Private-sector food safety auditors can use the success of kosher certification as a model.

Is That Kosher?

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The Americans can’t seem to agree these days on how much government we want or need. One thing we can agree on, however, is that some problems are too big and complex for government to tackle alone, especially in the current political climate of fiscal restraint. Frequently, private sector efforts can complement government regulation and improve regulatory outcomes. Food safety may be a case in point.

Food safety inspection has become one of those functions that seems too big and too costly for government to do alone. A 2009 FDA audit found that the agency inspects fewer than a quarter of the more than 67,000 domestic food production facilities it is charged with overseeing each year. More than half of those facilities had gone at least five years without an FDA inspection. The report also found that the FDA failed to take regulatory action against most of the facilities it cited for food safety concerns.

Even the Food Safety Modernization Act (FSMA) of 2011, heralded by the Center for Science in the Public Interest’s Caroline Smith DeWaal as “a historic victory for consumers, who can now look forward to a future of safer food”, requires the FDA to inspect high-risk domestic facilities only once every three years and all other facilities once every five years. Recognizing the limits of the Federal government’s capacity, the act calls for the FDA to rely more on state and local inspectors. These inspectors, however, also lack the resources to do the job properly.

In the current economic and political climate, calls for greater government expenditure on food safety inspection seem more like wishful thinking than a practical solution. Instead, developing private-sector alternatives to government regulation may be a better path to regulatory reform. Indeed,
private food safety auditors are already an integral part of the U.S. food safety inspection system, complementing government efforts. U.S. food manufacturers regularly rely on one or more of the 130 private food safety auditing firms to ensure the quality of their own operations, as well as those of their suppliers.

This isn’t to say that there aren’t problems in the private food safety business. Competition among certifiers has led many auditors to lower standards, resulting in a race to the bottom. In one notorious case, a private food safety-auditing firm awarded the Peanut Corporation of America a “superior” rating shortly before the company’s products caused a nationwide salmonella outbreak that killed nine people and sickened more than 22,000. Following the outbreak, Federal inspectors found dead rodents, open holes in roofs and pools of stagnant water at two production facilities. “Superior’ clearly doesn’t mean much”, quipped one Congressman. “How many dead mice do you have to find in your food before you get an ‘Excellent’ rating?”

So in addition to reforming government programs, we have to improve the private food safety inspection system too. Fortunately, a model of private-sector regulatory reform can be found in a little-noticed area of industrial food regulation: kosher food certification. A nationwide network of more than 300 private kosher certifiers reliably ensures compliance with religious standards of food production, and the success of this system holds many important lessons for food safety reform.

Kosher food has become a big business. More than 10,000 kosher food-producing companies operate in the United States alone, making more than 135,000 retail products for some 12 million American consumers. Surprisingly, only about 8 percent of kosher consumers are religious Jews who only eat kosher food; the rest choose kosher food for reasons related to health, food safety, taste, vegetarianism and lactose intolerance, or to satisfy non-Jewish religious requirements such as halal dietary restrictions observed by Muslims. Whatever the mix of reasons, the U.S. kosher market generates more than $12 billion in annual retail sales. In fact, more products are labeled kosher than are labeled organic, natural or premium.

Key to the success of kosher certification is market demand. Whereas government frequently lacks resources to develop, implement and enforce regulations, private certification can generate fees to cover these costs. Moreover, industries that resist government oversight are often willing to pay for private certification in order to enhance the value of their products and services. Reliable private certification must harness market demand for certification without succumbing to competitive pressures to cut corners. The success of kosher certification proves that private certifiers can resist pressures to lower standards in ways that undermine their reliability.

But that outcome isn’t inevitable. Indeed, kosher certification itself was not always so reliable. At the turn of the 20th century, kosher meat production was notorious for scandals involving price fixing, racketeering and even murder for hire. The New York City Department of Markets estimated in 1925 that 40 percent of the meat sold as kosher in the city was not kosher. Industry associations and consumer advocates estimated the rate to be between 50 and 65 percent. How did kosher certification become so unreliable?

The traditional means of regulating kosher trade in the Old World had been centralized communal control backed by government power. Local community councils possessed legal authority to issue exclusive licenses to slaughter and sell kosher meat within their jurisdictions. But religious liberty and free markets in America rendered this approach unworkable. By the mid-1800s, most Jewish communities in America contained a diverse mix of immigrants from different cultural backgrounds who founded rival synagogues within the same locality. Individuals could easily disregard the directives of congregational authorities by simply joining another synagogue, or by founding a new one.

Moreover, in America, Jewish communal authority was not an extension of civil government, as was the case under the Old World system of communal control. Community leaders in America had no coercive
power to enforce uniform kosher standards or to restrict the sale of goods. The problem of kosher fraud was too big for government regulators. Six full-time kosher inspectors in the New York City Department of Markets and ten in the New York State Kosher Enforcement Bureau by the late 1930s were insufficient to oversee the 18,000 kosher food establishments in New York City alone.

Reform finally came to the American kosher food industry with increasing demand among kosher consumers for industrially produced canned and packaged foods and the rise of private kosher certification agencies. Packaged foods presented new opportunities for kosher certifiers outside of kosher meat production, changing the economics of kosher certification. Meat production is labor intensive and therefore relatively slow. The resulting high unit cost of producing kosher meat led many slaughterhouses and retail butchers to fraudulently use non-kosher meat while still charging the kosher premium. By contrast, kosher certification of industrially manufactured packaged foods requires an initial inspection of the production facility and periodic inspections that range from weekly to annually, depending on the nature of the production. Consequently, fees for kosher certification vary from $2,000 to $100,000 per year. Given the fast rate of industrial production, these costs are spread across tens of thousands, or even hundreds of thousands, of production units. This lower unit cost greatly reduces incentives for fraud.

Moreover, kosher certifiers aggressively marketed their services to food manufacturers as a low-cost, highly effective marketing strategy. For example, sales of Duncan Hines cake mix rose 40 percent within two months of kosher certification. Kosher certifiers aggressively marketed their services to food manufacturers as a low-cost, highly effective marketing strategy. For example, sales of Duncan Hines cake mix rose 40 percent within two months of kosher certification. Menachem Lubinsky, a leading kosher market analyst, estimates that somewhere between 2 and 20 percent of a typical product’s sales are attributable to kosher certification, which can mean millions of dollars for a leading brand. Increased sales more than make up for the low unit cost of kosher certification, so companies need not increase the price of their products to acquire it. Today, no major company releases a new product into the U.S. market without kosher certification.

Several features of the market for kosher certification account for its reliability. First, the existence of sufficient consumer demand for kosher certification gives food manufacturers an incentive to pay for reliable, independent inspection of their production facilities. Consumers seek the assurances provided by kosher certification, and companies that fail to obtain it risk losing market share.

Second, brand competition among certifiers based on reliability has led to increasing expertise and accountability. Efforts to build brand value in response to competition have led kosher certification agencies to provide professional training for their personnel and impose strict ethical codes. Agencies have also instituted new forms of quality control.
involving multiple layers of oversight and improved information management. Brand sensitivity has also produced a culture of prompt and thorough responses to consumer complaints.

Third, interdependence among participants in the certification system gives rise to additional oversight. The value of an agency’s kosher certification of a food ingredient (for example, vanilla extract) depends on its acceptability to other agencies certifying products that include the ingredient downstream in the production process (for example, ice cream or cookies). This means that upstream certifiers must meet standards set by downstream certifiers. In turn, downstream certifiers are vulnerable to upstream mistakes, which have the potential to render a wide range of products non-kosher. Downstream certifiers thus carefully monitor upstream certifiers to ensure that their standards are acceptable and their inspection routines reliable. Since agencies typically certify different products at different stages of the production process, they operate both upstream and downstream relative to each other, creating a network of interagency oversight. Agencies are also interdependent in the sense that public scandal caused by one agency tends to undermine public confidence in kosher certification more generally, which gives agencies additional incentive to monitor each other and exclude those who fail to meet industry standards.

Fourth, concentration of market power in the hands of a few large certifiers makes it easier to coordinate the development and enforcement of industry standards. In kosher certification, a group of leading agencies known as the “Big Five” controls more than 80 percent of the U.S. kosher certification market. They established a trade association, the Association of Kashrus Organizations (AKO), as a forum for information-sharing, deliberation and standard-setting for the industry. While AKO has
no formal enforcement powers, it facilitates the communication of reputational information, which is a key source of pressure on agencies to conform to industry standards. Of course, concentrated market power creates a risk of collusion that might run afoul of antitrust laws, so AKO has been careful to focus on policies that promote consumer protection without restricting competition.

Fifth, a core of active and vigilant consumers provides additional oversight, gives certifiers quality-control feedback, and puts teeth in reputational sanctions. The 8 percent of kosher consumers who are religiously observant and eat only kosher food are highly motivated to monitor the reliability of certification. They call agency hotlines to report improperly labeled products—for example, products with a pareve label (indicating the absence of any milk or meat products) that nevertheless list dairy ingredients on the package, packages with agency symbols that appear to be counterfeit, or items that contain ingredients that they suspect are not kosher. Many of these consumers closely monitor agency publications for consumer alerts concerning improperly labeled products or unreliable certifications, and they disseminate this information through social networks. Since certification agencies’ brand values depend on their reputation among these vigilant consumers, agencies have a strong incentive to avoid mistakes and misconduct, and to report them promptly when they occur.

Aside from these five market conditions—consumer demand, brand competition, interdependence, concentration of market power and vigilant consumers—kosher certification agencies have developed an industry culture that further enhances the reliability of kosher certification. Kosher certification isn’t just a business. For the rabbis who staff certification agencies, it is also a sacred trust. Certification agency personnel are motivated by an industrial morality: a shared sense of mission that counteracts incentives to cut corners and promotes cooperation among competing certifiers.

In addition to industrial morality, social networks provide a medium for trust and reputation that supports reliable private certification. At AKO meetings, participants from different kosher certification agencies socialize and pray together. The rabbis who manage these agencies also frequently hold positions of authority in their local Jewish communities, many as congregational rabbis or respected teachers, interacting closely with community members (who are also kosher consumers). Agency personnel form personal bonds with their food-industry clients, many of whom they have worked with for decades. Personal ties also exist among religiously observant kosher consumers, ranging from close connections between congregants to internet-based exchanges carried on through postings on kosher-food websites. These various relationships constitute a complex network that enhances the regulatory performance of the kosher certification system.

How can we translate the successes of the kosher certification system to the private food safety auditing system? The current system suffers from three specific problems, according to Irwin Pronk, a private food safety consultant. First, many auditors lack sufficient technical training, industry experience and people skills to perform thorough inspections. Reliable audits require detailed understanding of the food technology and food chemistry issues in each industry.

Second, some auditors are simply lazy, failing to point out problems so as to avoid extensive paperwork and return visits. Moreover, auditors often spend too much time reviewing paperwork and too little time in the plant inspecting production operations.

Third, both auditors and the companies they audit have economic incentives to cut corners. Eager to win competitive accounts, auditors will reduce the cost of their services by lowering standards. To keep clients happy, auditors will also inflate the ratings they assign. “The pressure on the auditor to ‘improve’ the score can be considerable”, according to Pronk. “[M]oney is changing hands, and this can lead to undue emphasis on competing for business rather than ensuring quality.”

Some reform advocates have emphasized the need for greater government oversight of private food safety audits. In response, the FDA has published a non-binding guidance document that suggests standards for
private food safety audits. The 2011 Food Safety Modernization Act also requires the FDA to establish an accreditation system and model auditing standards for private audits of imported foods. But inadequate agency resources and industry resistance are likely to limit the scope and scale of government oversight. The example of kosher food certification suggests that reform advocates should invest energy in building a market structure and social context that will promote effective self-regulation among private food safety auditors.

To begin with, tapping into consumer demand for food safety is essential to reforming private audits. Promoting consumer demand will give food companies an economic incentive to pay for rigorous audits and will thereby make private auditing profitable and competitive. Fortunately, consumer demand for food safety appears to be growing. Widespread consumer awareness of food-safety issues is reflected in the popularity of best-selling books like Eric Schlosser’s *Fast Food Nation*, mainstream movies like *Food, Inc.*, and hundreds of popular food blogs. A recent study by researchers at Michigan State University finds that “[c]onsumers are not only aware of food safety issues, they are actually changing their shopping habits due to food safety concerns.” Leading food safety scholar Doug Powell cautions that such studies may overestimate current consumer demand, since “people overestimate their own food safety behaviors.” However, he agrees that there is untapped consumer demand for reliable assurances of food safety:

> [F]ood safety can be used as a selling point. The food businesses that use the best science to promote microbiological food safety, and couple that with employee commitment, will capture the imagination of a hungry public.

Growing consumer demand for reliable assurances of food safety is likely to increase brand competition among private auditors. The example of kosher food certification suggests that, if this brand competition can be focused on reliability, then it is likely to raise standards. Some sectors of the food industry are already promoting higher food safety standards. For example, the Global Food Safety Initiative (GFSI), a nonprofit organization managed by the Consumer Goods Forum, is an industry association of more than 400 food manufacturers that promulgates benchmarks for food safety systems in order to promote high standards and uniformity. Currently, four food safety programs meet the GFSI criteria for reliability, and major retailers such as Walmart, Delhaize, Carrefour, Tesco, Metro, Migros and Ahold require some or all of their suppliers to adopt a food safety system that satisfies GFSI benchmarks. GFSI benchmarks for food safety systems are a good start, insofar as they provide a competitive advantage to auditing firms that adopt higher standards. Pronk cautions, however, that many food companies still put cost considerations ahead of quality in choosing an auditor, leading some auditors to lower standards in order to obtain accounts, thereby providing what he calls “GFSI-light.”

The history of kosher certification shows us that industry pressure to cut costs by lowering standards can be counterbalanced by a core of vigilant consumers. The history of kosher certification shows us that industry pressure to cut costs by lowering standards can be counterbalanced by a core of vigilant consumers who generate, monitor and disseminate reputational information to discourage certifiers from cutting corners. Here, too, there are encouraging signs. Food activism is on the rise in America. “One of the most interesting social movements to emerge in the last few years”, writes
Michael Pollan, “is the ‘food movement’ [unified by] the recognition that industrial food production is in need of reform because its social/environmental/public health/animal welfare/gastronomic costs are too high.” Food activists publish popular newspapers and blogs dedicated specifically to food safety and consumer protection. The key role played by the 8 percent of kosher consumers who are religiously observant in kosher certification suggests that food-safety activists need be no more than a small percentage of the consumer market in order to put enough pressure on private auditing firms to maintain high standards.

Supply chain interdependence among food safety auditors is also likely to deter auditors from cutting corners. As is the case among kosher certification agencies, private food safety auditors downstream in the production process depend on the reliability of auditors upstream, and upstream auditors rely on the approval of downstream auditors. This interdependence encourages downstream auditors to police upstream auditors and upstream auditors to conform to the standards of downstream auditors.

The example of kosher certification also suggests that concentrated market power among a few private auditing firms can facilitate the development and enforcement of improved industry standards. In the field of food safety, the GFSI, backed by major retail giant like Walmart and Delhaize, have already started to play this role. These organizations, however, are not as independent of food companies as are the Big Five kosher certifiers. The GFSI governing board is composed of food industry executives. Aside from conflict-of-interest concerns, critics point out that leading brand name retailers support the GFSI’s uniform standards as a way to limit food safety competition, which they worry could drive up costs and cause them to lose market share to less brand-sensitive discount competitors. The food safety system would benefit from greater market power in the hands of leading auditing firms whose market shares rest on brands that are based on reliability rather than cost, and that are highly sensitive to consumer opinion.

The example of kosher food certification further suggests that industry culture is key to the success of private food safety audits. Powell has called for an industry culture in which “operators and staff know the risks associated with the products or meals they produce, know why managing the risks is important, and effectively manage those risks in a demonstrable way.” Such an industrial morality would provide a social context that reinforces economic incentives to do a good job.

Also consistent with the example of kosher certification, Pronk advocates long-term relationships between companies and auditors. “Some food processors”, he writes, “have wisely established a relationship with one certification body, selecting a specific group of auditors, and requiring their suppliers use the approved certification body. These firms are finding more consistent and rigorous audits.” Powell lauds the use of new media—webcams, blogs and social networking sites—that make reputational information widely available to consumers. Developing interpersonal relationships among auditors, food companies and consumers forges bonds of trust and amplifies reputational sanctions.

In 2011, the same year that President Obama signed the Food Safety Modernization Act, Powell and two co-authors published an article suggesting that “[t]he best food producers, processors, retailers and restaurants should . . . sell food safety solutions directly to the public . . . [and] demand ingredients from the best suppliers [and] . . . use a mixture of encouragement and enforcement to foster a food safety culture.” This proposal—promoting brand competition based on reliability, supply chain influence, reputational sanctions and industrial morality—is a bold recipe for reforming the private food safety audit system. And the success of kosher certification suggests that it holds great promise.

\footnote{Powell, Casey J. Jacob and Benjamin J. Chapman, “Enhancing Food Safety Culture to Reduce Rates of Foodborne Illness”, Food Control (June 2011).}