

The background features a light-colored, textured surface with a faint mountain range silhouette in the upper half and a dark, detailed branch with small berries on the right side.

# *Food Policy & Health*

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# *Food Policy & Health*

- ❖ Broad subject in 2006
- ❖ Well beyond the “Food Pyramid” discussion
- ❖ Encompasses:
  - Food litigation
  - Food availability, access & cost
  - Food concerns related to special populations (children)
  - Food labeling
  - Nutritional issues
  - Food safety

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## ❖ Food Litigation

- Most publicized obesity-related litigation
  - Perlman v. McDonalds (New York, 2002)
  - McDonalds alleged to have caused obesity and related health problems of 2 minor customers
  - Court dismissed case 2003
    - Holding: harm caused by over-consumption of fast food is common knowledge and plaintiffs freely chose to consume McD. Product
    - Plaintiffs failed to show that products are “so extraordinarily unhealthy” as to be dangerous for intended use
      - Product liability framework

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- ❖ Court provided roadmap for future claims and gave time to file an amended complaint
- ❖ Could have avoided dismissal if alleged that McD manufactured food in such a way that the consumer couldn't have appreciated the harm posed by the product
- ❖ Undisclosed manufacturing processes of ingredients constitute a "cloud on the awareness" of harm therefore couldn't have "freely chosen" to eat the food (disclosure issues)
- ❖ Court noted the: "**McFrankenstein character of the food**" so processed that it lost its "presumed healthy character"
  - Would a reasonable consumer know of the change in the food?
  - BOP on the plaintiff to show some action by McD caused the plaintiff to overindulge

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- ❖ Amended complaint filed in 2003
- ❖ Accused McD of deceptive acts and practices in violation of NY Consumer Protection Acts
  - False advertising re: nutritious character of the food and the food is part of a healthy lifestyle
  - Failing to disclose foods were substantially less healthy than represented
  - Falsely representing to NY AG that nutritional brochures were at all NY food store
- ❖ Claims dismissed – failure to allege McD caused the injuries and failed to provide McD representations were deceptive – failed to prove misled customers – didn't link health problems to the menu

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- ❖ When complaint dismissed again – court noted that if plaintiff could identify particular ads and allege they were aware of ads and relied on ads, could stay in court
- ❖ What else did plaintiff eat? How much did they exercise? Is there a family history of disease?
- ❖ Causal link between obesity and consumption of food? Exercise or lack thereof and overall dietary habits?
- ❖ Court specifically identified the way in which the case must be pled in order to survive and go to the jury



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- ❖ January 05 ruling in Perlman:
  - McD must defend itself in suit by plaintiffs
  - Plaintiff's claim that McD hid health risks survived
  - Court of Appeals vacated original ruling and said children should be allowed to collect evidence to support the case
  - Ruling came same day "Super Size Me" nominated for Academy Award
  - Settled; being continually monitored by [www.bantransfat.org](http://www.bantransfat.org)
- ❖ Heralded examination of food by trial lawyers – much discussion re: is it the next tobacco
- ❖ Will continue to be an issue as litigation remains a threat

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- ❖ McD to give notice to the public that the oil in their products has not changed
- ❖ McD donate \$7 million to the American Heart Association, to be used exclusively for:
  - Public education regarding trans fat.
  - Encouraging substitution of partially hydrogenated oils by the food industry.
  - Holding conferences on health issues associated with trans fat and the substitution of partially hydrogenated oils.
  - Other activities regarding the impact of trans fat on public health.
- ❖ McD to spend up to \$1.5 million on publishing notices to ensure that the public knows the status of its trans fat initiative.
- ❖ Legal fees, costs and expenses to Plaintiffs' counsel



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- ❖ Kraft sued in May 2003 to ban the marketing and sale of Oreos to children, and to prevent Kraft from continuing to distribute Oreos to young kids in schools.
- ❖ Kraft agreed to remove partially hydrogenated oil from the Oreo.
- ❖ Kraft said that it would reduce or eliminate trans fat in all its cookies and crackers across the board.
- ❖ Kraft also agreed to stop all in-school marketing.

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- ❖ January 2005, the U.S.D.A. and DHHS issued the *Dietary Guidelines for Americans 2005*. The *Dietary Guidelines* include the following recommendation:
  - “Consume 10 percent of calories from saturated fatty acids and less than 300 mg/day of cholesterol, and keep trans fatty acid consumption as low as possible.”
- ❖ The *Dietary Guidelines* also contain:
  - “Because trans fatty acids produced in the partial hydrogenation of vegetable oils account for more than 80 percent of total intake, the food industry has an important role in decreasing trans fatty acid content of the food supply. “

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- ❖ August 2005, New York City Department of Health and Mental Hygiene (DOHMH) asked city restaurants and food suppliers to voluntarily eliminate partially hydrogenated vegetable oils
- ❖ July 2006, Chicago proposed ordinance to ban the use of partially hydrogenated oils for cooking in Chicago restaurants. Hearing - only target restaurant chains with at least \$20 million in annual gross sales, including the major fast food establishments.
- ❖ August 2, 2006, three British supermarket chains, Sainsbury's, Tesco and Asda, announced eliminate partially hydrogenated oils from own-brand products by the end of 2006. Other chains - Marks & Spencer & Waitrose - already removed (2004).

# *Food Policy & Health*

- ❖ June 2006, the American Heart Association (AHA) issued "2006 Diet and Lifestyle Recommendations."
- ❖ Re: trans fat, AHA recommends daily intake of trans fats be limited to 1 percent of total calories, equivalent to 2 to 2.5 grams of trans fat/day.
  - One McD's large fries contains 8 grams of trans fat.
  - Four Girl Scout shortbread cookies contain 1.5 grams of trans fat.
  - Large order KFC Popcorn Chicken contains 7 grams of trans fat.
  - KFC's Chicken Pot Pie contains 14 grams of trans fat.
  - 3-piece KFC Extra Crispy combo meal, with a drumstick, two thighs, potato wedges, and a biscuit contains 15 grams of trans fat.

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- ❖ On June 13, 2006, a Maryland doctor sued Kentucky Fried Chicken (KFC).
  - The plaintiff asked that KFC be required to notify customers that it is using “lethal partially hydrogenated oil” for frying.
- ❖ June 12, 2006, Cheesecake Factory is making changes to its menu – trans fat free menu
- ❖ Other food retailers and processors continuing to change practices amidst changing regulatory environment and consumer/public focus on link between food and health.
- ❖ New Trans Fat labeling requirements – effective January 1, 2006.

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## ❖ Litigation theories:

- Products liability
- Personal injury
- Negligence
- Strict liability
- Failure to warn
- Breach of warranty
- Misrepresentation re: product
- Negligent/reckless marketing or distribution
- Vicarious liability
- Advertising liability – misleading ads; targeting of vulnerable populations
- Government subrogation – recovery of funds paid out for health care/medical (similar to tobacco theories)



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- ❖ Consumer Protection Acts
  - Seen as potentially most vulnerable area
  - Allow citizens suits
- ❖ Who is potentially liable?
  - Manufacturers
  - Advertisers
  - Restaurants
  - Joint liability
    - Ex: rancher or wheat farmer could be named as co-defendant in obesity suit against McD – example actually appears in Insurance Industry publications

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- ❖ 2003 U.S. Chamber of Commerce Study
  - States with the most litigation are generally the states where citizens are most obese
  - MS – ranks last among 50 states in its liability system (high verdicts)
  - MS also had worst obesity rate in the nation in 2001 (25.9% of citizens were obese in 01)
  - WV, AL, LA & TX rounded out bottom 5 state liability systems in 2003 and all had obesity rates over 23% in 2001.

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## ❖ Children's Issues

- Attempts to establish brand loyalty in kids
- Co-marketing of food/toys
- “Pouring rights” contracts that split school vending machine profits with school system
  - “unfair distribution to captive market”
- Marketing - \$15 B in 2002 up from \$6.9 B in 1992
- Nickelodeon – 1 week = 575 ads for food; 24% of all ads; 1 ad every 10 minutes; only toys and games ranked higher (55.7%)

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- ❖ Schools – Rapidly changing area
  - Vending machines and franchises – sponsorship of sporting events
  - Public Schools now required to change policies
  - Child Nutrition & WIC Reauthorization Act of 2004 – requires all school districts participation in school lunch program have local wellness policies by July 1, 2006.

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- ❖ Local Policies to include:
  - Goals for nutrition education, physical activity and nutrition guidelines for all foods available on each campus
  - Establish plan for measuring implementation of local wellness policy
  - Involve parents, students, school food authority, school board and administrations & public in developing school wellness policy

(Source: [www.schoolnutrition.org](http://www.schoolnutrition.org))

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## ❖ State School Foods Report Card (based on strength of school nutrition policies 2006)

A- =	KY
B+ =	NV, AR, NM, AL, CA
B =	NJ, AZ, TN
B- =	LA, WV, CN, FL
C+ =	HI, TX
C =	ME, MS, DC
C- =	CO, SC
D+ =	NY, MY
D =	OK, VI, NC
D- =	IN, IL, GA
F =	everyone else!



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- ❖ Legislation in response to obesity litigation
  - Commonsense Consumption Acts
    - Model state legislation being introduced/passing in many jurisdictions
    - 03 – 04: AZ, CO, FL, GA, ID, MI, IL, LA, MO, OH, SD, TN, UT, WA, WI
    - 04 – 05: CA, CN, KA, MN, MS, MT, NE, NV, NJ, NW, ND, OK, SC, TX, VA, WY

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- ❖ State Restaurant Labeling Bills
  - 03-04: CA; DC; NJ; NY; OH; PA; PR; ME; NH; TX
  - 05: AR; CN; DC; HI; IL; ME; MA; NJ; NY; OH; PA; VT
- ❖ Nutrition Policy ([www.cspinet.org](http://www.cspinet.org))
  - Nutrition labeling on menus
  - Decrease marketing low-nutrition foods to children
  - Improve school foods
  - Increase physical activity
  - Support physical activity through transportation policy
  - Promote F/V intake
  - Increase resources for nutrition; physical activity programs through soft drink taxes

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- ❖ California Prop. 65 – law passed in 1986 - requires that anyone at reasonable risk of exposure be informed when substances classified as toxins are present.
- ❖ Proposition 65 requires Governor publish list of chemicals known to the State of California to cause cancer, birth defects and other reproductive harm.
- ❖ The list of "Prop 65 Chemicals" - over 750 chemical entries and is updated quarterly.
- ❖ Statutory civil penalties (for actual or threatened violation) include: (i) issuance of an injunction; (ii) enjoining the sale of the offending product in California; and (iii) monetary penalties of up to \$2,500 per day per violation.

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- ❖ “National Uniformity for Food Act” – HR 4167, S. 3128.
  - Would invalidate any food-safety and labeling laws considered "not identical" to FDA regulations. States would be allowed to keep safety standards if the FDA fails to take a position.
  - States could appeal to the FDA to keep state laws, but exemptions granted only under three conditions:
    - States must demonstrate that their law would cover an otherwise unprotected "important" interest,
    - wouldn't "unduly burden interstate commerce," or
    - "cause any food to be in violation of any applicable requirement or prohibition under federal law."

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## ❖ Links between Ag & Health

- 2020 Vision for Food, Ag and the Environment (IFPRI, May 2006)
- Increase availability and affordability of staple foods
- Raise incomes in households engaged in ag work
- Increase access to micro-nutrient rich foods
- Empower women (as nutrition providers to children)
- Address globalization and urbanization associated with greater supply of and demand for energy-dense, nutrient poor foods – links to obesity in countries with high incidence of childhood under-nutrition
- Elevate role of agricultural marketing & nutrition linkages
- Increase impacts of food and nutritional demands on ag

# *Food Policy & Health*

- ❖ Food Costs ([www.cnpp.usda.gov](http://www.cnpp.usda.gov)).
  - Official USDA Food Plans: Cost of Food at Home (Weekly - U.S. Average, January 2000)
    - Thrifty plan: family of 4 - \$86.70 – \$100.00
    - Low cost plan: \$109.40 - \$128.90
    - Moderate cost plan: \$133.70 - \$160.50
    - Liberal plan: \$164.70 - \$193.60
  - Official USDA Food Plans: Cost of Food at Home (Weekly – U.S. Average, March 2006)
    - Thrifty plan: family of 4 - \$102.60 - \$119.40
    - Low cost: \$128.90 - \$152.80
    - Moderate: \$158.20 - \$190.40
    - Liberal: \$195.60 - \$230.80



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## ❖ **Food Policy Councils**

- comprised of stakeholders from various segments of a state or local food system.
- can be officially sanctioned through a government action such as an Executive Order, or can be a grassroots effort.
- primary goal is to examine the operation of a local food system and provide ideas or recommendations for how it can be improved.

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- ❖ Exist in: AZ, CA, CN, IL, IA, TN, MI, NC, OK, OR, MN, UT, WA
  - Food Policy Inventories
  - Public Schools
  - Housing
  - Jobs in food industry
  - Interface with Dept. of Health, Public Works, Transit Authorities, Law Enforcements
  - Land use planning
  - Coalition Building
  - Monitor Policies
  - Organize Constituency
  - Review budgets, reports
  - Develop food policies for public analysis
  - Take positions on food issues

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- ❖ Involved in broader issues of:
  - Community food security
    - Community supported agriculture
    - Community gardens
    - Farmers markets
    - Local and regional food systems
    - Farm to cafeteria; farm to institution
    - Community food assessments
  - Rural Poverty
  - Hunger and food programs
  - Migrant and seasonal farm workers
  - Family farms
  - Nutrition

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- ❖ **“Arkansas Fights Fat: Translating Research Into Policy to Combat Childhood & Adolescent Obesity”** (Ryan, et al. 25 Health Affairs, no. 4 (2006); [www.healthaffairs.org](http://www.healthaffairs.org))
  - Vending machines eliminated from elementary schools
  - Pouring contracts made public
  - School district advisory committees on nutrition & PE
  - CHAC (Statewide Child Health Advisory Committee – created by legislation in 2003) 60+ recommendation to ABE
  - Employ community health promotion specialists
  - Assess annually BMI for all public school students (K-12) – reported to parents on report cards
- ❖ August 2006 – slight decline in # of children overweight/at risk
  - 2005 = 37.5% schoolchildren overweight/at risk
  - 2003 = 38.1%

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- ❖ Trans Fat Labeling Changes
  - January 1, 2006, all packaged foods entering interstate commerce in the United States must list trans fat content on Nutrition Facts labels.
- ❖ Other Labeling Changes
  - Food Allergen Labeling and Consumer Protection Act of 2004
    - Applies to all food products labeled on or after Jan. 1, 2006
    - Identifies “Big 8” food allergens
    - Requires plain English and specificity in labeling for these “Big 8” allergens

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- ❖ “Big 8” Food Allergens:
  - Milk
  - Eggs
  - Fish
  - Crustacean shellfish
  - Tree nuts
  - Peanuts
  - Wheat
  - Soybeans
- ❖ Over 90% of all documented food allergens are from these foods – most likely to result in severe or life-threatening reactions
- ❖ Gluten labeling of foods by August 2006 and final rule no later than August 2008



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- ❖ Other 2005 Food Code Changes:
  - Clarification of “potentially hazardous food” definition – added new tables
  - Major food allergen labeling
  - Employee health - targeted reporting, restriction, exclusion and returning to work provisions
  - Reduced oxygen packaging
  - Added *listeria monocytogenes* as pathogen of concern
  - Summary of food defense resources
  - Re-focusing on high risk employee practices
  - Amended definition of juice
  - New provisions re: managing potentially infected food employees and food employee applicants

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- ❖ Bioterrorism Act (passed in 2002) – regulations coming on line
  - Registration of food facilities
  - Administrative detention of food
  - Record keeping of food
  - Exclusions – farms, restaurants, nonprofit operations, fishing vessels, if regulated by other USDA statutes
- ❖ Guidelines, checklists and models issued
  - Disposal of intentionally adulterated food & decontamination of food processing facilities
  - Security practices for transportation of food
  - Self-assessment checklists for food security
  - Model food security plans
- ❖ Began acrylamide examination – new reports being issued; regulations will follow (byproduct from high heat – cancer causing (corn and potato chips))

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## ❖ Policies to Protect Food Safety and Animal Health

- Upcoming Choices article
- H.L. Goodwin, et al
- Based on Future of Animal Agriculture in North America, Farm Foundation

## ❖ 2004-2005 reported cases of notifiable diseases in the U.S.

– Campylobacter:	12.9 (04)	9 (05)
– E coli 0157:H7:	2,452 (04)	2,368 (05)
– Listeria:	710 (04)	769 (05)
– Salmonella:	40,263 (04)	40,327 (05)
– Shigella:	13,327 (04)	13,195 (05)
– vCJD	0 – (04)	0 – (05)

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## ❖ Cross Cutting Issues

### – Traceability, Bioterrorism and Animal Disease

- Vital need to pay attention to these issues
- Tracking system important to the process
- Animal disease and public health interactions
- Organics increasing – perceived as healthier and of better quality – looming question of whether they are “safer”
- Residues – antibiotic and chemical residue – leading to increase in claims concerning food product (“antibiotic free” and the regulation of those claims)

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## ❖ Food Safety Responsibilities

- Canada, Mexico and U.S. all have systems in place to guard against importation of p/a diseases and to control naturally occurring disease outbreaks
- Concern re: robust nature of Mexican programs
- Lack of clear cut assignments of duties in Mexico
- Proliferation of agency responsibilities in US

## ❖ Antibiotic Resistance

- Concern abounds re: use of antibiotics
- If reduce antibiotic use in animals – will more animal disease occur? Will food epizootic pathogens occur at higher levels? (salmonella, campy, E. coli)

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## ❖ Animal Health Regulation

- National Academy of Sciences National Research Council recommends high-level mechanism to coordinate current fragmented US system
- Common robust system of epidemiological surveillance should be developed; strengthen diagnostic capabilities

## ❖ Trade and Market Accessibility

- Sanitary and Phytosanitary Standards are part of most trade agreements but implementation disputes result in trade restrictions or embargoes on food products
- Operation of local and regional markets with live animals continue to be source of concern regarding animal health
- Need to manage trade relative to animal health and food safety in ways that do not provoke trade disruption



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## ❖ Livestock Insurance and Indemnity

- Disease outbreaks – high potential to cause extreme economy damage
  - Direct loss to producer
  - Loss in consumer confidence
- Income support mechanisms do not address sector sustainability if closed export markets
  - Lack of farm safety net policies in animal ag
  - Require quick responses
  - Insurance and indemnification is an option – must also consider impact on price to all producers if export markets are lost due to animal disease

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## ❖ Business Strategies

- Source Verification
- RFID
- Recall Mitigation
- Product claims
  - Policing of claims practices is limited
- Cost of disease testing and continued vaccine research

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## ❖ Drivers of Change

- Increasing consumer sophistication
- Evolution of markets for traditional and niche animal products
- Consumers demanding more information and greater access to food safety/animal health info
- Costs of animal health outbreaks
  - USDA estimates BSE could result in \$15B loss in sales and \$12B in slaughter and disposal costs (Pritchett 2005)
  - FMD estimated losses \$14B (Paarlberg 2002)
  - 2002 Virginia END outbreak – 197 poultry premises affected – 4.7 M birds depopulated – cost more than \$130 M (Bauhan, 2004).

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- ❖ Technological Developments – improvements in tracking and identifying animal disease issue
- ❖ Globalization – reemergence of once eradicated diseases is increasing
- ❖ Market innovations
  - Source assurance
  - Product technology innovation to support consumer confidence with measurable, scientific criteria
  - Emerging niche markets capitalizing on uncertainty of safety in traditional animal product supply chain
  - Credible sources of information

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## ❖ Production level mitigation

- Biosecurity programs
- Vaccinations, sanitation, handling and use of colostrums, separating animals by age, restricting of visitors, suppliers and vehicles
- Risk assessment and management
  - Food animal vets – continued decline in #
- Quarantines – size, duration and extent
- Use of satellite mapping for tracking animal movement
- DNA probes and other rapid diagnostic techniques
- Poultry industry – voluntarily testing for both H5 and H7 AI including establishment + control zone 2 miles around any infected flock

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- ❖ Continued need to proactively address pre-harvest food safety issues
  - FDA has limited pre-harvest authority
  - APHIS – pre-harvest authority re: animal disease
  - FSIS – regulates at point of entry to slaughter through processing
  - Implementation of producer-level management activities
  - HACCP



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## ❖ Public Programs & Policies

- Policy instruments to share losses, policy costs and program benefits
- Need accelerated response times
- Need additional epidemiological surveillance of diseases

## ❖ Public & Private Partnerships

- Credible certification and labeling processes
- Increased funding of research and programs to build scientific, educational and managerial capacity to respond is necessary

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- ❖ Up to 90% of all foodborne illnesses are attributed to handling and preparation – often in the household (Schutze 1999)
- ❖ Need for increased consumer outreach
- ❖ Need for better coordination of public efforts – national structure of food safety in US – movement to combined system
- ❖ Enhancing efforts for rapid and widespread information dissemination re: food safety issues
- ❖ Support new scientific tools and technologies and an increase in supply of veterinarians
- ❖ Establishment of indemnity insurance for animal ag

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- ❖ Need for more consistent international standards and enforcement regimes
- ❖ Need to address gaps and research needs
  - Risk management tools that livestock producers could use to mitigate catastrophic financial losses
  - Scientific managerial and educational tools to enhance identification of and response to disease outbreak
  - Triggers that allow cross border trade to resume

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- ❖ Subject of food policy is broad and deep
- ❖ Will continue to see development along multiple lines:
  - Nutrition
  - Food policies
  - Food litigation
  - Food safety
  - Bioterrorism
  - Cost, access, availability, locality
- ❖ Role for public issues educator is unending