



Consumer Federation of America

Testimony of
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Subcommittee on Agriculture, Rural Development,
Food and Drug Administration, and Related Agencies
Committee on Appropriations
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Madame Chair and members of the committee, I am Carol Tucker Foreman, Distinguished Fellow at the Food Policy Institute of Consumer Federation of America. From 1977-81, I was assistant secretary of agriculture for food and consumer services. My responsibilities included oversight of meat, poultry and egg inspection.

CFA is a non-profit association of over 300 organizations, with a combined membership of over 50 million Americans. Member organizations include local, state, and national consumer advocacy groups, senior citizen associations, consumer cooperatives, trade unions and anti-hunger and food safety organizations. Since its founding in 1968, CFA has worked to advance the interest of American consumers through research, education and advocacy. CFA's policy positions are determined by a vote of member representatives. CFA's Food Policy Institute was created in 1999 and engages in research, education and advocacy on food and agricultural policy, agricultural biotechnology, food safety and nutrition.

I appreciate the privilege of appearing before you today to represent CFA's members. Congresswoman DeLauro, my organization's members are grateful to you for your leadership on food safety issues—as founder and co-chair of the Congressional Food Safety Caucus, as author of legislation that would address many of the problems outlined by the Government Accountability Office in the High-Risk Update issued last week and as an eloquent voice for the

need to modernize this nation's food safety system so that it can do the job of protecting public health.

Before I address the specifics of the GAO report assigning high risk status to food safety programs, I'd like to take a moment to comment on the President's budget requests for food safety.

The FDA Budget for Food Safety Activities

The FDA is the starving bulimic model of regulatory agencies and if it doesn't get adequate funding soon, its effectiveness will completely expire. The federal budget is in the trillions of dollars, but the FDA budget has been flat-lined for a number of years. The agency has had to reduce staff just to cover the costs of inflation.

The public needs and wants FDA to be an effective food safety agency. It has to have adequate resources to do that. Over the past few years FDA's budgets, especially the food safety functions, have been effectively decreased.

CFA and other consumer organizations have joined with the food industry to ask Congress to provide adequate resources for the FDA to protect the public health. We are proud to be members, along with the Food Products Association/Grocery Manufacturers of America and three former secretaries of Health and Human Services in the Coalition for a Stronger FDA. The Coalition is seeking a \$115 million increase in the FY 2008 budget to enhance the agency's ability to respond to possible outbreaks of food-borne illness and to help states, local jurisdictions, and industry reduce the risks of increased outbreaks, especially those from fresh produce.

The President's budget includes an additional \$10.6 million for food safety efforts, which FDA says would be used to "develop better methods to rapidly detect foodborne illness, track contamination to its source and help states, local jurisdictions and industry mitigate the risks of new outbreaks," as well as \$13.3 million for consolidation of FDA staff and infrastructure at a new facility in White Oak, Maryland.

It will take more than the modest increases in the President's budget to enable the FDA to meet its food safety responsibilities. We hope the Subcommittee and the Congress will consider the recommendations of the FDA Coalition and provide additional increases.

There is also a provision in the FDA budget for \$23,275,000 for user fees for "reinspection of food processing facilities." For reasons spelled out below, CFA does not generally favor user fees.

The USDA/FSIS FY 2008 Budget for Food Safety

This is a much harder issue for us. The FSIS budget includes, again, a stated intention to ask Congress to approve user fee legislation to cover increasing program costs. USDA uses this device to project a savings of \$96 million in FY 2009. It is irksome to us, and I presume to you, that USDA trots this proposal out regularly to cover its failure to request enough funding to cover meat and poultry inspection programs. Congress has rejected this proposal many times. Over the past 35 years consumer groups have consistently opposed user fees. On this issue, as with increasing funding for FDA, we have agreed with associations representing the food industry.

Meat and poultry inspection is a public health program. The public should support the costs of the program. We want inspectors to think of meat consumers as their employers. We're willing to support the tax burden of an effective inspection program. We don't want an inspector who sees filthy meat to think twice about stopping the line because it might cost his or her job.

However, there is one new element in user fee category that, depending on how it is structured, CFA can support. USDA/FSIS is projecting a \$4 million savings for FY 2009 from fees it will collect in FY 2008 from plants that require additional inspection activities for performance failures such as retesting, recalls, or inspection activities linked to an outbreak. If this request is as straight forward as it seems, we say Hallelujah! Madam Chair.

It seems appropriate for USDA to try to recoup the excessive amounts of time and resources it expends keeping under performing plants in business. USDA has little capacity to deal with chronic problem plants.

The Supreme Beef case destroyed USDA's ability to enforce pathogen performance standards and the department's capitulation to Nebraska Beef's claim that the agency could not close the plant just because it failed to meet its own HACCP plan or SSOPs, has just about gutted effective enforcement against plants that consistently fail to meet their obligation to operate in a manner that protects public health. FSIS also has no authority to invoke civil penalties. When the agency runs into one of these plants that, either through intransigence or incompetence, fails to operate at an acceptable level of food safety,

the agency has to send in teams to do intensive in-plant reviews, explain the problems and try to help the plant comply. FSIS staff have become the plant's HACCP staff.

Ladies and gentlemen, that is an outrageous use of the public's money and it is manifestly unfair to the meat and poultry companies that invest money, talent, time and creativity to do the job the right way. The responsible companies bear those costs. The bottom dwellers get a free ride from the taxpayers. Charging plants for this type of over time supervision would seem to be a reasonable approach to stopping them from gaming the system until Congress can modernize the meat inspection law and provide better mechanisms for achieving the goal.

The GAO Designation of Food Safety as a High Risk Area

The current GAO report is just the most recent of many studies that office has presented to the Congress outlining weaknesses in the government's food safety system. Since 1993 the office has issued, investigated and published multiple detailed reports analyzing the problems that arise from the patchwork nature of federal food safety oversight.

GAO has urged that the federal government use food inspection resources more strategically, identify and react more quickly to outbreaks of foodborne illness, and focus on achieving results to promote the safety and integrity of the nation's food supply.

They have repeatedly recommended modernizing current law and creating a food safety organizational framework designed to address current risks to public health and to the economy.

Is the Government Doing a Better Job of Protecting Public Health?

Even without the basic statutory and organizational changes recommended by GAO, the government has taken some steps directed to improving food safety. The USDA's FSIS adopted HACCP in meat and poultry inspection and the FDA has instituted it for fresh juices and seafood. The Centers for Disease Control has stated that these actions, plus industry adoption of FDA guidelines on *Salmonella* prevention in egg production, and the meat industry's efforts to control *E. coli* O157:H7 led to reductions in food-borne illness in the late 1990s.

The USDA's Food Safety and Inspection Service, has consistently and blatantly overstated and misrepresented that their own data and the CDC's FoodNet data to claim far more progress than has occurred and

to cover up the fact that, since 2001, reductions in food-borne illness have stalled.

The leaders of the Food Safety and Inspection Service claim they are winning the war against food-borne illness. Don't you believe it. The GAO is correct. Food safety is a high risk area. The experience last year with produce related *E. coli* illnesses and a review of the CDC's food-borne disease monitoring over the past few years reveal the problems.

Produce Related *E. coli* O157:H7 Outbreaks

Surely everyone in this room is aware of the major food poisoning outbreaks last year traced to produce from California's Salinas Valley crops that came in contact with *E. coli* contaminated ground water. Contaminated spinach caused 204 illnesses and 3 confirmed deaths in 26 states. The Taco Bell *E. coli* outbreak made 71 people in five states ill. An outbreak of *E. coli* poisoning traced to Taco John's restaurants caused 81 illnesses in 3 states.

If the produce related *E. coli* O157:H7 outbreaks of 2006 aren't enough to demonstrate the truth of GAO's assertion that food safety is a high-risk area, then a close look at the CDC FoodNet data for the past five years will surely do so.

CDC FoodNet Data Demonstrate That Progress Against Food-borne Illness Has Stalled, and In Some Cases Illness Rates are Going Up
CDC's data indicate that progress in reducing food-borne illness has stalled and in some cases, we are losing ground.

USDA officials play with the CDC's data to claim that improvements in food safety are continuing.

Dr. Richard Raymond told a Food Safety Education Conference last September that USDA programs have resulted in "*dramatic declines in the rate of human illness. Comparing human illness data from 2005 with 1998 data, E. coli O157:H7 human illness rates are down 29%, Listeria monocytogenes illness is down 32% and Campylobacter declined 30%.*"¹

¹ Raymond, Richard, M.D. Remarks to the National Food Safety Educations Conference, Denver, CO, September 27, 2006

Those figures are correct but Dr. Raymond has chosen to use the most favorable figures. He ignores the fact that, since 2001, there has been virtually no additional progress.

In the April 2006 report on food-borne illness rates in 2005, the CDC reported the following with regard to progress against well known food-borne pathogens.

- *Campylobacter*—virtually no decline since 2001
- *Salmonella* serotypes—of the five most common only *Typhimurium* declined since the base years. Most of that decline occurred by 2001. (In other reports the CDC reported that antibiotic-resistant *Salmonella Newport* rates have increased steadily over the past five years.)
- *E. coli* O157:H7- after dropping to the level of the National Health Objective in 2004, the rate increased in 2005.²

The record with regard to *Listeria* is particularly disheartening and USDA's claims of continuing improvement are particularly disingenuous.

The National Health Objective for *Listeria* related illnesses, set in May 2000, was to cut the rate in half-- from 5 cases per million to 2.5 cases, by 2005.³ Congresswoman DeLauro, 2005 has come and gone and the U.S. government failed to meet the goal. That did not keep the agency's chief spokesman from claiming this week that the agency is on track to reach the National Health Objectives. He simply ignores inconvenient facts.

In 2005 the *Listeria* related illness rate was 3 cases per million, as high as it was in 2000. It fell as low as 2.6 in 2002, but then reversed and went to 3.3 in 2004.

² Vugia, D., M.D. and others, Preliminary FoodNet Data on the Incidence of Infection with Pathogens Transmitted Commonly Through Food—10 States, United States, 2005, *Mortality and Morbidity Weekly Report*, Vol. 55, No.14, April 14, 2006, pp. 392-95. See especially, Editorial Note, page 394.

³ The White House, Press Release, *President Clinton Announces Aggressive Food Safety Strategy to Combat Listeria in Hot Dogs and Other Ready-to-Eat Foods* (May 6, 2000) available at <http://www.foodsafety.gov/~dms/fs-wh20.html>.

In 2003, USDA introduced a new *Listeria* control program which consumer groups criticized as being far less stringent than the one originally proposed. Under Secretary Raymond likes to point to the *Listeria* rule as a prototype for a new "risk-based" inspection system. Consumers should beware. Before the 2003 industry-friendly *Listeria* control program was adopted by the Bush Administration, the country was close to achieving the 2.5 per million *Listeria* rate of the National Health Objective. After the meat industry worked its way with the USDA and weakened the *Listeria* rule, the rate rose as high as 3.3 and, in 2005, was 3 per million.

The attached chart, drawn from CDC FoodNet reports published annually in the *Mortality and Morbidity Weekly Reports* shows the problem (see Attachment).

I don't think anyone can convincingly argue that the rate of decline has slowed because the disease incidence has been driven down to a bare minimum. The regular reports of illness and death from the outbreaks that become public show the problems continue.

The CDC still estimates that there are 76 million cases of food-borne illness each year, 325,000 hospitalizations and 5,000 deaths. Those numbers are a national tragedy and should create an imperative to make the changes needed to finally control food-borne illness.

Why Has Progress Stalled?

The public has a right to ask why the progress has stalled so soon and so far short of the goal.

At the risk of offending the committee I have to say that the record shows that one reason for lack of progress is insufficient commitment from Congress, as well as the President and the agencies. Congressional and presidential pledges of concerns are unconvincing because so far there has been no meaningful action by either.

The GAO is a creature of the Congress. You ask them to tell you how to address problems. They file reports year after year telling you what to do, but Congress has not acted.

Congress has directed and appropriated funds for numerous National Academy of Sciences/National Research Council efforts to examine what is needed to reduce the toll of foodborne illness in the U.S. They echo the GAO report catalogue of outdated law and unwieldy, ineffectual division of responsibilities.

The 1998 report, *Ensuring Safe Food from Production to Consumption* concluded that it is not possible to achieve an acceptable level of public health protection without revising current statutes and reorganizing federal food safety efforts. The committee recommended that Congress:

- Change federal statutes so that inspection, enforcement and research efforts are based on scientifically supportable assessments of risk to public health.

- Join the executive branch in developing a comprehensive national food safety plan and allocate funds for inspection and enforcement according to the level of risk posed by products and the potential benefits from reducing the risk. This was started but abandoned.

- Establish by statute a unified and central framework for managing federal food safety programs, one that is headed by a single official and which has responsibility for and control of resources for all federal food safety activities, including outbreak management, standard setting, inspection, monitoring, surveillance, risk assessment, enforcement, research and education.⁴

In 2003, another NAS/NRC committee issued *Scientific Criteria to Ensure Safe Food*. That report urged that Congress amend food safety law to provide federal food safety officials with specific authority to set and enforce microbiological criteria, including pathogen performance standards. Congress pays for the studies and reads the reports but you do not act on them.⁵

Existing Laws Hamstring Effective Action to Improve Food Safety

The GAO, the NAS and others repeatedly tell the Congress that the nation's food safety laws are archaic and ineffectual in addressing the problems of a modern food system and 21st century food consumption patterns. The original Pure Food and Drug Act and Meat Inspection Act are 100 years old. This year the current Meat Inspection Act will be 40 years old and the food sections of the FDCA are almost 70 years old.

Since the governing statutes were written, the way food is grown, transported, processed, sold and consumed have changed radically. The laws were passed before the age of fast food chain restaurants

⁴ Institute of Medicine, National Research Council of the National Academies of Science, *Ensuring Safe Food from Production to Consumption*, 1998.

⁵ Institute of Medicine, National Research Council of the National Academies of Medicine, *Scientific Criteria to Ensure Safe Food*, 2003.

and before the percentage of meals Americans eat away from home exploded. When the Meat Inspection Act was passed in 1967 most women did not work outside the home. They stayed home and cooked meals that the family ate together every night. Today everyone works outside the home. Everyone eats multiple meals each week away from home. Most of us buy food partially prepared and take it home.

The industrialization and internationalization of the food production system adds to the risk of food-borne illness. In the 1930s and even the 1960s if someone made a mistake while growing or processing food the damage was limited because the food system was local. Today the food system is international and a mistake threatens the lives of people across the country and even around the world. Most of the lettuce and tomatoes we consume are raised in two or three states and shipped across the country. A little contamination, a small mistake, goes a long way and threatens a lot of people. The Taco Bell distribution center in New Jersey that was investigated as part of the recent E. coli outbreak, supplies more than 1,100 restaurants. The produce farms in the Salinas valley of California produce most of the nation's lettuce.

No One Is In Charge

No one is in charge. Responsibility for food safety is spread across 15 agencies and governed by some 30 laws. Each agency responds first to its own imperatives and priorities. Sometimes there is a competitive urge or just a lack of interest that prevents agency staff from cooperating and throwing all their resources into a joint effort to address a problem quickly. USDA officials have been known to suggest that, since their regulatory sampling shows a reduction in carcass contamination levels, it must be FDA regulated products that are keeping the *Salmonella* and *E. coli* poisoning rates high. The institutional imperative to survive is never as obvious as when Congress asks a serving FDA commissioner or Under Secretary for Food Safety whether he or she supports a single food safety agency. The answer is always, "No...not necessary." However, virtually every one of those individuals, once they have left the government and can respond freely, has reversed course and acknowledged that it is idiocy to maintain the current hodgepodge of jurisdictions.

Current Law Requires Different Food Safety Agencies to Use Different Approaches to Protecting Public Health

The Meat Inspection Act and Poultry Products Inspection Act still place virtually all responsibility for safe food on the USDA inspector. Meat and poultry can't be sold without the "mark of inspection." A USDA

inspector must be assured that the food is safe, wholesome, not adulterated and correctly labeled. This means that every meat and poultry plant must be visited at least once a day by a USDA inspector. Every animal and bird must be examined by a USDA inspector.

GAO and others have been highly critical of USDA's approach to inspection. I won't argue that having over 3,000 inspectors stand on a line watching dead chickens fly by, is an effective means to prevent food-borne illness.

The USDA inspection system is not without benefits. The meat and poultry laws are preventative, designed to stop bad food from leaving the plant and vesting responsibility for determining safety to an officer of the US government, sworn to protect public health.

The FDA on the other hand tells companies it is their responsibility to produce safe food and then the agency sits back, assuming the companies will comply. While the USDA has an inspector in every plant every day, the FDA may visit a plant once every few years. The FDA does not inspect eggs, produce, juices, or seafood to assure they're safe.

The FDA inspection system is primarily remedial. It doesn't swing into action unless there is clear evidence from plant records that a food they regulate is either contaminated or someone has eaten an FDA regulated food and become ill. Then the agency is called in to determine the culprit. I don't think most Americans consider that to be a sufficient safety program.

Who Inspects the Sandwich Where the Meat Sits on Top?

The division of labor among agencies would be a joke if it weren't so serious. If a piece of meat is slipped between two slices of bread, USDA regulates. If it has only one slice of bread—it is regulated by FDA as an open-faced sandwich.

Neither agency has authority to require that adulterated products be recalled. They have to negotiate with the industry while consumers remain at risk.

Lack of Appropriate Research

Neither FDA nor FSIS are unable to conduct the specific research they need to make the best use of science in protecting public health. Neither agency has funds to do its own research. Congress funds food safety research, but the money goes not to the FDA and FSIS but to

USDA's agricultural research establishment. The regulatory agencies are supplicants, asking ARS and land grant universities to emphasize a particular area of concern but they have no capacity to direct the research, to write their own grants and contracts to get the information needed to carry out a regulatory program.

Which Foods Are Implicated in Food-borne Illness?

The lack of research important to regulatory methods may be one of the reasons that neither agency is able to state the risk of illness associated with individual food products. The CDC reports the number of illnesses attributable to various pathogens, but none of the agencies has the capacity to determine the food source of outbreaks and illnesses. You cannot have a risk-based inspection system without knowing which foods are most frequently associated with illnesses.

When FSIS wanted to try to develop data on inherent product risk, they were limited in their ability to contract to get the information. They tried to develop it in house. The parameters for the study were so poorly established that it was impossible to draw any meaningful conclusions from the data they collected. The agency could not afford or would not pay for their "experts" to meet together to discuss the different assumptions each made about product risk. Do not make the mistake of thinking this is a trivial matter. USDA intends to use the resulting mess to support changes in processing inspection.

USDA's Divided Affections

There is no indication that the Department of Agriculture can effectively carry out a public health program. USDA's primary interest and purpose, is to promote the production and sale of agricultural products. But you've also assigned USDA responsibility for protecting public health. Sometimes those two assignments conflict and when they do, USDA virtually always opts to put its production and processing assignments ahead of its roles as a public health agency.

For example, acknowledging the public health risks of Mad Cow disease hurts cattle producers and meat processors, so USDA tends to become an advocate for the industry instead of putting primary emphasis on protecting public health.

Congress established an Under Secretary for Food Safety but that position and the Food Safety and Inspection Service exist in an environment that will always put the interests of agricultural producers first. That doesn't serve the public interest.

USDA Has No Authority to Set and Enforce Pathogen Performance Standards

While the USDA has adequate resources to carry out its mission, it has no authority to set limits on the pathogens that make people ill. USDA inspectors are in every plant every day but they cannot close down a plant permanently if the plant consistently sends out products that have high levels of *Salmonella* or *Campylobacter* or *Listeria*. The USDA can send in more inspectors. They can point out problems to a plant. They can show plant management how to do the job the right way. But if, through intransigence or ignorance, the plant does not change, USDA has no effective means to keep that plant from continuing to operate.

FDA: Commitment minus Resources Equals Failure

The primary role of the Department of Health and Human Services includes protecting public health. The FDA's food safety mission is reinforced by the other agencies of the Department. As noted earlier the FDA cannot adequately protect the public unless Congress and the President provide the resources necessary to carry out the assigned duties.

Lack of On Farm Food Safety Jurisdiction

Federal agencies have virtually no authority to go back to the farm to stop the pathogens before they contaminate food. Federal agencies have no authority to set standards for food transportation, to inspect food retailers or restaurants. None of those industries want federal inspection. They prefer state and local regulations and those are of varying effectiveness. Again, the current laws were written for a different time. We are unlikely to reduce food-borne illnesses to the lowest possible point until we devise some way to set and enforce meaningful public health based standards from farm to fork. That means federal standards for on farm food safety and at least minimum federal standards for chain retailers and restaurants.

How to Address the Problem and Get Food Safety off the High Risk List

Congresswoman DeLauro, Consumer Federation of America strongly endorses passage of the Safe Food Act. Your legislation would revise the existing food safety statutes to allocate resources according to risk, provide authority to test for dangerous pathogens, authorize mandatory recalls, and penalize companies that knowingly sell dangerous food.

It would create a single agency and assign responsibility to a single administrator responsible for all of the nation's food safety programs

and for their budgets. It would facilitate a swift effective response to the inadvertent outbreaks and deliberate acts of terrorism.

A Possible First Step to Addressing the Need for New Law

While everyone knows the problems, everyone is also afraid of the adjustments that change might bring. Agency employees, the regulated industry and even some consumers fear that change will be at their expense. It's not surprising that Congress and the President have been loath to tackle the issues. But Congress and the President owe it to the American people to tackle these problems and to do everything possible to reduce food-borne illness. Madame Chair I believe that your Food Safety Act addresses most of the issues. I hope that Congress will hold hearings and act on the bill.

Perhaps the best way to jump start the necessary change would be to put representatives of all the stakeholders together in a room and tell them to come up with specific recommendations for creating a food safety system that has protecting human health as its primary objective and assigns resources according to the public health risks associated with different products and processes. The recommendations would need to include specific changes to existing law and a rational organizational structure in which one federal official is responsible for determining priorities and preparing budgets to meet them.

To be successful the group would have to be established and empowered by an act of Congress, include members from both parties and both houses of Congress and representatives of all the stakeholders. The act should direct the President to name the citizen members and charge them to develop specific recommendations that meet the needs of all the public. Finally the group would have to have funds to hire an independent staff whose only commitment would be to the successful completion of this task. I think such a group could come together and achieve the goals. And I believe the public would be reassured that the recommendations would address their concerns and meet their needs for safe food. I have been staff to such a commission and watched others perform successfully.

The last Farm Bill included a weak version of the above. Congress never appropriated funds and members were never appointed. The time has come.

If Congress does not act now, the high-risk concerns identified in the GAO report will continue to grow; food-borne illness will continue to

cause illness and death and public confidence in government will continue to decline. My organization and the other groups that are part of the Safe Food Coalition are eager to work with the Congress to make an effective, efficient food safety program real.

Attachment

CDC FOODNET REPORTS SHOWS PROGRESS ON FOODBORNE ILLNESS DECLINING OVER TIME

(1)

Comparison--Incidence of Foodborne Disease Related to 4 Pathogens

	1996-98(2) Baseline	2000	2001	2002	2003	2004	2005	Natl Health Objective(3)
Campylobacter	21.7	15.7	13.8	12.61	12.6	12.9	12.72	12.3
E. Coli O157:H7	2.3	2.1	1.6	1.22	1.1	0.9	1.06	1
Salmonella	13.5	14.4	15	15.09	14.5	14.9	14.55	6.8
Listeria(4)	4.9	3	3	2.6	3.3	2.7	3	2.5(5)

	1996	1997	1998	1996-98(2) Baseline
Campylobacter	23.5	25.2	21.4	21.7
E. Coli O157:H7	2.7	2.3	2.8	2.3
Salmonella	14.5	13.6	12.3	13.5
Listeria(4)	5	5	6	4.9

(1)Compiled from CDC Foodnet Data, Incidence of Bacterial Disease, etc 1996-05

(2)1996-98 data compiled for comparison purposes to account for increase in number of FoodNet sites

(3)Healthy People 2010 National Health Objectives

(4)Campylobacter, E coli, Salmonella are incidences per 100,000 people; Listeria is incidence per one million people

(5)In 2000 the goal for cutting Listeria rate by half was moved up from 2010 to end of 2005. Goal not met.