

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

March 25, 2004

Chairman Bonilla, Ranking Member Kaptur and Members of the Subcommittee. My name is Wenonah Hauter. I am Director of Public Citizen's Energy and Environment Program. As you know, Public Citizen is a not-for-profit consumer organization, representing 150,000 members. We welcome this opportunity to present our views on the FY 2005 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 \$124 million in user fees in order 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. This proposal has been rejected in the past by the Congress and we request that Congress do so again this year. Furthermore, FSIS has already taken action to delist 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 would be hypocritical.

While not fully under the jurisdiction of the subcommittee, we believe that the subcommittee needs to look into the mixed signals top officials at USDA have been sending in regards to the authority the FSIS has to do its job effectively. On March 19, 2003, USDA Secretary Ann Veneman delivered a speech before an industry-sponsored conference in which she stated:

"...we are working under a Meat Inspection Act that pre-dates the Model T. In an effort to modernize food safety authorities, we want to work with Congress and our partners to consider various ideas, some of which have been discussed in the past. These include: "Mandatory notification to USDA when a federally inspected establishment has reason to believe that meat or poultry has been adulterated or misbranded; Authority to impose civil penalties after notice in writing and continued lack of compliance. This authority would involve due process before an administrative law judge, and liabilities would be limited to penalties based on continued noncompliance; And cease-and-desist orders and potential suspensions at earlier phases and on an expedited basis arising from HACCP violations." ¹

Industry reaction to her remarks was quick and ferocious opposition. As a consequence, nothing has occurred since her speech and we were disheartened to hear Dr. Elsa Murano, Under Secretary for Food Safety, state at the subcommittee's March 18, 2004 hearing that the Department had no intention to review its authorities at this time. In light of adverse court rulings which FSIS has suffered in recent years in its attempts to exert its regulatory authority over meat processors that have violated FSIS food safety regulations, we believe that this is an irresponsible position to take.

¹ <http://www.usda.gov/news/releases/2003/03/0092.htm>

We are also concerned that FSIS does not have adequate in-plant inspection staffing to ensure that our meat and poultry products are safe for consumption. In recent years, the requests for additional staffing by the Administration have been modest. FSIS has been engaged over the past year to realign staffing based on new standards that take into account food safety risk. While the agency claims that the new staffing model is based on “science”, we are concerned that the data upon which the agency is basing its decisions may not be sufficient or reliable. The agency is relying on data that it has collected through its Field Automation and Information Management (FAIM) system upon which to make its new staffing decisions. We have learned from inspection personnel that reliance on such data may lead to incorrect conclusions because the FAIM system has been fraught with problems. For example, inspection personnel have had difficulty logging on to the system and the system often crashes before inspectors’ reports have been completely transmitted. Consequently, there may be a “garbage-in-garbage-out” scenario whereby the agency will find itself having re-deployed its inspection staff based on faulty and/or complete data. We request that the subcommittee fully investigate this issue before the agency completes its staffing reassignments.

In a related area, the USDA Office of Inspector General (OIG) found serious security weaknesses in the FSIS information technology systems. Specifically, the OIG stated:

“Our vulnerability scans of selected FSIS systems disclosed weaknesses that may be exploited both internally and externally from the Internet. FSIS had not adequately protected physical access to its headquarters computer facility by limiting it to users who need access to perform their duties, and it had not completed all security plans required by OMB Circular A-130. FSIS database administrators were allowed to make changes to FSIS data without following up with appropriate personnel to verify the validity of the changes...”²

It was shocking to us that when asked about the OIG’s findings, both Dr. Murano and Acting FSIS Administrator Dr. Barbara Masters, could not comment about them during the March 18, 2004 hearing before the subcommittee.

On the issue of equivalence and import reinspections, we believe that FSIS needs to do a better job of safeguarding consumers against unsafe food that may be imported into our country. In July 2003, Public Citizen released a report entitled, “The WTO Comes to Dinner: USDA Implementation of Trade Rules Bypasses Food Safety Requirements” in which we documented shortcomings in the FSIS food safety program for imported meat and poultry products. For example, we have not been able to determine how FSIS permanently bans a country from exporting food to the United States if FSIS finds habitual violations of food safety regulations. We have also become alarmed that since the fall of 2002, when FSIS instituted a new sampling regime, the amount of imported meat and poultry products reinspected at our ports of entry has dropped precipitously. During a period in which we must be more vigilant about the security of our food supply, FSIS seems to have adopted a policy that is counterintuitive. We ask that the subcommittee review FSIS’s food safety program for imported products.

We have also recently learned that FSIS, through its work on the Codex Alimentarius Commission, has tentatively agreed to support an Australian initiative that would permit meat products inspected under Australia’s controversial privatized meat inspection system to enter into world commerce. The United States has historically refused to permit meat inspected by those other than government inspectors – foreign as well as domestic – to enter the U.S. food supply. We find this development very troubling, especially in light of a report released by the Government Accountability Project entitled, “Free Trade

² <http://www.usda.gov/oig/webdocs/OIG-Report010604.pdf>, p. 6

in Filth,” that described the shortcomings of the Australian privatized system.³ We believe that the subcommittee should provide additional oversight into FSIS’s work with the Codex Alimentarius Commission.

While we applaud FSIS’s steps in protecting consumers from beef that may be contaminated with bovine transmissible encephalopathy (BSE), the initiatives announced on December 30, 2003 still do not go far enough. First, we are concerned that meat product that is obtained through the use of advanced meat recovery (AMR) systems is still permissible for cattle that are slaughtered under the age of 30 months. AMR systems recover meat close to the spinal column. The spinal column is an area of concern since that is where infected tissue is often found in BSE-infected cattle. There have been cases of BSE-infected cattle reported abroad that were younger than 30 months. Consequently, we believe that the 30-month cutoff is too high, and that AMR should be banned. Second, there needs to be a rigorous training program on BSE for FSIS inspectors and veterinarians to ensure that FSIS personnel fully comprehend the symptoms of BSE and the new regulations FSIS has put in place. Third, there has been much controversy over the “downer” ban that FSIS announced. We believe that the definition of “non-ambulatory, disabled” animal is adequate to prevent any confusion at the slaughter facilities, but we are concerned about how USDA will continue to conduct its BSE surveillance program since such animals will no longer be presented for slaughter. Fourth, the recall of meat from the slaughtered BSE-contaminated cow in Washington State illustrated, once again, the weaknesses of the FSIS recall process. Fifth, we are concerned that USDA may have prematurely lifted its ban on Canadian beef imports in August 2003. In light of the fact that both recent cases of BSE-contaminated cows on the North American continent were of Canadian origin, the meat from Canadian cows may not be safe for human consumption.

USDA – Regulatory and Marketing Affairs

At the outset, we request that the subcommittee revisit the issue of country-of-origin labeling and provide funding for the full implementation of this provision of the 2002 Farm Bill on its originally scheduled date of September 30, 2004.

We believe that recent announcements by the Animal and Plant Health Inspection Service (APHIS) regarding its surveillance program for BSE are less than adequate. First, we do not believe that reopening our border to live Canadian cattle is prudent at this time. Both recent cases of BSE-contaminated cows on the North American continent were of Canadian origin. Prior to the finding of the BSE-contaminated cow in Washington State, APHIS had published a proposed rule permitting the import of live cattle from countries that had a minimal risk of BSE. This proposed rule was originally published in October 2003, and it was an attempt to reshape U.S. policy on BSE because heretofore the United States shut our borders to any country that had a reported case of BSE. In May 2003, Canada reported that it had discovered a cow in Alberta with BSE in May 2003, so the United States closed its borders and prohibited Canadian cattle from entering the United States. But, since this case involved our North American neighbor, APHIS seemed to searching for a way to make an exception.⁴ We felt that the proposed rule was contrived because U.S. agribusiness interests have operations on both sides of the border. The original comment period for this rule was due to close on January 5, 2004. But then, the events of December 23, 2003 intervened which changed the picture again. While APHIS announced that it would close the comment period on January 5, it announced on March 4, 2004 that it was reopening the comment period on this issue.

³ <http://www.whistleblower.org/uploads/msep%202000%20for%20web.pdf>

⁴ <http://www.citizen.org/publications/release.cfm?ID=7298>

Nothing has changed. The fact still remains that both cows were of Canadian origin. There have been recent press reports that revealed that cattle feed exported from Canada to the United States is contaminated with prohibited material.⁵ If it is contaminated coming across the border, how can we be assured that contaminated feed is still not being fed to Canadian cattle that may be destined for the United States? In addition, since the Food and Drug Administration announced on January 26, 2004 new measures on cattle feed, officials from the Canadian government announced that they will not comply with the new restriction on feeding bovine blood to cattle.⁶ Yet, the Premier of Alberta recently announced that he has received assurances that the border will reopen during the upcoming summer.⁷ We see no merit in even considering reopening the border at this time.

While the new BSE surveillance program announced by APHIS on March 15, 2004 is a step in the right direction, it still leaves many questions unanswered. The size of the sample is still not finite. We have been critical of APHIS in the past for its sampling techniques,⁸ and it seems that the agency is leaving itself vulnerable to criticism with its new program. In fact, Dr. George Gray, Executive Director of the Harvard Center for Risk Analysis recently stated that APHIS was basing its new surveillance regime on faulty assumptions and cautioned APHIS to adjust its sampling to reflect the possibility of BSE being found in so-called low risk animal populations.⁹

On the issue of food irradiation, we believe that APHIS is opening up our borders to increased fruit and vegetables imports from abroad, leaving our domestic farmers vulnerable to unfair competition, and possibly exposing American consumers to harmful health effects from consuming irradiated food. In October 2002, APHIS approved the use of irradiation as an approved phytosanitary measure for imported fruits and vegetables. We had opposed this rule.¹⁰ When APHIS issued its final rule in October 2002, we were perplexed with regard to convoluted structure of the rule.¹¹ APHIS is still reviewing applications from foreign governments that wish to use irradiation as a phytosanitary measure. There has been interest expressed in a number of countries to use this technology on their products for export.

Most recently, APHIS approved the use of irradiated to treat Hawaiian sweet potatoes to be shipped to the mainland of the United States. This approval came even after mainland sweet potato growers opposed the approval of the rule.¹² What is even more troubling is that APHIS seemed to have approved this rule to assist a financially ailing food irradiation company stay in business. In fact, in approving this new rule, APHIS stated:

“The irradiation facility in Hawaii will benefit from having more crops available to treat. The treatment available at this facility has enabled many producers in Hawaii to move their products to the mainland, thus providing them with access to markets that were not previously available. For several years, the State of Hawaii has encouraged farmers to diversify agricultural production, given the significant decline in the production of sugarcane as a major crop. The approval of irradiation as a treatment for sweet potatoes moved interstate from Hawaii will help to provide steady throughput for this facility. The facility currently treats seasonal crops whose volume is more variable than that of sweet potatoes and is thus sometimes underutilized. A steady source of revenues from treatment, such as revenues

⁵ http://seattlepi.nwsourc.com/local/157454_madtest21.html

⁶ <http://www.canoe.ca/NewsStand/WinnipegSun/News/2004/01/28/327305.html>

⁷ O’Neill, Brendan. “Klein: U.S. border to reopen to Canadian cattle in June,” meatingplace.com, March 24, 2004.

⁸ <http://www.citizen.org/documents/madcowreport.pdf>

⁹ Sugarman, Carol. “USDA’s Ambitious BSE Testing Program Gets Guarded Support,” *Food Chemical News*, March 22, 2004

¹⁰ <http://www.citizen.org/documents/aphiscomments.PDF>

¹¹ <http://www.citizen.org/pressroom/release.cfm?ID=1254>

¹² Skrzycki, Cindy. “Approval of Irradiated Sweet Potatoes Has Critics Steamed,” *Washington Post*, March 9, 2004.

from treating sweet potatoes to be moved interstate, would help assure this facility's continued operation and availability for all the producers in Hawaii who can use it."¹³

The facility in question is owned by Hawaii Pride, a company that was created using a USDA Rural Development Administration loan.¹⁴ The firm was having difficulty making payments on the loan because of its precarious financial condition.¹⁵ In essence, APHIS is running an irradiation "industrial policy" by helping bail out Hawaii Pride from total financial ruin with the approval of this rule. The subcommittee should review APHIS's activities regarding this rule.

USDA – Cooperative State Research, Education, and Extension Service

It has come to our attention that the Cooperative State Research, Education, and Extension Service (CSREES) provided funds to Texas A & M University to establish a National Center for Electronic Beam Research at its campus. The grant was approved on July 28, 2003, and certain Texas congressional delegation members were credited for securing the funds.¹⁶ The timing of the grant approval raised suspicions since Texas A & M and the SureBeam Corporation, a leading food irradiation processor and electron-beam irradiation equipment manufacturer, had already entered into a strategic partnership only three years earlier.¹⁷ SureBeam had donated to the University \$10 million worth of electron-beam irradiation equipment in exchange for the use of a building on the campus whereby the company could use the equipment for commercial purposes and University could use it for research purposes. In the summer of 2003, revelations concerning SureBeam's dubious accounting practices began to surface in the press, and among the areas of concern was the manner in which SureBeam was reporting "revenues" from its relationship with Texas A & M University.¹⁸ On January 19, 2004, the SureBeam Corporation filed for Chapter 7 bankruptcy and is in the process of liquidating its assets.¹⁹ We believe that the subcommittee needs to investigate this matter further to determine whether there were any improprieties with the awarding of this grant.

USDA - Foreign Agricultural Service

We would also request that the subcommittee investigate whether the Foreign Agricultural Service or anyone else at USDA promised the government of the Philippines a \$10 million grant from P.L. 480 funds to build a food irradiation facility in that country. It was widely reported in the Filipino press during the May 2003 state visit of Filipino President Arroyo that such a proposal was being seriously entertained by the USDA.²⁰ The stated purpose of this project was to facilitate the ability of the Philippines to export fruits and vegetables to the United States.

USDA – Food and Nutrition Service

In October 2002, the Food and Nutrition Service awarded Minnesota's Department of Education (formerly the Department of Children, Families and Learning) a grant of \$151,000 to develop a food safety and food irradiation education program in three Minnesota school districts. Three school districts were selected in January 2003 to conduct this program. Unfortunately, the program was fraught with problems since balanced information was not being furnished to parents, school personnel

¹³ 69 FR 7547.

¹⁴ <http://www.hiedb.org/showtext.asp?ArticleID=26&Category=Articles>

¹⁵ Titan Corporation. Form 10-K filed with the Securities and Exchange Commission, March 10, 2004, p.21.

¹⁶ <http://www.meatandpoultryonline.com/content/news/article.asp?docid={d63bd189-14d2-450d-b399-bd02eac5cbc6}>

¹⁷ http://www.ift.org/publications/docshop/ft_shop/10-00/10_00_pdfs/10-00-p&t-proc.pdf

¹⁸ Norris, Floyd. "SureBeam Revenue Policy Questioned," New York Times, August 27, 2003.

¹⁹ Freeman, Mike. "SureBeam's Bankruptcy Filing Offers Few Details," San Diego Union-Tribune, January 21, 2004.

²⁰ deLeon, Max V. "Trade Chief Optimistic of Irradiation Facility Grant," Manila Times, May 21, 2003.

and students. Public Citizen wrote a report critiquing the project.²¹ While the Food and Nutrition Service continues to extol the virtues of this project on its website,²² we believe that the fact that none of the Minnesota school districts chose to order irradiated food during the 2003-2004 school year illustrates how controversial this issue still remains. Section 502 of H.R. 3873, the Child Nutrition Improvement and Integrity Act of 2004, directs the Secretary of Agriculture to develop model education materials on food irradiation that are based on science. As we testified last year, there is recent research that raises questions about the safety of consuming certain irradiated foods, such as irradiated hamburger meat. We sincerely hope that the Secretary includes that information when it is disseminated to states and schools districts across the country. We request that the subcommittee direct the Secretary to develop balanced information on this issue.

Food and Drug Administration

We applaud the Food and Drug Administration (FDA) for revisiting its feeding restrictions for ruminant animals in light of the discovery of a BSE-infected cow in Washington State. Unfortunately, while the FDA made its announcement on January 26, 2004 that it intended to promulgate interim final rules creating new BSE firewalls, none of those rules have yet been published in the Federal Register. That means that cattle in this country are still being fed under the old feeding rules that the FDA has found to be deficient. The FDA needs to take immediate action to place those new restrictions in effect. While we believe the new rules proposed are a step in the right direction, we believe that further restrictions are needed that include the prohibition of any mammalian and poultry protein to be fed to cattle, as recommended by the International Advisory Panel appointed by USDA Secretary Ann Veneman.²³

We are also concerned that the FDA is not able to increase its surveillance over imported foods that fall under its jurisdiction. In fact, the FDA is being overwhelmed with imports – leaving U.S. consumers vulnerable to unsafe imported food making its way into commerce. The subcommittee needs to review the staffing levels for FDA, especially as they relate to import inspection.

In his testimony last year, then-FDA Commissioner Mark McClellan reported that an FDA working group has been considering a redefinition of the term pasteurization to include such new technologies as irradiation. Such a redefinition could be used by food processors on product labeling. The group that has been charged with this responsibility is a subcommittee of the National Advisory Committee on the Microbiological Criteria for Food. As we have testified in the past on this issue, consumers have repeatedly rejected such a redefinition in focus group studies conducted by the USDA and FDA.²⁴ We believe that such an exercise is a waste of resources since redefining pasteurization would lead to consumer deception and confusion.

²¹ <http://www.citizen.org/documents/minnesotareport.pdf>

²² <http://www.fns.usda.gov/fdd/foodsafety/irrad-edmaterials.htm>

²³ http://www.aphis.usda.gov/lpa/issues/bse/US_BSE_Report.pdf

²⁴ <http://www.citizen.org/documents/agappropsmarch03.pdf>

Financial Disclosure

In accordance with clause 2 (g) (4) of Rule XI of the Rules of the House of Representatives, I declare that Public Citizen has not received any funds or grants from the Government of the United States during this or the past two fiscal years.

Wenonah Hauter, Director

Public Citizen's Critical Mass Energy and Environment Program

Date