

**Testimony of Wenonah Hauter
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Public Citizen**

**Presented before the House Subcommittee on Agriculture, Rural Development,
Food and Drug Administration and Related Agencies Appropriations**

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Chairman Bonilla, Ranking Member Kaptur and Members of the Subcommittee:

My name is Wenonah Hauter. I am the Director of Public Citizen's Critical Mass Energy and Environment Program. As you know, Public Citizen is a national consumer organization founded by Ralph Nader in 1971. We represent 150,000 members. We welcome this opportunity to present our views on the FY 2004 Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Bill.

USDA – Food Safety and Inspection Service (FSIS)

We are adamantly opposed to the Administration's proposal to collect \$122 million in user fees to recover the cost of providing inspection services beyond an approved eight-hour primary shift. We believe that such a proposal could compromise the effectiveness of FSIS inspectors. Furthermore, FSIS has already taken action to de-list foreign establishments that had been previously approved to export their meat and poultry products to the United States on the basis that inspection services were paid by the companies involved instead of by the foreign government. Implementation of the Administration's proposal to institute user fees would be hypocritical.

Additionally, we are concerned that the current proposal to hire approximately 80 more FSIS inspectors will be inadequate to fill current vacancies and to make up for previous year's cuts. We recommend that at least 200 line inspectors be hired this year.

The alarming number and magnitude of meat and poultry recalls in the past year indicate that there are some serious problems with the implementation of the Hazard Analysis Critical Control Points (HAACP) program. We have been arguing for the past three years that HACCP has turned over too much authority to industry to police itself and has severely undercut the ability of FSIS inspection personnel to their jobs. We have heard directly from inspection personnel who state that they are very confused and concerned over their roles in HAACP.

More troubling is the fact that the economic well-being of companies is placed ahead of the public's welfare by the management at FSIS. In June 2002, we were able to obtain instructions to FSIS inspectors assigned to a large Kansas slaughter plant in which they were admonished that should they err on the side of public health and stop a slaughter line for suspected fecal contamination they could be held personally liable for their decision.

We are also concerned about the failure of supervisors and management to back up FSIS inspectors when they discover food safety hazards. Since last year's massive ConAgra recall, it has come to light that USDA was notified of potential problems at the Greeley, Colorado plant as early as February 2002 – some three months before the first recall notice went out. Warnings came from John Munsell, president of Montana Quality Foods and Processing, after FSIS personnel assigned to his plant confirmed that the source of contaminated meat ground at Montana Quality Foods and Processing was the ConAgra plant in Greeley, Colorado. Instead of applauding Mr. Munsell and the FSIS personnel for their investigative work, they have been maligned by top FSIS officials and have been told they had no authority to point the finger at ConAgra.

The same can be said of the Wampler recall. A twenty-year veteran FSIS inspector, Vincent Erthal, had tried to warn his supervisors for several months of the unsanitary conditions at the Wampler plant in Franconia, Pennsylvania. His concerns went unheeded. This fall, the second largest recall in FSIS history was issued for possible *Listeria monocytogenes* contamination of product coming out of that plant. After much soul-searching, Mr. Erthal decided to come forward to reveal how his attempts to warn FSIS supervision of his concerns were thwarted. Again, instead of backing their own employee, FSIS management has circled the wagons and launched a campaign to discredit Mr. Erthal.

With all of the problems that FSIS has already experienced with their implementation of HACCP in processing plants, the proposed FY 2004 budget contains language that would expand the HACCP-based Inspection Models Project (HIMP) in slaughter facilities. HIMP is yet another attempt at weakening the authority of FSIS inspection personnel and turning that responsibility over to company personnel. In a December 17, 2001 report, staff from the General Accounting Office found glaring methodological deficiencies in FSIS' current pilot project. There has not been any evidence to show that those deficiencies have been addressed. Therefore, we would urge that this expansion of HIMP not go forward until all data from the current project has been evaluated.

While we applaud additional funds to support food safety education, we believe that the money will actually be used to promote irradiation. In her written remarks to the Subcommittee, Under Secretary for Food Safety Dr. Elsa Murano stated it was her intent to devote resources to educate the public about food irradiation. Her remarks also indicate that she will attempt to blur the definition of pasteurization to include irradiation as part of the education campaign.

In focus groups conducted for FSIS in 2002, consumers in St. Louis, Missouri; Raleigh, North Carolina; and Philadelphia, Pennsylvania were asked whether they considered irradiation to be a form of pasteurization, and overwhelmingly consumers responded that making such an assertion would be misleading. Those findings corroborated findings from focus groups conducted for the Food and Drug Administration (FDA) in three different cities during the summer of 2001. We urge you not to fund any additional efforts to change labeling requirements for irradiated food by allowing "pasteurization" to be used.

Lastly, we are concerned about the recent revelations that FSIS still has not addressed problems identified by the USDA Inspector General (IG) regarding the agency's reinspection program for imported meat and poultry products. In 2000, the IG noted some 18 deficiencies in the FSIS reinspection program. In her recent audit, the IG stated that FSIS had still not corrected 14 of those deficiencies – even though they had agreed to do so three years ago. In light of the heightened concerns about the security of our food supply, this is unconscionable. We urge you to instruct FSIS to comply with the recommendations in the 2000 Inspector General report.

USDA – Food and Nutrition Service/Agricultural Marketing Service

The Farm Security and Rural Investment Act of 2002 (the Farm Bill) contains a provision {section 4201 (l)} that directs the Secretary of Agriculture not to prohibit the use of approved food safety technologies in any commodity purchased by the USDA for various government-sponsored nutrition programs, including the National School Lunch and National Breakfast Programs. The USDA has decided this means that they should lift the current ban on the use of irradiation as an intervention for ground beef products purchased for these programs. And, it seems irradiation is the only approved food safety technology they are pursuing.

Section 4201 (l) received no scrutiny from any congressional committee, in either the House or Senate. It never received any floor debate in either the House or Senate. It was placed in the Senate version of the Farm Bill at the last minute as part of a 400-page manager's amendment. The conferees on the Farm Bill never even discussed it in open session.

On November 22, 2002, the USDA announced that it would solicit comments from the public on the implementation of Section 4201 (l) of the Farm Bill and specifically wanted comments on irradiation. The comments are being collected by the Agricultural Marketing Service (AMS). Of the comments posted on the AMS website as of March 19, 2003, by over a 5 to 1 margin, citizens have expressed their opposition to lifting the ban on irradiation – with thousands of comments still left to be posted. Comments opposing such action have come from nearly all fifty states, while those supporting the technology have come primarily from those who have direct ties to the irradiation industry.

In order to promote this technology, the Food and Nutrition Service (FNS) has funded an irradiation “education” program in three Minnesota school districts. The program is being administered by proponents of irradiation – with no access for critics of the technology to present alternative views. In addition, the steering committee for the program is dominated by one irradiation company and its affiliates. In essence, FNS is funding a government-sponsored advertising campaign for one company.

Recent research indicates that some chemicals formed when certain foods are irradiated may be harmful when consumed. The new studies call into question the long-held position of the FDA and the food industry that irradiated foods are generally safe for human consumption. But the studies confirm research published in 1998 and 2001 showing that concentrations of chemicals called 2-alkylcyclobutanones (or 2-ACBs) – which are found only in irradiated foods – caused DNA damage in human cells. Among the new findings, 2-ACBs were shown to promote tumor

development in rat colons. The 2-ACBs are formed when foods that contain fat are irradiated, such as beef, chicken, eggs and certain fruits – all of which can legally be irradiated.

There is even less research into the long-term health effects experienced by children who are exposed to toxic chemicals in foods. Dr. William Au, a toxicologist at the Department of Preventive Medicine and Community Health, University of Texas Medical Branch in Galveston, has argued that the lack of understanding regarding the ill effects suffered by children who consume toxic chemicals in foods extends to **“the toxicological risk with respect to eating irradiated food.”**

If implemented, Section 4201 (l) will create the largest mass-feeding of irradiated food to children in history. We urge the committee not to fund the purchase of irradiated food for federal government nutrition programs.

Food and Drug Administration

We are concerned about the lack of funding for the Food and Drug Administration (FDA) for import reinspections. Even after the additional funding the agency received in FY 2003 to hire more staff to perform food import reinspections, the agency is only capable of reinspecting a paltry 1.3% of imported food over which it has jurisdiction. This needs to be addressed with additional funding, with the goal of reaching at least the 20% reinspection rate that FSIS is able to perform for imported meat and poultry products. Furthermore, FDA should be granted the same authority that FSIS currently possesses to inspect foreign establishments that can export their food to the United States.

We are also concerned with the repeated attempts to weaken the labeling for irradiated foods. The FDA has visited this issue repeatedly since 1997 – primarily at the direction of Congress. Each time, the FDA finds that consumers do not see eye-to-eye on this issue with the irradiation industry and their supporters in Congress. It seems that there are those who want to keep on trying until we get it wrong.

In the conference committee report that accompanied the FY 2001 Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, the conferees stated:

The conferees expect FDA to make final the regulations regarding labeling of irradiated foods by March 1, 2002, and report to the House and Senate Committees on Appropriations on the status by November 15, 2000. This agreement changes the dates proposed for final regulations by the House of September 30, 2001, and by the Senate of October 30, 2001.

In its report to the Appropriations Committees, the FDA explained that it had published an Advanced Notice for Proposed Rulemaking (ANPR) in 1999 on food irradiation labeling as the agency was directed to do under the FDA Modernization Act conference committee report in 1997. In evaluating the comments that the agency received from the ANPR, FDA stated:

The majority of these comments were letters that urged the agency to retain special labeling for irradiated foods but did not address the specific issues on which FDA requested comment. A preliminary analysis of the comments suggests no consensus about what alternative language for disclosure of irradiation processing would be truthful and not misleading. Because the public comments provided no clear direction for agency rulemaking, FDA believes that 1999 ANPR fulfills the Agency's obligations under the FDAMA Conference Report.

The FDA went on to say in its report to Congress that it intended to impanel consumer focus groups to attempt to obtain further guidance on the labeling issue.

During the summer of 2001, the FDA commissioned six consumer focus groups in suburban Washington, DC; Minneapolis, Minnesota; and Sacramento, California. In all of the focus groups, the moderator attempted to make a strong association between pasteurization and irradiation. This was significant since there have been some irradiation proponents who have argued that a more appropriate term to describe irradiation is either "cold pasteurization" or "electronic pasteurization." In a 2002 report to Congress, the FDA summarized the results of those focus groups:

Most of the participants viewed alternate terms such as "cold pasteurization" and "electronic pasteurization" as misleading, because they appeared to conceal rather than disclose information about irradiated food products. Participants did not see the current disclosure labeling as a warning...Everyone agreed that irradiated foods should be labeled honestly. They indicated that the current FDA required statement is a straightforward way for labeling irradiated foods.

Furthermore, in his 2002 testimony before the House Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations, Dr. Lester Crawford, Deputy Commissioner of the FDA stated:

(W)hen we did focus groups at FDA on cold pasteurization, the general feeling of the average citizen was that this was kind of a ruse or a means to conceal the fact that the food had been irradiated. And so we are kind of back to square one. We don't have a good synonym for irradiation and we would like to have one. We don't want to mislead the public.

The public has been very consistent on this issue – in focus groups for USDA and FDA and in public comments solicited by FDA. Consumers do not want labeling rules for irradiated food to allow euphemisms like "electronic pasteurization." In fact, rather than changing the words that are permitted to describe irradiated food, FDA should instead focus on expanding the current rules beyond retail establishments, so that irradiated food served in restaurants, hospitals and schools must be labeled. There have already been too many resources devoted to this issue within FDA. The driving force ought to be what the consumers believe to be honest and straightforward labeling – not what some in industry think will make it easier to sell their product. The FDA has more important things to do than devising ways to confuse and mislead consumers. We urge you not to fund further attempts to change labeling rules for irradiated foods.

Thank you.