



**International Dairy Foods Association**  
Milk Industry Foundation  
National Cheese Institute  
International Ice Cream Association



**Statement to the U.S. House of Representatives  
Committee on Small Business  
Subcommittee on Regulations and Healthcare**

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**"Impact of Food Recalls on Small Businesses"**

Good morning, Madame Chair and Committee members.

My name is Diane Austin, and I am the Vice President for Marketing at Perry's Ice Cream Company in Akron, New York. I would like to thank you for holding this hearing today to discuss the impact of food recalls on small food manufacturers like Perry's.

In my statement today, I will highlight three areas: first, outline the steps we take to make sure American dairy products are among the safest in the world; second, explain why product recalls can have a devastating impact upon small businesses and third, ask you to consider how Congress can help us get through the economic losses suffered through no fault of our own. My statement will conclude with a call to carefully consider the impact of any new food safety regulations on small businesses.

Perry's Ice Cream is a family run company that has been making great tasting, creamy ice cream for four generations. From our humble beginnings in 1918, using hand cranks and horse-drawn delivery wagons, Perry's Ice Cream has evolved to be one of the most modern ice cream production facilities in the country. We now employ nearly 300 team members in Akron, NY.

We manufacture ice cream under our own label and under contract for other brands as well. We maintain a fleet of vehicles to distribute our products in New York and Pennsylvania but you can find products manufactured in our facility as far West as Chicago and as far South as Florida. In the Western New York area, we proudly maintain the # 1 Market share against large multinational competitors and supply ice cream across multiple channels of trade, including chain and independent grocery stores, convenience stores, independent mom-and-pop ice cream stands, schools, nursing homes and other food service venues.

Perry's remains committed to the old-fashioned values that have made us a successful household name for over 90 years. We are very proud of the fact that the Niagara University Family Business Center named us the 2008 Family Business of the Year. This award recognized our commitment to family businesses and our contribution to the economic growth of Western New York.

We also recently received the 2008 INNOVATE award in the Agribusiness category from the Buffalo Niagara Partnership for growth, innovation and investment in the regional economy.

We enjoy bringing smiles to others, not only through our many delicious flavors of ice cream, but also by sponsoring charitable teams, supporting nonprofit agencies and donating products to community organizations throughout Western New York. If you take a look around the Western New York region for the Perry's logo, you'll see the many ways that we're making life a little better.

I am here today with our trade association, the International Dairy Foods Association, which represents our nation's dairy manufacturing companies and their suppliers. IDFA has a membership of 530 companies representing more than 85 percent of the milk, cultured products, cheese and frozen desserts produced and marketed in the United States. More than half of IDFA's member companies are small businesses. Perry's is an active member of IDFA and one of its constituent organizations, the International Ice Cream Association. Our Chairman, Tom Perry, and our President, Brian Perry (Tom's son), have both served on the Board and as officers of the organization.

IDFA annually hosts an ice cream party on Capitol Hill for Congress and its staff. We serve thousands of scoops of ice cream that is donated by the members of IDFA. This year's event is on June 18th and I'd like to take this opportunity to invite each of you and your staff members to attend.

### **American dairy products are among the safest in the world**

Product quality and consumer safety are the top priorities at Perry's Ice Cream. Like small businesses across the country, the trust and confidence of our customers is paramount. From premium ice cream to custard, Perry's makes more than 550 different flavors of ice cream products at our facility in Akron.

To better understand the impact of this recall on Perry's, it's important to understand the food safety and quality control protocols we use. These are typical for dairy processors, both large and small.

Dairy manufacturing plants must meet stringent federal, state and local regulations, including those developed by the U.S. Food and Drug Administration (FDA) and state regulatory agencies.

Food safety controls begin with the receipt of milk, cream and other ingredients. We require that our dairy ingredients are sampled and tested for animal drug residues, total bacteria count, temperature and composition. For non-dairy ingredients, such as peanuts or peanut butter, we require that a Certificate of Analysis (COA) be provided with each shipment to document compliance with our ingredient specifications. Any ingredient that does not meet our specifications is rejected and returned to the supplier.

Effective food safety procedures are used throughout the manufacturing process. Making ice cream begins by blending all the dairy ingredients and sweeteners in a high-speed blender to produce a base ice cream mix.

This mix is then pumped through stainless steel piping to a pasteurizer that destroys any potential harmful micro-organisms. The pasteurized and homogenized ice cream mix is then stored in closed, refrigerated, stainless steel

tanks at 45°F or less until lab testing is completed and the mix is ready for freezing. This process could take between 1 to 96 hours. The ice cream mix is then pumped from the pasteurized refrigerated storage tanks to flavor vats where color and flavor are added. The product is then pumped to the barrel freezers that add air and freeze the mix to 21°F. The frozen product is then passed through a “Fruit Feeder” and reel pumps where inclusions (such as peanuts, chocolate chips) and reel (such as peanut butter or chocolate sauce) are added.

The ice cream mix, now with inclusions or just plain, flows into consumer-ready packaging. This packaging is quickly conveyed to the blast freezers where the final hardening of the ice cream occurs.

A very similar process is used for making ice cream novelties, except the frozen mix flows into metal molds where it is partially frozen in the shape of the particular novelty, then removed, packaged and conveyed to the blast freezers. A thick peanut base is sometimes injected into the center of the metal molds prior to removal.

Because inclusions do not undergo pasteurization with the rest of the ice cream mix, Perry’s establishes product specifications for our vendors and evaluates the vendors of these products to ensure the ingredients are safe and of high quality.

To further ensure that our products are safe and of the highest quality, Perry’s has a plant-wide Hazard Analysis and Critical Control Point plan, known throughout the food industry as HACCP. This includes good manufacturing practices, preventative maintenance programs for processing equipment, standard operating procedures and other food safety and quality programs. In addition, Perry’s uses a strong on-going Good Manufacturing Practices program that is based on FDA’s requirements for food processing plants. This program includes:

- Maintenance of the plant surroundings and the integrity of the plant facility to prevent entry of pests and rodents
- Extensive training of processing personnel regarding personal hygiene and plant operations
- Detailed maintenance and cleaning of the processing facility and its equipment
- Correct storage and handling of food ingredients and packaging
- Proper temperature control of the food product during processing and storage.

In 2008, Perry’s delivered over 1700 man hours of training to our team members in the areas of food safety and quality.

As you can see, dairy foods go through extensive and rigorous safety and quality tests before they reach the grocery store.

These practices enable us to reliably deliver safe products to our customers. Until the peanut recall, Perry's had only two very limited product recalls in the last ten years and each of those events were limited in scope and costs. Simply put, it is never in our best interests to cut corners, or risk delivering unsafe products to our customers.

Now I will describe how product recalls can be devastating to the successful operation of a small business such as Perry's.

### **Product recalls impose many direct and indirect costs on small businesses, most of which cannot be recovered**

Earlier this year, Perry's Ice Cream voluntarily recalled and destroyed a significant amount of product as a result of the food safety lapses at the Peanut Corporation of America. These recalls have already had a significant impact upon our business, and I fear that before this is all over, many small food processors may go under.

For background, I think it's important that you understand that food processors, like Perry's, are in the middle of the food chain; that is we buy raw products and ingredients; we process them into food products; and sell them to other distributors or directly to food retail and food service outlets. Our customers are both the grocers who sell our products and, ultimately, the consumer.

As the seller and manufacturer in a food recall, we are financially responsible for making sure our direct customers and the consumers are made whole. So instead of being paid for our product, we are paying our customers, and absorbing the cost of finding the recalled products and destroying them. At the same time, we also have to pay our suppliers of milk, cream, and other inputs that went into the recalled products and for new ingredients needed to manufacture the re-supply. This presents a double burden on our cash flow – one that many small businesses are unable to absorb.

Small businesses are heavily reliant on cash from their operations or banks for funding. When cash flow is interrupted, very tough choices must be made about what expenses can be met and what purchases can be made.

Let me now give you some details describing the current PCA recalls.

As I have explained, some of our ingredients, such as peanut paste, are added to the ice cream mix after it has been pasteurized. These ingredients cannot be added prior to pasteurization and that is why we require certificates and additional testing of those products to ensure they have been safely handled.

When we received multiple recall notices from PCA this year, we had no choice but to recall our products even though our testing and certificates indicated

complete compliance. We did not receive direct information from FDA about unfolding events at PCA. In fact, we heard about the PCA investigation on the news. Our initial recall, which was launched on January 17th, was based on products we received from PCA's Georgia facility. Each subsequent recall (the second was on January 22nd and the third on January 30th) expanded the scope of the PCA products being recalled and, therefore, expanding the number of our products that we needed to recall.

Although we received the recall notices from PCA, we coordinate our recall efforts with the Food and Drug Administration's food recall coordinator for our region. We immediately contacted our customers and began the effort to pull and destroy the affected products from our inventory in retail stores and distribution networks. This activity was followed by extensive field audits to confirm that all channels were clear of affected product before we could begin the product re-supply.

As a result of the series of recalls associated with PCA, we had to recall 44 different products affecting the Perry's brand as well as the products of five of our customers. We traced the affected products to 6,534 individual locations ranging from distribution warehouses to retail grocery stores; from schools to mom and pop ice cream stands.

So far, we have conducted audits at more than 900 locations to insure that the product has, indeed, been pulled from sale. These audits are most often performed by drivers who check the freezers and back rooms to assure that the product is gone.

In addition to the direct costs of destroying more than 170 tons of valuable products, we have already accounted for over 2100 employee hours spent on the PCA recalls and we believe that to be a very conservative estimate. We placed a notice of the recalls on our Web site and have responded to nearly 1,000 contacts via our 800 number. These efforts continue as we communicate with our customers and consumers, and begin our re-supply.

This describes our losses, but unfortunately, Perry's Ice Cream is only one of hundreds of food processors that have recalled products because of PCA. At least twenty members of IDFA, both large and small businesses, have been similarly affected through no fault of their own. More than 3,000 food products have been recalled as a result of the failure of PCA and 10 percent of these recalls have been ice cream products.

To the best of our knowledge, no consumer illnesses were related to any of Perry's recalled ice cream products. Yet, the recalls have damaged the trust that our customers and consumers place in our products. Additionally, we are likely to suffer continued business disruption as we complete the recall and re-supply process.

## **Congress should consider assisting the small food manufacturers injured by the PCA recalls**

The dairy industry has an excellent record of food safety and is considered a leader in developing new technologies and processes. However, food processors have been hit particularly hard because the recalled PCA products were used primarily as minor ingredients in a larger product. In our ice cream products, we estimate that the cost of the peanuts or peanut paste was at most only one tenth of the value of the food inputs that we lost.

We do not yet have a complete accounting of the financial losses that Perry's will face as a result of the PCA recalls. It will surely be in the hundreds of thousands of dollars, if not more.

Just as our customers look to Perry's, their supplier, for reimbursement; we would look to PCA for liability for these losses. However, PCA has filed for bankruptcy, its owners are under investigation, and any insurance it may have will be woefully inadequate to cover the millions of dollars that have been lost across the food supply chain. If we can recover anything at all from PCA, it will take years to do so. Many small companies cannot afford to wait years for reimbursement.

What about our own insurance? Insurance to cover recalls is not common and is limited in scope. We did have some insurance for extra expenses associated with the additional cost of conducting the recall (postage, disposal cost, communication cost) and we are in the process of making claims against our policy. However, our insurance will not begin to cover all of our costs. Due to the fact that the legal liabilities will not be resolved in the next few weeks or even next few months, we can't look to insurance to get us through the immediate cash crunch.

The major problem we face is cash flow. Perry's is: crediting our customers for recalled product they purchased; paying our suppliers for the ingredient used in the recalled product; incurring costs for dumping product, legal fees and other recall-related expenses and working to re-establish a pipeline that has been dry for almost eight weeks. As an ice cream manufacturer, we are also trying to build our inventories for the critical sales demand during the spring and summer season. Those manufacturers not affected by the PCA recall, do not have the same burdens.

Perry's is a successful business. Only a portion of our product line was affected by the PCA recalls. As such, we believe we will be able to weather this storm. Unfortunately, many businesses do not have the diversity of product lines or quality of management staff to be able to get past the financial losses and cash

flow problems that this recall has likely created for them. Some will surely be forced out of business as a result.

This Committee and Congress should consider providing financial assistance, preferably in the form of grants or loan guarantees, to help small businesses that have been the innocent victims of recalls such as this. In addition, we would propose that any new food safety legislation consider giving authority and funds for maintaining a program to keep small businesses from going under due to recalls when they are not at fault. Similar programs assist agriculture producers, and I think something should be done to protect small food manufacturers as well.

Finally, I would like to add that as we struggle through the financial implications of this recall; we are also frightened by the cost of complying with new food safety regulations.

Congress is currently considering food safety legislation. Yet, small businesses are already subjected to considerable regulation, not just from the Food and Drug Administration (FDA), but from other federal and state authorities.

The current food safety program at Perry's is very effective and we have rarely recalled products. The possibility of bad, negligent, or even criminal behavior in any part of the supply chain makes it impossible to regulate to a zero risk level. Adding more regulations without fully understanding their impact could make the cost of doing business prohibitive, especially to smaller businesses, and ultimately to our customers and consumers.

We hope that any changes to FDA's food safety program will be combined with an effective regulatory structure to prevent the need for many future recalls. However, when one is necessary, small businesses need reliable, timely and accurate information from the FDA and local regulators. Our financial liability would be less, for example, if recalled products did not cover an unnecessarily long two years. One recall for all products would have been easier than three.

Given the illnesses and deaths caused by PCA products, it is understandable that Congress would be focused on improving the food safety oversight by FDA. As a small business, we would ask Congress to carefully balance business responsibility and government regulation.

On behalf of Perry's Ice Cream and the 530 members of the International Dairy Foods Association, I thank you for this opportunity to offer our views to you this morning.