Right now it’s illegal to sell unpasteurized milk across state

lines, but some states allow its sale within their boundaries, albeit grudgingly and with heavy restrictions. HR 875 puts even this limited market in jeopardy.

FTCLDF explains:

“FDA has long wanted a complete ban on the sale of raw milk. The agency’s mantra is that raw milk should not be consumed by anyone at any time for any reason. The agency does not consider this subject to be debatable...*Under HR 875, FSA is given statutory authority to unilaterally impose a ban.*” [Emphasis added]

“Under HR 875, FSA has the power to adopt “preventative process controls to reduce adulteration of food” [Section 203], and to issue regulations that “limit the presence and growth of contaminants in food prepared in a food establishment using the best reasonably available techniques and technologies” [Section 203(b)(1)(D)]. FDA has long made it clear that in its opinion the best available technology to limit contamination in milk is pasteurization.”

Even if the FSA doesn’t issue an outright ban, raw milk producers could be harassed out of business instead. HR 875 designates dairies and farms processing milk as Category 2 Food Establishments – and these are to be “randomly inspected at least weekly.”

### **\$1 Million-a-Day Fines for the Food Police**

On March 14, during his weekly radio broadcast, President Barack Obama accused the Bush administration of having created a “hazard to public health” by not solving food contamination problems, adding he planned to set up a “Food Safety Working Group” to “upgrade our food safety laws for the 21st century.”

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That’s going to cost money, and Obama said he’d ask Congress for \$1 billion to pay for added inspectors and new laboratories.

If \$1 billion isn’t enough, HR 875 has its own built-in money generator to make up any deficit. Fines can be assessed at up to *\$1 million a day* per violation – and each day a violation

continues is considered a separate offense. That's for civil offenses. Criminal offenses – those causing illness or death -- mandate lengthy jail terms for those deemed responsible.

Fines collected by the agency are to be deposited in an account in the Treasury, and the agency “may use the funds in the account without further appropriation or fiscal year limitation . . . to carry out enforcement activities under the food safety law.” The agency may also use the funds “to provide assistance to States to inspect retail commercial food establishments or other food or firms under the jurisdiction of State food safety programs.

As FTCLDF see it: “This would give the States reason to support the bill despite the fact that it dilutes much of what is left of their Tenth Amendment police power to regulate food.”

### **“Great for Factory Farming”**

“How did they get this far with such a scheme to apply insane industrial standards to every farm in the country?” asks [Linn Cohen-Cole](#). “Through fear of diseases and of outbreaks of food borne illnesses, both of which they [the multi-national food corporations] cause themselves.” Cole-Cohen, self-described “leftist” and Democrat, isn't alone in linking the food industry to food control bills like HR 875.

HR 875 would be “Devastating for everyday folks but great for factory farming ops like Monsanto, ADM, Sodexo and Tyson to name a few,” writes [Lydia Scott](#) at [Campaign for Liberty](#). “I have no doubt that this legislation was heavily influenced by lobbyists from huge food producers. ... It will literally put all independent farmers and food producers out of business due to the huge amounts of money it will take to conform to factory farming methods.”



The role of agribusiness in actually writing HR 875 is a valid question. The fact that DeLauro's husband [Stanley Greenberg](#), a powerful Democratic political strategist and consultant, counts pesticide and biotech giant Monsanto among his many clients has helped fuel a growing bipartisan opposition to the bill itself, as has the revelation that DeLauro [received over \\$186,000 from agribusiness](#) for her recent re-election campaign.

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Critics like Cohen-Cole, Scott and DeWeese say HR 875 has little or nothing to do with food safety and everything to do with government and corporate control of the food supply, and ultimately over the population. As former Secretary of State Henry Kissinger [famously observed](#): "Who controls the food supply controls the people; who controls the energy can control whole continents; who controls money can control the world."

### **For More Information and to Take Action**

1. HR 875 has not been set for a hearing. Opponents hope to keep it from getting out of committee and are urging phone calls and emails to committee members and congressional representatives.
2. Tom DeWeese's [Sledgehammer Alert](#) provides excellent analysis, with **contact information and phone numbers** on committee members and other members of Congress.
3. The [Analysis by Farm-to-Consumer Legal Defense Fund](#).
4. A [PDF version of HR 875 is here](#). It's over 100 pages.
5. See [also the Q&A section on HR 875](#).
6. Linn Cohen-Cole and Sue Diederich, of the [Illinois Independent Consumers and Farmers Association](#), take a "[Solemn walk through HR 875](#) at OpEd News, a site self-described as "liberal...tough...progressive."

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