

**Testimony of Wenonah Hauter  
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**and**

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

**May 30, 2003**

Chairman Bennett, Ranking Member Kohl and Members of the Subcommittee:

On behalf of our two organizations, we welcome this opportunity to present our views on the FY 2004 Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Bill. Public Citizen is a non-profit consumer organization founded by Ralph Nader in 1971. Public Citizen represents 150,000 members. The Government Accountability Project's mission is to protect the public interest by promoting government and corporate accountability through advancing occupational free speech and ethical conduct, defending whistleblowers, and empowering citizen activists. Founded in 1977, GAP is a non-profit, public interest organization and law firm.

**USDA – Food Safety and Inspection Service (FSIS)**

We are adamantly opposed to the Administration's proposal to collect \$122 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. 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 would be hypocritical.

Additionally, we are concerned that the current proposal to hire 80 more FSIS inspectors will be inadequate to fill the current vacancies and to make up for previous years' cuts. We urge the subcommittee to request from the agency a full listing of all current position vacancies and the length of time the positions have been vacant. We recommend that at least 200 new line inspectors be hired this year.

The alarming number and magnitude of the meat and poultry recalls that have occurred over 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 of the authority to industry to police itself and has severely undercut the ability of FSIS inspection personnel to do their jobs. We have heard directly from inspection personnel who state that they are very confused over their roles in HACCP because of the conflicting instructions they receive from top level management within FSIS.

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

We are also concerned about the lack of backing which FSIS inspectors receive from supervisors and USDA management when they discover food safety hazards in their assignments. In the ConAgra recall, information has surfaced that USDA knew of potential problems at the Greeley, Colorado plant as early as February 2002 – some three months before the first recall notice went out. During that month, testing conducted by FSIS inspection personnel at the Montana Quality Foods and Processing plant located in Miles City, Montana and transmitted to the FSIS regional office in Minneapolis confirmed that the source of contaminated meat ground at Montana Quality Foods and Processing was the ConAgra plant in Greeley, Colorado. Working with John Munsell, the President of Montana Quality Foods and Processing, the inspection personnel tried to get FSIS upper level management to review food safety practices at the ConAgra plant. They were concerned that due to the large volume of product from this plant, inadequate practices could create a significant public health threat. 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 inspector, Vincent Erthal, had tried to warn his supervisors for several months of the unsanitary conditions at the Wampler plant located in Franconia, Pennsylvania. He even requested that FSIS take enforcement action against Wampler. His concerns went unheeded. This past fall, the 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, USDA 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, the proposed FY 2004 budget contains language that would expand the HACCP-Inspection Models Project (HIMP) in slaughter facilities. HIMP is still another attempt to weaken the authority of FSIS inspection personnel and turn that responsibility over to company personnel. In a December 17, 2001 report, the General Accounting Office documents glaring methodological deficiencies in the current pilot project that FSIS has been conducting. There has not been any evidence to show that those deficiencies have been addressed. Therefore, we would urge that this pilot project not go forward until reliable data is furnished upon which a proper evaluation can be made of the effectiveness of this program.

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 in her 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.

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

#### **USDA – Food and Nutrition Service/Agricultural Marketing Service**

The Farm Security and Rural Investment Act of 2002 (the Farm Bill) contained a provision {section 4201 (l)} that directed 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 to interpret this language to mean the lifting of the ban currently in place against the use of irradiation as an intervention for ground beef products purchased for these programs. And, it seems this is the only approved food safety technology they are pursuing.

Section 4201 (l) never received any scrutiny by any congressional committee – in either the House or the Senate. It never received any floor debate – in either the House or the 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 were collected by the Agricultural Marketing Service (AMS). The comment period ended on April 11, 2003. Of the comments posted on the AMS website on this subject by May 28, 2003, by a nearly 11 to 1 margin, citizens have expressed their opposition to lifting the ban on irradiation – with hundreds 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 spite of this overwhelming opposition to permitting irradiation of food in the child nutrition programs, USDA announced on May 29, 2003 its intent to lift the prohibition on irradiation as an intervention.

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 provided to opponents of the technology to present alternative views. In addition, the program is dominated by one irradiation company and its affiliates. In essence, FNS has funded a government-sponsored advertising campaign for one company.

What makes this “education” program significant is the fact that the material used to promote irradiation in Minnesota will be used across the country in other school districts. We have learned that one of the Minnesota school districts recently dropped out of the program because the superintendent came to the conclusion that this issue properly belonged in the public health arena and should not be debated at the school district level. Consequently, it seems that FNS has wasted \$151,000 to fund an “education” program with incomplete results.

We are opposed to irradiation because we are not certain of its safety. Recent research coming from Europe 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. 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. Also, scientists discovered that they could not adequately account for most of a dose of 2-ACBs fed to rats. While very small amounts of 2-ACBs were detected in their fat, most of the chemicals could not be recovered, implying that they are either stored in other parts of the body or transformed into other compounds. 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 and sold to consumers.

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.”**

Implementing Section 4201 (l) of the Farm Bill will create the largest mass-feeding of irradiated food to children over an extended period of time ever in the history in the world.

## **Food and Drug Administration**

We are concerned about the lack of funding for the Food and Drug Administration (FDA) for import re-inspections. Even after the additional funding the agency received in FY 2003 to hire more staff, the agency is only capable of re-inspecting 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% re-inspection rate that USDA's 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 suggest 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 contracted with ORC Macro, a public opinion research firm, to organize six consumer focus groups. Two of these focus groups were held in Calverton, Maryland (suburban Washington, DC); two were held in Minneapolis, Minnesota; and two were held in 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 food irradiation

proponents who have argued that a more appropriate term to describe irradiation on product labeling 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 – whether through the focus groups conducted for USDA or FDA or through comments solicited by FDA. 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 it ought to be. The FDA has a much more important mission to accomplish than devising ways to confuse and mislead consumers.

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