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ONE HUNDRED NINTH CONGRESS

**U.S. House of Representatives**  
**Committee on Energy and Commerce**  
**Washington, DC 20515-6115**

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March 30, 2006

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BJUD ALBRIGHT, STAFF DIRECTOR

The Honorable Michael O. Leavitt  
Secretary  
Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Leavitt:

We ask you to order the Food and Drug Administration (FDA) to rescind its GRAS (generally regarded as safe) determinations regarding the use of carbon monoxide to color meat and fish until such time as notice and comment rulemaking can determine whether such practices, under existing conditions of refrigeration and labeling and existing consumer practices, are safe for American consumers. If you choose not to order the FDA to take immediate action, we ask that you undertake an immediate public information campaign to inform consumers that they cannot rely on color to ascertain the safety of meat and fish. Such a campaign should contain cautions such as never under any circumstance consume meat or fish that exceeds its "use by" date; never remove meat and fish from their dated packaging before use; and, if consumers have problems with reading the packages or smelling the contents, to seek help before consuming such products.

On February 9, 2006, Representatives Dingell and Stupak sent the attached letter to FDA Commissioner von Eschenbach detailing concerns regarding the decisions to permit meat of unknown age and safety to be displayed as red and therefore wholesome. While FDA has not found time to respond to the concerns raised in the February 9 letter, it did find time on February 27, 2006, to hold a press conference to address public indignation over the FDA decision. Unfortunately, several statements by the two FDA representatives, Dr. Laura Tarantino, Director of the Office of Food Additive Safety, and Ms. Susan Bro, a public relations official assigned to the Commissioner's Office, were helpful to the meat industry, but not helpful to consumers.

Meat that is packaged with the CO captured within the packaging until it is opened will retain a fresh, appetizing appearance indefinitely under almost any storage conditions. The attached pictures are of meat whose "use by" date was in October, and meat packaged with and without CO and left at room temperature for 27 hours. Clearly the coloring of each package that contains CO is deceptive in that the meat appears safe yet is entirely spoiled.

At the February 27th press conference, Dr. Tarantino plainly stated: "I think one of the issues is that color probably is not a major or particularly good indicator of spoiled meat." That is certainly the case after FDA's decision. But what most every American consumer knows and Dr. Tarantino knew or should have known is that color has been the principal basis for consumer determinations of the quality and safety of meat. Not only is this fact recognized by multiple marketing studies by the meat industry itself, it is clearly the only reason that the industry sought the GRAS determination. Nowhere is it alleged that placing meat in a sealed atmosphere containing CO has any purpose other than to assure that the meat appears fresh regardless of its age.

This could have significant consequences. The industry presentations to FDA and the U.S. Department of Agriculture Food Safety and Inspection Service (FSIS) were made on an *ex parte* basis behind closed doors. It appears from FDA and FSIS statements that the industry presented evidence that toxins would not attach to meat kept at 38-42 degrees F during an interval of 28 to 42 days depending on the cut. What Dr. Tarantino should have known, however, (at least by the time of the news conference because it is referenced in petitions before the FDA) is that meat is not stored at a constant 38-42 degrees. Most people understand this from common experience. One study stated: "Temperature abuse is common throughout the distribution and retail markets, with temperature in 21% of household refrigerators often higher than 10 degrees (C) (50 degrees F). Recent data suggested that 33% of retail refrigerated foods were held in display cases above 7 degrees C (45 degrees F) and 5% were held above 13 degrees C (55 degrees F). Temperatures were even higher in southern market regions. Serious microbial stability problems exist because of the frequency of temperature abuse."

Further, whatever incentive existed to assure adequate refrigeration of meat because of the fear of economic loss associated with "browning" was diminished by the FDA decision. Now that the consequences of poor handling of meat will not be obvious, such mishandling can be expected to increase.

Who might be hurt? The population least able to protect itself against this FDA-approved deception is the most vulnerable to the potential illnesses from bad food. The Centers for Disease Control and Prevention has identified the elderly (along with infants and the immunocompromised) as at the highest risk for illness and death from foodborne illness. It is precisely this group that is mostly likely to be losing a meaningful sense of smell, and is least able to read the often obscure labeling.

Dr. Tarantino advises that smell is a better indicator than color of spoilage in meat. But the National Geographic Survey (NGS), in a seminal work involving 1.2 million subjects, found that chemical exposure, pregnancy, and head injury as well as colds and flu can cause permanent loss of smell but overwhelmingly such loss occurs as we age. As one article by prominent nutritionists noted after reviewing the NGS findings, "the decline in sensitivity to the odor with age is large enough to render the odor useless as a warning for about half of the elderly population."

The Honorable Michael O. Leavitt  
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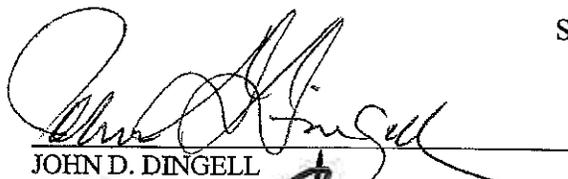
Also, because some deterioration of eyesight is virtually universal after age 40, it is precisely those Americans that are least able to rely on a sense of smell that are also likely to be victimized by the lack of meaningful labeling standards. Both Dr. Tarantino and Ms. Susan Bro dismissed press conference questions regarding inadequate labeling by noting that it is the Department of Agriculture's responsibility to assure that meat is properly labeled. Apparently, they believe the legibility of the labeling was not their problem even though FDA's decision made prominent "use by" labeling the consumer's only defense against unsafe meat.

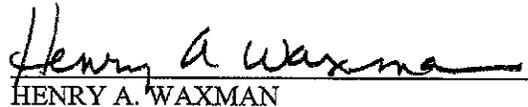
This is no idle concern. A trip to any supermarket reveals that the labeling on meat products often appears to be deliberately illegible. Certain of the pre-packaged products use low-resolution ink jet printing on the film packaging itself to "inform" the consumer of the end date. Such printing is not visible to someone with 20/20 vision unless the light hits it at a certain angle. Other packages print the "use by" in 8-point type or less combined with other information that is not relevant to product safety such as weight.

Given these facts, we urge you to order FDA to rescind its acceptance of the use of carbon monoxide to color meat and fish until a full and public process can be undertaken and, if CO is ultimately allowed, until labeling is strengthened and clarified. If you refuse, you should at least order an aggressive public campaign to tell consumers they can no longer trust what their eyes are telling them about the suitability and safety of packaged meat and fish.

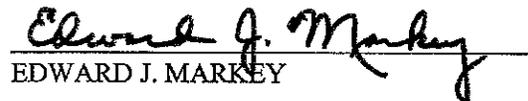
Because the misleading use of carbon monoxide continues, we ask that you examine these matters and respond to us by Wednesday, April 12, 2006. If you have any questions regarding these requests please contact one of us, or have your staff contact David Nelson of the Committee Democratic staff at (202) 226-3400.

Sincerely,

  
JOHN D. DINGELL

  
HENRY A. WAXMAN

  
BART STUPAK

  
EDWARD J. MARKEY

Attachments

cc: The Honorable Joe Barton, Chairman  
Committee on Energy and Commerce

The Honorable Nathan Deal, Chairman  
Subcommittee on Health

The Honorable Mike Johanns, Secretary  
Department of Agriculture

**CERTIFIED**  
**GROUND BEEF**  
**74/26**

100% PURE BEEF  
ALL NATURAL\*

**LEAK PROOF**

KEEP REFRIGERATED

\*CONTAINS NO ARTIFICIAL INGREDIENTS,  
ONLY MINIMALLY PROCESSED.

NET WT. 16 OZ.  
**(1.0 LB.)**





**CENTURY FARM**

30/2

**CHUCK  
GROUND  
BEEF  
PATTIES**

U.S. Department of Agriculture  
Cook to 160°F  
EST. 1902  
2275EK-8

**Nutrition Facts**  
Serving Size 1 Patty (100g)  
Servings Per Container 2

|                    |       |     |
|--------------------|-------|-----|
| Total Fat          | 20g   | 40% |
| Saturated Fat      | 7g    | 14% |
| Cholesterol        | 100mg | 20% |
| Sodium             | 50mg  | 1%  |
| Total Carbohydrate | 0g    | 0%  |
| Protein            | 20g   | 40% |

NET WT. 200g (7.05oz)  
NET WT. 200g (7.05oz)  
NET WT. 200g (7.05oz)

THANK YOU FOR CHOOSING MEIJER

GROUND BEEF-CHUCK  
80% LEAN - 20% FAT

27hr

USE OR FREEZE BY MAR 15 2006

| TOTAL PRICE |            |         |
|-------------|------------|---------|
| NET WT.     | UNIT PRICE | PRICE   |
| 1.29        | \$ 3.73    | \$ 4.89 |

**SAFE HANDLING INSTRUCTIONS**  
 1. PREPARE MEAT SEPARATELY FROM OTHER MEATS.  
 2. WASH HANDS AND SURFACES THOROUGHLY WITH SOAP AND WATER.  
 3. DO NOT TOUCH OTHER MEATS OR FOODS.  
 4. COOK TO 160°F.  
 5. REFRIGERATE OR FREEZE IMMEDIATELY.  
 6. DO NOT REFRIGERATE AT ROOM TEMPERATURE.  
 7. DO NOT LEAVE AT ROOM TEMPERATURE FOR MORE THAN 2 HOURS.  
 8. DO NOT REFRIGERATE FOR MORE THAN 3 DAYS.  
 9. DO NOT REFRIGERATE FOR MORE THAN 3 MONTHS.  
 10. DO NOT REFRIGERATE FOR MORE THAN 3 MONTHS.

USE/FREEZE BY 03-15-06  
L1



Have complete confidence this package contains only 100% fresh, hand-trimmed beef.

U.S. Department of Agriculture  
**100% FRESH**  
Hand-Trimmed  
**BEEF**  
Available only where you see this seal.

**27hr meijer**  
Higher Standards. Lower Prices.

**GROUND CHUCK**  
GROUND BEEF CHUCK 83/17  
DIST. BY MEIJER INC. • GRAND RAPIDS, MI 49530  
KEEP REFRIGERATED

EST. 562M  
1028232 BUCK P O B L

03 02 06  
NET WT. 1.00 LB