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ABSTRACT

Noting the significant increase since 1990 in food-borne illnesses affecting school children, these hearings transcripts provide testimony on the safety of federal school lunches. Statements by Senator Richard Durbin and Representatives Stephen Horn, Janice Schakowsky, and Carolyn Maloney emphasized the array of federal agencies with various food safety responsibilities, food safety agencies' inability to mandate food recalls, and the need for better cooperation and communication between the Department of Agriculture (USDA) and the Food and Drug Administration (FDA). Representative Rosa DeLauro discussed findings of unsanitary conditions and unsafe food handling practices in Chicago area schools, recordkeeping flaws preventing officials from tracing food contamination to its source, the need to consolidate and streamline the number of federal agencies/committees responsible for protecting food, and the need to give the USDA and FDA authority to conduct mandatory recalls. General Accounting Office testimony recommended making schools aware of federal inspection and compliance records of potential food suppliers and described USDA and FDA measures to protect the food supply from deliberate contamination. Officials from the FDA and USDA described their respective roles in ensuring food safety and procedures for responding to illness outbreaks. An official of the Center for Science in the Public Interest discussed gaps in the food safety system and urged

passage of the Durbin-DeLauro Safe Food Act. Two parents from a food safety advocacy group testified about their children's food-borne illnesses, urged trace-back capability and accountability, advocated a single food safety agency, and maintained that overemphasizing consumer education misdirects responsibility for food safety from producers to consumers. Counsel for the National Food Processors Association asserted that mandatory recall is unnecessary because of industry cooperation with federal recall requests and maintained that a single food safety agency is not likely to provide the kinds of benefits proposed. Questions for witnesses related to interagency cooperation and communication, bioterrorism possibilities, specific incidents of foodborne illnesses and the followup investigations, USDA guidance to districts regarding procurement procedures, and concerns about due process. Appended to the transcripts are prepared statements, letters, and charts illustrating the school lunch supply chain and food safety oversight responsibilities. (KB)

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Senate Hearing 107-510

April 30, 2002

S. Hrg. 107–510

KIDS AND CAFETERIAS: HOW SAFE ARE FEDERAL SCHOOL LUNCHES?

JOINT HEARING

BEFORE THE

OVERSIGHT OF GOVERNMENT MANAGEMENT, RESTRUCTURING, AND THE DISTRICT OF COLUMBIA SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

AND THE

SUBCOMMITTEE ON GOVERNMENT EFFICIENCY, FINANCIAL MANAGEMENT, AND INTERGOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

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TUESDAY, APRIL 30, 2002

ALPHABETICAL LIST OF WITNESSES

KIDS AND CAFETERIAS: HOW SAFE ARE FEDERAL SCHOOL LUNCHES?

TUESDAY, APRIL 30, 2002

U.S. SENATE,
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, RESTRUCTURING, AND THE DISTRICT OF COLUMBIA, OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS, JOINT WITH U.S. HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON GOVERNMENT EFFICIENCY, FINANCIAL MANAGEMENT AND INTERGOVERNMENTAL RELATIONS, OF THE COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The joint Subcommittee hearing convened at 2:56 p.m., in room SD–342, Dirksen Senate Office Building, Hon. Richard J. Durbin and Hon. Stephen Horn, Co-Chairmen, presiding.

Present: Senator Durbin; and Representatives Horn, Schakowsky, and Maloney.

OPENING STATEMENT OF SENATOR DURBIN

Senator DURBIN. Good afternoon. I apologize that the floor votes came at an inappropriate moment, but as my colleagues from California and Illinois will tell you, it is our first responsibility, and I am glad to be with you all now, even though a little bit late.

I want to welcome you to today's joint hearing before the Senate Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia and the House of Representatives Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations, focusing on "Kids and Cafeterias: How Safe are Federal School Lunches?"

I want to thank the Members of the House Subcommittee for joining us. This is not unprecedented, but it is rare, and I am glad that we could get together on a bicameral and bipartisan basis.

Each school day, 27 million children eat lunches provided through the Federal school lunch program. Despite increased attention in recent years to the safety of food served to kids, there is evidence of serious safety problems. A series of articles published by *The Chicago Tribune* last December highlighted many managerial and organizational deficiencies that result in unsafe or contaminated food being served to our kids.

A significant problem it seems to me is that school officials are many times unaware of the identity of the food manufacturers and processors who are supplying the food they buy to serve the students. Before food ever winds up in school cafeterias, it must first work its way through a complex tapestry of manufacturers, sub-

contractors, distributors, and brokers who each have a distinct role in preparing and marketing food as it travels from farm to school lunch table.

Please put up Chart 1.[1] This is not a subway system. This is an effort to chart out how food moves from its source into the school cafeterias.

School officials generally know the distributor who is the final link in the chain, but they may not know the manufacturer who supplied the food to the distributor. School officials are also many times unaware of the food safety records of companies supplying food to their school lunch programs. Data on food safety violations is kept by Federal food safety agencies but is not readily available to schools, which purchase a large proportion of the food served to our kids.

School officials have no way to determine if their suppliers are consistently complying with Federal food safety laws. Federal food safety agencies must find a way to inform school officials when food companies continually maintain a poor food safety record.

Many Americans may be surprised to discover that our Federal food safety agencies do not have the ability to mandate the recall of contaminated food. Instead of having the authority to recall the contaminated food, the USDA and FDA must rely on voluntary cooperation by the food companies to pull contaminated food out of supermarkets, restaurants, and even school cafeterias.

The only way to ensure that contaminated food is removed from the market quickly is to give the Federal agencies mandatory recall authority.

When examining the increasing trend in foodborne illnesses in school, I cannot help but revisit a problematic issue that has concerned me for years, and I will summarize it briefly—12 different Federal food safety agencies, 35 different Federal food safety laws, 26 different committees and subcommittees of jurisdiction on Capital Hill. We are lucky to have the safest food supply in the world, because that food supply is in a bureaucratic tangle.

Chart 2, I think, will show you some of the problems that we run into when we apply this just to the cafeteria.[2] As you can see, as someone looks at the servings in a cafeteria, they are looking at apples and fruit, regulated by the Food and Drug Administration; ham, beef, and poultry, regulated by the Department of Agriculture; meat pizza, regulated by the USDA; veggie or cheese pizza, regulated by the FDA; lettuce and vegetables, regulated by the FDA; chicken and turkey, regulated by the USDA; and fish, regulated by the FDA and other agencies. It goes on and on. Try to explain it. There is no good science behind this—only political tradition.

I have some legislation, S. 1501, that moves us toward a single food safety agency which would address some of the very serious shortcomings of our current situation.

Based on what we learn in this hearing, I am going to be working to draft legislation that would direct the USDA—the Depart-

[1] Chart entitled "Who's Supplying Whom? The School Lunch Supply Chain" appears in the Appendix on page 128.

[2] Chart entitled "Food Safety Oversight: A Divided Tray" appears in the Appendix on page 129.

ment of Agriculture—to require distributors and other suppliers who contract with schools to provide schools with the identity of the manufacturers, subcontractors, and other suppliers who supply food to the school lunch program immediately upon a school's request. We should know the chain from the farm to the school cafeteria.

Second, this legislation would direct Federal food safety agencies to share information on food safety records of suppliers with school food service officials.

Third, it would direct the USDA to provide technical assistance to schools that would like to use the USDA's food safety procurement specs in their own contracts with suppliers.

Fourth, it would provide Federal food safety agencies with mandatory recall authority over food purchased by schools.

Fifth, it would require the USDA to develop voluntary food security guidelines for industry to follow to better protect the general food supply.

I encourage my colleagues to join me in this effort not only to consolidate food safety functions but also to better protect our Nation's children who participate in the Federal school lunch program.

[The prepared opening statement of Senator Durbin follows:]

OPENING PREPARED STATEMENT OF SENATOR DURBIN

Today we are dealing with one of the most critical issues under this subcommittee's jurisdiction, an issue that is of importance to every American virtually every time they eat. Food safety affects each of us, whether we realize it or not. We are all consumers, and we each rely on the many Federal food safety agencies to ensure that the food we eat is safe and free of harmful contaminants. I would like to thank the Members of the House Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations for joining us today to discuss this very important issue.

Make no mistake, our country has been blessed with one of the safest and most abundant food supplies in the world. However, we can do better. While food may never be completely free of risk, we must strive to make our food as safe as possible. Foodborne illnesses and hazards are still a significant problem that cannot be passively dismissed.

The Centers for Disease Control and Prevention (CDC) estimate that as many as 76 million people suffer from foodborne illnesses each year. Of those individuals, approximately 325,000 will be hospitalized, and more than 5,000 will die. The Department of Health and Human Services has predicted that foodborne illnesses and deaths may increase 10—15 percent over the next decade. While many adults will be fortunate enough to avoid the devastating effects of a foodborne illness, we must not forget that our children are especially vulnerable. We must ensure that the food we are providing our Nation's schoolchildren is not only wholesome and nutritious, but also safe to consume.

Each school day 27 million children eat lunches provided through the Federal school lunch program. Despite increased attention in recent years to the safety of meals provided to schoolchildren, there is evidence of serious safety problems with our national school lunch system. A series of articles published by the *Chicago Tribune* last December highlighted many managerial and organizational deficiencies that result in unsafe or contaminated food being served to children.

According to these articles, data from the CDC show a significant increase in the number of foodborne illnesses affecting children in schools since 1990. Increases in foodborne illness in schools are simply unacceptable. We must do what is necessary to identify the causes of these increases, and act accordingly to reduce the numbers.

A significant problem, it seems to me, is that school officials are many times unaware of the identity of the food manufacturers and processors which are supplying the food they buy to serve to students. Before food ever winds up in school cafeterias, it must first work its way through a complex tapestry of manufacturers, subcontractors, distributors, and brokers who each have distinct roles in preparing and marketing food as it travels from farm to school lunch table. School officials gen-

erally know the distributor who is the final link in the chain, but they may not know the manufacturer that supplied the food to the distributor.

This scenario creates a serious problem. When USDA or FDA issues an announcement saying that a manufacturer has produced a product that may contain a harmful pathogen, schools may not know if they have that contaminated product in their kitchens. They may have to rely on food safety agencies and distribution companies to notify them when a problem occurs. Such a process creates unnecessary delay and may result in innocent children becoming ill. We must find a way to ensure that school officials have the necessary information on hand to easily identify manufacturers so they can quickly and efficiently act before contaminated food is served to our Nation's schoolchildren.

School officials are also many times unaware of the food safety records of companies supplying food to their school lunch programs. Data on food safety violations is kept by Federal food safety agencies but is not readily available to school officials who purchase a large proportion of the food they serve our children. School officials have no way to determine if their suppliers are consistently in compliance with Federal food safety laws. Federal food safety agencies must find a way to inform school officials when food companies continually maintain a poor food safety record.

Many Americans may be surprised to discover that our Federal food safety agencies do not have the ability to mandate the recall of contaminated food. Instead of having the authority to recall contaminated food, the USDA and FDA must rely on the voluntary cooperation of food companies to pull contaminated food out of supermarkets, restaurants, and even schools.

The voluntary recall system works in most cases. However, the only way to ensure that contaminated food is removed from the market quickly is to give the Federal agencies mandatory recall authority. Delays in recalling unsafe food products can pose life-threatening situations to all consumers, and especially children. Mandatory recall authority for Federal food safety agencies will provide an added "insurance policy" against uncooperative companies who may refuse to participate or deliberately delay in voluntarily recalling products.

We face new security threats in our world today. We are not only concerned about pathogens like Salmonella and E. Coli, but also by the threat of deliberate contamination to the food supply. In an age where food products can be distributed from coast to coast within a matter of hours, we must ensure that FDA and USDA have authority to stop the spread of contaminated food. We must also ensure that Federal food safety agencies are providing appropriate guidance to the food industry about how best to prevent intentional contamination of the food supply. I commend FDA for taking this essential step since our hearing last October. It is now time for USDA to follow suit.

When examining the increasing trend in foodborne illnesses in schools, I cannot help but revisit a problematic issue that has concerned me for many years. It is an issue that was identified by the Senate Committee on Governmental Affairs over 20 years ago and yet remains unchanged. Our Federal food safety oversight system divides responsibility between at least a dozen Federal agencies which implement more than 35 food safety statutes. This system of divided responsibility has created a regulatory system that is duplicative, costly, and unduly complex. Given these inherent problems, this system cannot be the most effective way to ensure the safety of our food supply—the same food supply that feeds our Nation's schoolchildren everyday.

With overlapping jurisdictions, Federal agencies many times lack accountability on food safety issues. A single agency would help focus our policy and improve enforcement of food safety and inspection laws.

A single agency with uniform, science-based standards and regulations based on food hazards would provide an easier framework for ensuring food safety. I have been working on the issue of food safety for many years and even I still find it confusing. USDA regulates meat and poultry and FDA regulates fruits and vegetables. If it is a meat pizza, USDA inspects. If it is a cheese pizza, it's FDA. If I were a local school official with a potential foodborne illness crisis on my hands, I would not want to be in a position where I had to figure out which agency I needed to call to get help.

If we had one agency handling all food safety issues, this problem would not be an issue.

This Subcommittee has been discussing the weaknesses of the Federal food safety system for decades. It's time to move forward. We need to stop discussing the need for a single agency and actually take the necessary steps to make it happen. We can bring the various food safety agencies together to eliminate the overlap and confusion that unfortunately have sometimes characterized our food safety efforts.

When the health of our children is at stake, we cannot afford to waste any more time.

I already have a piece of legislation—S. 1501—that would create a single food safety agency. I believe that is a crucial step to ensuring the safety of our Nation's food. However, to ensure the safety of the food served in the Federal school lunch program, other measures must be taken. Based on what we learn in this hearing, I will be working to draft legislation that would:

1. Direct USDA to require distributors, and other suppliers who contract with schools, to provide schools with the identity of the manufacturers, subcontractors, and other suppliers who supply food to the school lunch program immediately upon a school's request;
2. Direct Federal food safety agencies to share information on food safety records of suppliers with school food service officials;
3. Direct USDA to provide specific technical assistance to schools that would like to use USDA's food safety procurement specifications in their own contracts with suppliers;
4. Provide Federal food safety agencies with mandatory recall authority over food bought by schools; and
5. Require USDA to develop voluntary food security guidelines for industry to follow to better protect the general food supply from an act of bioterrorism or other deliberate contamination.

In a time when the food supply faces serious risks, we need something more than mere reaction to an identified problem. We need to be proactive and do what it takes to preserve the safety of our Nation's food supply so it continues to be the safest food supply in the world. I encourage my colleagues to join me in the effort not only to consolidate the food safety functions of the various food safety agencies into a single food safety agency, but also to better protect our Nation's schoolchildren who participate in the Federal school lunch program.

Senator DURBIN. I would now like to recognize from Long Beach, California, Congressman Stephen Horn. Thank you for joining us.

OPENING STATEMENT OF HON. STEPHEN HORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. HORN. Thank you. I might add that you have a brother in my constituency.

Senator DURBIN. That is right. He is one of your fans.

Mr. HORN. Thank you.

I am pleased to be here today with Chairman Durbin—and I believe Senator Voinovich is going to come. This hearing has been called to examine the adequacy and efficiency of the Federal oversight of the National School Lunch Program.

This important Federal program provides meals in more than 97,000 public and nonprofit private schools and residential child care facilities. The program, which is administered by the Food and Nutrition Service in the Department of Agriculture, offers nutritionally balanced, low-cost or free lunches to more than 2 million children each school day.

The Department of Agriculture denotes about 17 percent of the program's food, including beef, poultry, fruits, vegetables, grains, and dairy products. The Department seeks to ensure the safety of this food through its procurement policies and procedures. For example, the Department's contracts with meat suppliers require suppliers to adhere to provisions of the Federal Meat Inspection Act. The remaining 83 percent of the goods provided to the school lunch program and all of the food served in the school breakfast program is acquired by the local school food authorities through private contracts with suppliers. Although the Department of Agri-

culture has its own policies and procedures to ensure food safety, there are no mandatory national standards that apply to the Nation's schools.

An additional problem is created by the number of Federal agencies that are involved in food safety. Currently, 12 separate agencies in two departments—the Department of Agriculture and the Department of Health and Human Services—oversee the Nation's food safety network. Despite that oversight, in 1997, the most recent national data available, there were 20 outbreaks of foodborne illness. Of those 20, 8 were associated with food served in the school meal programs.

In a February 2000 report, the General Accounting Office, which is the group that we depend on in Congress to do bipartisan research—headed by the Comptroller General of the United States, who has a term of 15 years, and therefore, nobody can touch him, and that is the way we want to keep it—the GAO found five cases in which USDA-donated food had to be recalled. And in 2001, 1,200 children in at least seven States were sickened by the tainted burritos served at school.

The Federal Government created school food programs to build strong bodies. The government must ensure that the food it provides also builds healthy bodies.

I welcome our witnesses today, and I look forward to your testimony.

Senator DURBIN. Thank you very much, Chairman Horn.

It is my pleasure now to introduce my colleague and friend from the State of Illinois, the Ranking Democrat on the House Committee, Congresswoman Janice Schakowsky.

OPENING STATEMENT OF HON. JANICE D. SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. SCHAKOWSKY. Thank you, Senator—my Senator—and Representative Horn, for holding this hearing.

It is significant that this hearing is both bipartisan and bicameral, because it emphasizes the importance that we place on our public schools in protecting the health of our children.

The Federal role in safe food dates to the passage of the Pure Food and Drug Act nearly 100 years ago. Congress declared that safe food was a national priority.

Food safety in public schools now more than ever before must be a national priority.

During the 5 years from 1990 to 1994, for example, Illinois authorities reported only three school food outbreaks in which 66 children were sickened. But during the next 6 years, the average annual number of Illinois school food outbreaks more than tripled, and the number of youth affected increased ten-fold, State records show.

Over the last century, the labeling and inspection of food has become an extensive and complicated business, as these charts have shown. The local school kitchen with cooks who made large batches of food from scratch have been replaced by heat-and-serve institutions that serve pre-packaged meals.

The web of suppliers, producers and regulators in the food service industry has left local officials in a difficult place and has put the health of our Nation's children in jeopardy.

Local officials are responsible for the safety of the children in their schools but often do not have the necessary information to make well-informed choices. Local officials cannot distinguish a supplier with good health records from one with a history of health violations.

The white flour tortillas suspected in 1,200 school illnesses in 1998 were produced in an unmarked factory in Chicago, for example. FDA inspections from 1996 and 1997 which were done under contract with the Illinois Department of Public Health noted sanitation deficiencies there, but that plant was not inspected by any food safety agency during the 8 months in 1998 when it produced the tortillas linked to the school food outbreaks. Following a flurry of inspections prompted by the outbreaks, the plant was not inspected again until the summer of 1999, although it continued to provide school food manufacturers.

In today's hearing, we will hear about specific cases of illness that resulted from foodborne diseases, and we will hear about large-scale outbreaks across several States, all within our public schools. Once a foodborne illness is identified, it is often difficult to trace back to the source. The complex nature of packaged food production results in ingredients coming from a wide variety of sources. Any single ingredient can be the source of the illness, yet food manufacturers often cannot provide investigators with the source of the ingredients for a specific batch of food.

One of the lessons from today's hearing is that students in public schools are being served prepackaged foods, and they need more Federal protection than ever before. The interstate nature of the food industry and particularly food delivered to our public schools requires continued, vigilant Federal food safety guarantees, and enhanced food inspection and tracking is essential.

Our food inspection program is arbitrary. Food monitored by the Department of Agriculture is inspected daily; food inspected by the FDA is not. This is one of the problems that Senator Durbin's bill would resolve, and Representative DeLauro has introduced the companion bill in the House, and I am proud to be a cosponsor of her bill.

However, there is much that can be done by the agencies now, before we even pass the Food Safety Act. One of the key ingredients in making school lunches safer is to provide local districts with better information with which to make decisions, and this could be done today.

USDA has a great deal of information about inspections that it conducts. It then uses that information in deciding what companies will get USDA contracts. Unfortunately, local school districts do not have access to the same information about food providers. They often buy unknowingly from firms with a long history of safety violations.

Until the Food Safety Act is law, I would like to see the USDA and FDA work together to provide local school districts with a comprehensive database that could be used in awarding school lunch contracts. This database would include the same information that

USDA uses in its contracting decisions. In addition, it could include information from the FDA on inspection and compliance. In other words, the Federal Government should be providing not just money and goods to local school systems, but the information they need to protect our children.

With all the concerns they have today, parents deserve a Federal guarantee that the food their children eat at school is safe. Ask any parent if it is worth the cost, and they will tell you that their child's health comes first. They are right, and the Federal Government has a major role to play.

Again I thank you, Chairman Durbin, Senator Voinovich when he comes, and Chairman Horn, for holding this hearing, and I look forward to the testimony of our witnesses.

Thank you.

[The prepared statement of Hon. Janice D. Schakowsky follows:]

PREPARED STATEMENT OF HON. JANICE D. SCHAKOWSKY

Thank you Senator Durbin, Senator Voinovich, and Representative Horn for holding this hearing. It is significant that this hearing is both bipartisan and bicameral because it emphasizes the importance we place on our public schools and protecting the health of children.

The Federal role in safe foods dates to the passage of the Pure Food and Drug Act nearly 100 years ago. Congress declared that safe food was a national priority. Food safety in public schools, now more than ever before, must be a national priority.

During the 5 years from 1990 through 1994, for example, Illinois authorities reported only three school food outbreaks, in which 66 children were sickened. But during the next 6 years, the average annual number of Illinois school food outbreaks more than tripled, and the number of youths affected increased tenfold, State records show.

Over the last century, the labeling and inspection of food has become an extensive and complicated business. The local school kitchen with cooks who made large batches of food from scratch has been replaced by a heat-and-serve institution that serves prepackaged meals. The web of suppliers, producers, and regulators in the food service industry have left local officials in a difficult place and have put the health of our Nation's children in jeopardy. Local officials are responsible for the safety of the children in their school, but often don't have the necessary information to make well-informed choices. Local officials cannot distinguish a supplier with good health records from one with a history of health violations.

The white-flour tortillas suspected in 1,200 school illnesses in 1998 were produced by Munoz Flour Tortilleria Inc. in an unmarked factory at 1850 W. 43rd St. for example. FDA inspections from 1996 and 1997 (done under contract with the Illinois Department of Public Health) noted sanitation deficiencies there. But that plant was not inspected by any food safety agency during the 8 months in 1998 when it produced the tortillas linked to the school food outbreaks. Following a flurry of inspection prompted by the outbreaks, the plant was not inspected again after the summer of 1999, although it continued to supply school food manufacturers.

In today's hearing we will hear about specific cases of illness that resulted from foodborne diseases, and we will hear about large-scale outbreaks across several States—all within our public schools.

Once a foodborne illness is identified, it is often difficult to trace back to the source. The complex nature of packaged food production results in ingredients coming from a wide variety of sources. Any single ingredient can be the source of the illness, and yet food manufactures often cannot provide investigators with the source of the ingredients for a specific batch of food.

One of the lessons from today's hearing is that students in public schools are being served prepackaged foods, and they need more Federal protection than ever before. The interstate nature of the food industry, and particularly food delivered to our public schools, requires continued and vigilant Federal food safety guarantees. Enhanced food inspection and tracking is essential.

Our food inspection program is arbitrary. Food monitored by the Department of Agriculture is inspected daily. Food inspected by the FDA is not. This is one of the

problems Senator Durbin's bill would resolve. Rep. DeLauro has introduced the companion bill in the House, and I am proud to be a cosponsor of that bill.

However, there is much that can be done by the agencies now before we pass the Food Safety Act. One of the key ingredients in making school lunches safer is to provide local school districts better information with which to make decisions. This can be done today.

The USDA has a great deal of information about the inspections that it conducts. It then uses that information in deciding what companies will get USDA contracts. Unfortunately, local school districts do not have access to the same information about food providers. They often buy unknowingly from firms with a long history of safety violations.

Until the Food Safety Act is law, I would like to see the USDA and the FDA work together to provide local school districts with a comprehensive database that could be used in awarding school lunch contracts. This database would include the same information the USDA uses in its contracting decisions. In addition, it would include information from the FDA on inspection and compliance. In other words, the Federal Government should be providing not just money and goods to local school systems, but the information they need to protect our children.

With all of the concerns they have today, parents deserve a Federal guarantee that the food their children eat at school is safe. Ask any parent if it is worth the cost and they will tell you their child's health comes first. They are right and the Federal Government has a major role to play.

Again, thank you Chairman Durbin, Senator Voinovich, and Chairman Horn for holding this hearing, and I look forward to the testimony from our witnesses.

Senator DURBIN. Thank you, Congresswoman Schakowsky.

Our first witness is my colleague and friend from the State of Connecticut, the 3rd District, Congresswoman Rosa DeLauro. She and I have worked together on this issue for a long, long time, and I am happy that she came to join us at this hearing.

She is the lead sponsor of the Safe Food Act of 2001 in the House, identical to the legislation I mentioned earlier.

Thank you for joining us, and please proceed.

TESTIMONY OF HON. ROSA L. DELAURO,[1] A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Ms. DELAURO. Thank you very much, Mr. Chairman.

I might add to my colleague, Mr. Horn, that Senator Durbin truly has relatives all over the country. His daughter is at school in my district in Connecticut.

Senator DURBIN. This is not a national campaign.

Ms. DELAURO. This is a national campaign, indeed.

I want to say thank you to you, Senator Durbin and Congressman Horn and Congresswoman Schakowsky, for holding this hearing. This is such an important issue.

I would just say that Chairman Durbin served in the House on the Agriculture Appropriations Committee, and he has truly been a consistent voice on the issue of food safety. I think we owe him a debt of gratitude for that effort. It has not been for shock value or just every now and again; it has been years in terms of trying to focus on this issue and make sure that our children and our food is safe.

The National School Lunch Program was established to improve children's nutrition, to increase lower-income children's access to nutritious meals, and to help support our Nation's agricultural economy.

On an average day in 2001, more than one of every two children in America ate a school lunch program meal. In my own State of

[1] The prepared statement of Hon. Rosa L. DeLauro appears in the Appendix on page 55.

Connecticut, 1,093 schools and about 272,000 students participated in the program. The school lunch program is a key component to the health of our children, and we need to ensure that the food that they are eating is safe.

There is no question about how important this program is. We need to remain vigilant to ensure the safety of the food that is served to our kids. It is a special concern because foodborne pathogens which might only mildly affect an adult could seriously sicken or even kill a child, as we have known in individual cases, whose immune system has not fully developed.

I had a personal experience with this problem when I was a child. At 2 years old, I contracted Salmonella, a foodborne illness. I was put in the hospital and quarantined for several days, away from my parents and my family. So I understand the devastating effects of that foodborne illness. I am told, although I do not remember, by my mom—and I guess my personality traits were being developed at age 2—that when I left the hospital, because I had not seen my parents for probably 12 days, I was absolutely hostile to them because I thought they had abandoned me. So that is in addition to the physical damage that the illness does.

A February 2000 GAO report concluded that "few outbreaks of foodborne illness" were reported in the school lunch and school breakfast programs. But at the same time, I understand that *The Chicago Tribune* reported last year that there has been a 56 percent increase in school food outbreaks from 1990 to 1997.

It is important at its very fundamental level and imperative that we determine the scope of this problem. To further ensure the safety of our children, we must address the issues. Let us get the numbers straight. Let us find out what those numbers are.

As *The Chicago Tribune* series reported last year, some schools no longer prepare their meals from scratch. According to the series, 15 to 20 percent of schools currently contract out their lunch programs. Meals are factory-frozen, pre-plated, manufactured according to portion size and nutrition requirements of the school lunch contracts.

As a result of these techniques, harmful pathogens can contaminate these food trays and sicken more children. The largest cases of foodborne illness have included 400 children sickened by staphylococcus aureus in spaghetti in 1996 and the 213 students sickened at 23 Michigan schools from strawberries contaminated with Hepatitis A.

We should also be concerned about the conditions of the cafeterias where these meals are served. Again using the Chicago area as a case study, *The Chicago Tribune* provided vivid examples of unsanitary conditions and unsafe food handling practices. An inspector found waste water that had spilled from a leak in a freezer at the Northside Pier School, soiling several cases of frozen hamburger patties. Rather than get rid of the food, the inspector instructed the lunch room manager to simply move the patties to another freezer.

Other problems include rodent infestations or droppings in areas where food is prepared; peeling paint in food storage and preparation areas—in some cases, the peeling paint contained lead, which

as we know can cause brain damage in children who eat it repeatedly.

These are only some of the examples. If this is the case in Chicago, it is probably occurring all over the country, and something must be done.

Another concern is the current Federal oversight of food in the school lunch program. While the school lunch and other federally-assisted meal programs are administered by the Food and Nutrition Service at USDA, the safety of school meals is monitored by USDA's Food Safety and Inspection Service and the Food and Drug Administration. FSIS is required to ensure the safety of all meat, poultry, and some egg products, and FDA is responsible for all other foods, including fruit, seafood, vegetables, and other products.

As a 2001 GAO report stated: "The current food safety system is a patchwork structure that hampers efforts to adequately address existing and emerging food safety risks." Further: "The resulting fragmented organizational and legal structure causes inefficient use of resources, inconsistent oversight and enforcement, and ineffective coordination, which together hamper Federal efforts to comprehensively address food safety concerns."

Even if contaminated food is identified, neither FSIS nor FDA has the ability to offer mandatory recall of the product. Instead, both agencies can request manufacturers to start a recall voluntarily and announce if a manufacturer has started a recall to keep the public informed. But as the GAO again reported: "The announcements do not include detailed information, such as whether the recalled food was delivered to a USDA food assistance program or was USDA-donated food."

In addition in some cases, because of recordkeeping flaws and the complex distribution chain, as has been pointed out, USDA cannot trace back the product to its original source.

In response to an outbreak of E. Coli at a school in Minnesota, the health department reported: "USDA cannot positively say what beef was used in the hot dish and which plant it came from."

The article points to a Georgia-based supplier, and they had no idea which schools the distributors were serving. Such records are considered confidential, people were told.

How can we address these critical issues? First, schools must be given the tools that they need to make sure that the food they serve is safe. This includes ensuring that kitchens and cafeterias are clean and that food service employees are trained in the safe handling of food.

The Chicago Tribune talks about dirty kitchens, improperly-handled food, and undercooked meals. This should serve as a wakeup call for action for all of us. Ensuring that foods are properly handled from the farm to, in this case, the cafeteria is critical to the safety of our children.

We can do more at the Federal level. We need to consolidate and streamline the number of agencies and committees that are responsible for protecting our food and put authority in one food safety administrator.

I have had the honor of introducing the companion bill that Senator Durbin talked about in the House. It would transfer all food safety activities to this new agency. Currently, the bill has 43 bi-

partisan cosponsors who believe this is the right thing to do—in our numbers, not a lot, but I believe that if these reports get out, and if people understand what is happening out there with regard to food safety, they will be on the phone, writing letters, flocking to House Members' offices and Senators' offices to say sign onto this legislation.

We need to give USDA and FDA the authority to conduct a mandatory recall to ensure that contaminated food does not make it into the school cafeteria.

Looking at recent data, in some cases, USDA has only been able to recover a small part of a contaminated product. For example, in 2000, one company initiated a voluntary recall of 22,000 pounds of ground beef tainted with E. Coli. The case is still open. So far, only 10 pounds of the product have been recovered. We need to be able to move swiftly, and I believe that giving USDA and FDA the authority to institute a mandatory recall would do that.

Finally, we must maintain the zero tolerance Salmonella standard for ground beef used in the school lunch program. A recent PBS Frontline program entitled, "Modern Meat," was aired on April 18, 2002.

The program describes numerous challenges that we face in ensuring the safety of our meat supply.

The program describes the story of Supreme Beef, a manufacturer who was supplying as much as 45 percent of the meat for the National School Lunch Program. In 1999, this company failed the USDA Salmonella standard three times. In the first instance, almost 50 percent of its meat was contaminated with Salmonella. Rather than cleaning up its act, Supreme Beef sued, alleging that the government created arbitrary and onerous standards.

USDA lost the case and consequently, in my view, its ability to enforce this critical standard. As a result of the verdict, Supreme Beef kept supplying the school lunch program until they failed yet again in another round of Salmonella tests in June 2000.

We need to appeal the Supreme Beef case, and we need to get back the kind of authority in our agencies that are responsible for these issues.

USDA instituted a zero tolerance standard in response to this effort, and that is only for the school lunch program. As a result of this standard, USDA rejected millions of pounds of ground beef that was to be used in the school lunch program; yet in the spring of last year, the Department proposed to reverse course and sample for other "indicator organisms" to identify contaminated products.

A number of us thought it was the wrong thing to do. Working with Senator Durbin and others, the zero tolerance standard was maintained, and the Secretary reversed the issue. This is a critical component of the safety of the food used in our school lunch program.

Our children need to be able to sit down and have their lunch and know that everything possible has been done to ensure that their food is free from contamination. The school personnel need to know that everything possible is being done to keep this food free from contamination. Parents need to be assured that this food is free from contamination.

There is no higher priority than the safety and health of our children.

This hearing does not take into consideration the whole issue of imported beef products, inspections—this is another area that needs to be discussed as well.

I know I have gone on much longer than my time allotted here, and I thank you very much. I look forward to the opportunity of working with my House and my Senate colleagues on this issue. We could have no higher priority.

Thank you very much, and I beg your indulgence.

Senator DURBIN. Thank you very much, Congresswoman DeLauro. You told us a little bit about your background, but you failed to mention your connection with food through your mother's bakery.

Ms. DELAURO. That is right; a pastry store for over 50 years in the Italian American community in New Haven. Thank you.

Senator DURBIN. Thank you for joining us today.

Ms. DELAURO. Thank you.

Senator DURBIN. We are fortunate today to have two excellent panels.

I would like to invite the first panel to come to the table.

Lawrence Dyckman is Director of Natural Resources and Environment for the U.S. General Accounting Office.

Lester Crawford is Deputy Commissioner of the Food and Drug Administration of the U.S. Department of Health and Human Services.

And the Hon. Elsa Murano is Under Secretary of Agriculture for Food Safety at the U.S. Department of Agriculture.

Thank you all for coming. It is customary in this Subcommittee to swear in the witnesses, so I will ask you to please raise your right hand.

[Witnesses sworn.]

Thank you. The record will reflect that they have answered in the affirmative—I do not know what we will do if anybody ever refuses that, but we will wait and hope it never happens.

I would like to ask each of you to limit your oral statement to no more than 5 minutes, and then, we would like to ask some questions as follow-up.

Mr. Dyckman from GAO, would you be kind enough to start with your oral testimony?

TESTIMONY OF LAWRENCE J. DYCKMAN,[1] DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, U.S. GENERAL ACCOUNTING OFFICE

Mr. DYCKMAN. Good afternoon, Chairman Durbin and Chairman Horn. I want to thank you for inviting us to testify today.

Much of my introduction has been covered by the Congresswoman and by your opening statement, so I will try to be brief.

We know that there are 27 million children who are provided low-cost or free meals daily through two federally-funded programs—the National School Lunch Program and the Breakfast

[1] The prepared statement of Mr. Dyckman appears in the Appendix on page 58.

Program. Both are administered by USDA through its Food and Nutrition Service.

These programs cost the government approximately $8 billion a year. Most of it comes from USDA's reimbursements to schools and the rest in the form of food donated by USDA.

As Members of the Subcommittee are painfully aware, while the United States enjoys a relatively safe supply of food, according to CDC, each year, 76 million people suffer from foodborne disease, 325,000 are hospitalized, and unfortunately, 5,000 die.

CDC also shows that in the decade from 1990 through 1999, there were nearly 300 reported outbreaks of foodborne illnesses that occurred in schools. These affected more than 16,000 people, the vast majority of whom have been children.

These reported outbreaks, though, while only a small fraction of overall illnesses, are of particular concern because, as we know, children are much more vulnerable to disease-causing pathogens than healthy adults.

Let us talk a little bit about the CDC outbreak data. There were 292 outbreaks in total between 1990 and 1999; on average, 17 outbreaks occurred in the first 4 years, 28 in the next 4 years, and 57 in the final 2 years.

CDC officials attribute much of the increase in the last 2 years to improved data collection procedures that the agency started in early 1998. However, even accounting for CDC's more active surveillance approach, our analysis clearly shows an increasing trend in the number of school-related foodborne outbreaks in the 10-year period. That increase averages about 10 percent each year, but it does mirror the outbreaks occurring in the general population.

It is important to note that CDC's data also includes outbreaks associated with food brought from the home or other sources. We wanted to get a better understanding of this, so we examined the 20 largest outbreaks that occurred in schools during the last 2 years, and we found that about two-thirds of these largest outbreaks were indeed caused by food served through the school meals program.

Now I would like to briefly turn to two recommendations that we made in our February 2000 report on the school meals program. First, we recommended that USDA establish a database to track all of the actions taken to remove or replace or dispose of USDA-donated foods that could potentially cause foodborne illnesses, and I am happy to say that USDA has implemented that recommendation.

Our second recommendation talked about USDA revising its school food service manual to include guidance regarding safety provisions for procurement contracts that States and localities could also use. USDA recently told us that it plans to address our recommendation by partially revising its procurement guidance for schools. We believe they could provide even more information to schools in this regard.

In the short amount of time we had to prepare for this testimony, we did some limited review work, and we identified two additional issues that we think warrant further study and might help in this issue.

First, on the donated portion of the school meals program, USDA procurement officials have routine access to the Federal inspection and compliance records of potential suppliers. They told us they take these records into account before they consider contractors for donated foods. But because the vast majority of food, as we have mentioned, comes from the State purchases and the local authority purchases, we believe it would be very helpful for them to have access to this information as well.

Second, we observed that while USDA has an established process for holding and requesting recalls of the USDA-donated foods when they have safety concerns, sharing this process with States and localities we believe would also be in the best interest.

Now I would like to address, as I was asked to do, some measures taken since September 11 by USDA and FDA to protect the food supply and hence, meals served to school children, from potential acts of deliberate contamination.

As we testified last October, recent events have raised the specter of bioterrorism as an emerging risk factor to our food supply. We stated further that under the current structure, there are questions about the food safety system's ability to detect and quickly respond to any such event.

Since then, FDA and USDA officials have told us that they believe they are better-prepared to detect and respond to such an event. They are in the process of conducting risk assessments to determine where in the food supply things are most vulnerable. In addition, FDA has issued voluntary guidelines to sectors of the food industry that it regulates to enhance, among other things, the physical security in processing and storage facilities.

USDA is working on such guidelines, but has not issued them yet.

Also, both agencies told us that they have placed their field personnel on heightened alert.

I see that my time is running out. I just want to reemphasize something that the Congresswoman stated, that we indeed have a patchwork system in the food safety structure in the Federal Government. If we had to start from scratch, we would never build the system as it exists today.

Clearly, if we want to make a long-lasting improvement in the safety of our Nation's food, I believe—and my agency has said this on several occasions—that what we need is a single food safety agency, and we have to reexamine the corresponding legislative authorities of the present food safety agencies.

Thank you. I would be happy to answer any questions.

Senator DURBIN. Thank you very much, Mr. Dyckman. Dr. Crawford.

TESTIMONY OF LESTER M. CRAWFORD, D.V.M., Ph.D.,[1] DEPUTY COMMISSIONER, FOOD AND DRUG ADMINISTRATION, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Dr. CRAWFORD. Thank you very much, Mr. Chairman and Members of the Subcommittees.

[1] The prepared statement of Mr. Crawford appears in the Appendix on page 74.

I am Lester Crawford, Deputy Commissioner of the Food and Drug Administration.

Thank you for this opportunity to discuss the safety of Federal school lunches. Ensuring the safety of the food supply is a top priority for FDA, the Department of Health and Human Services, and the administration.

I am pleased to be here today with my colleagues from GAO and the U.S. Department of Agriculture. I appreciate this opportunity to explain FDA's role with regard to the safety of Federal school lunches and the food supply in general.

I would like to describe FDA's role in responding to reports of foodborne illness and our collaboration with other Federal, State, and local agencies, and to mention some of our recent food safety efforts that are directed toward children.

As you know, FDA as a unit of the Department of Health and Human Services has responsibility for all of the food supply with the exception of meat, poultry and egg products, which are regulated by USDA. FDA's jurisdiction covers approximately 80 percent of domestic and imported foods that are marketed in interstate commerce. The agency seeks to ensure that these products are safe, nutritious, wholesome, and properly labeled. FDA has jurisdiction where food is produced, processed, packaged, stored, or sold.

In addition to jurisdiction over food establishments, FDA's purview also includes approval and surveillance for new animal drugs, animal feeds, and all food additives that can become part of food.

USDA administers the Federal school lunch program. FDA is not involved in the procurement of foods for this program. However, FDA works closely with USDA and other Federal, State, and local agencies when reports of illness related to foods in the school lunch program are received. FDA's various food safety activities all help to ensure that food served in schools is safe.

Our food safety activities include but are not limited to research, risk assessment, outbreak response, development of preventive controls, inspection of domestic and imported food, enforcement, and the development of educational materials for consumers, health officials, and industry.

FDA recognizes State and local governmental jurisdictions as having primary responsibility for the regulation of the retail segment of the food industry. FDA provides assistance to local, State, and Federal governmental bodies to ensure that the food that is provided to consumers by retail establishments is not a vehicle for transmitting foodborne illness. The agency publishes a model Food Code that represents FDA's best advice for a uniform system of regulation to ensure that the food sold or offered for human consumption in retail outlets, including schools, is safe, properly protected, and honestly presented. Many jurisdictions have adopted FDA's Food Code or an amended version of it as their regulatory standard.

Responsibility for responding to foodborne disease outbreaks is shared among local, State, and Federal Governments. Local and State governments are often the first to detect the occurrence of an outbreak and initiate an investigation. It is important to note that many episodes of foodborne illness are addressed exclusively at the local or State level.

The role of the Federal agencies in large or complex multi-State outbreaks is to assist the State and local agencies in preventing additional cases of illness from occurring. The Centers for Disease Control and Prevention, another agency of the Department of Health and Human Services, through its surveillance systems, detects and investigates outbreaks of foodborne illness. CDC also assists Federal, State, and local agencies in investigating outbreaks.

FDA becomes involved when FDA-regulated food products may be implicated. Our objectives in outbreak investigation and response are: Verification of the association with a regulated product, identification of the source of the product and the extent of distribution, prevention of any further exposure to the contaminated product, and initiation of regulatory action if indicated. An additional critical role of outbreak investigation is to identify contributing factors in order to prevent any future outbreaks from a similar problem.

In 1998, FDA initiated an effort known as the National Food Safety System Project to improve coordination and communication among public health and food regulatory officials.

Enhanced surveillance systems are also important tools for improving the response to outbreaks. For example, PulseNet enables a national network of public health laboratories to fingerprint bacteria that may be implicated.

Another system is the Electronic Laboratory Exchange Network, or eLEXNET. This is the Nation's first internet-based interagency food testing and reporting system developed to provide access to critical food testing data in Federal, State, and local food safety laboratories.

Our activities with school children and the prevention of disease therein are specifically aimed at reducing specific diseases, mainly four different disease categories. We have been working with USDA on a project to revise "Serving It Safe: A Manager's Tool Kit." We have also been participating with CDC and the National Coalition for Food-Safe Schools.

We thank you for this opportunity to discuss FDA's food safety activities. We look forward to working with both subcommittees on ways to continue to improve the safety of the Nation's food supply.

Thank you very much, Mr. Chairman.

Senator DURBIN. Thank you. Dr. Murano.

TESTIMONY OF HON. ELSA MURANO,[1] UNDER SECRETARY OF AGRICULTURE FOR FOOD SAFETY, U.S. DEPARTMENT OF AGRICULTURE

Dr. MURANO. Thank you, Mr. Chairman and Members of the Subcommittees.

I am very pleased to appear before you today to discuss the role of the U.S. Department of Agriculture in ensuring the safety of foods used in the National School Lunch Program.

I am Dr. Elsa Murano, USDA Under Secretary for Food Safety. With me today also on behalf of USDA are Eric Bost, Under Secretary for Food Nutrition and Consumer Services, and Barry Car-

[1] The prepared statement of Dr. Murano with an attachment appears in the Appendix on page 85.

penter, Deputy Administrator for Livestock and Seed at the Agricultural Marketing Service.

I am also pleased to be here today with Dr. Lester Crawford, from whom you have just heard, my good friend and colleague from FDA. Although Dr. Crawford just recently came on board, we have already had a number of productive meetings on food safety issues of mutual concern, and I look forward to many more.

As has been said already, the National School Lunch Program plays an important role in ensuring access to safe, nutritious, and healthful diets to our school children. The program operates in more than 97,000 public and private schools and residential child care institutions. It provides nutritionally-balanced, low-cost or free lunches to more than 27 million children each school day.

I care deeply about this program both on a personal and professional level. On a personal level, I have a niece and a nephew who live in Miami, Florida. Elena and Peter each eat school lunches, and as their aunt, I expect the meals served to them to be safe as well as nutritious.

On a professional level, as you know, I am responsible for the safety of meat, poultry, and egg products. I am committed to ensuring that these foods are as safe as they can possibly be, not only for my family and school children but for all Americans.

As you can see from the chart here,[1] several agencies work together to ensure the success of the National School Lunch Program. Within USDA, the Food and Nutrition Service (FNS), administers the program at the Federal level. FNS coordinates with the Agricultural Marketing Service (AMS), and the Farm Service Agency, which purchase commodities and donate them to participating schools.

It is important to note, however, that donated commodities represent only 17 percent of the dollar value of food served in school cafeterias. Schools, as has been stated already, contract independently with food processors and distributors for their remaining food, and these firms must demonstrate that they are capable of complying with all product specifications and contractual requirements of the school.

While the Federal agencies depicted on this chart represent people who are committed to the safety of school lunches, not only is it important that these agencies work well together, it is equally important that they work well with the schools and local authorities.

In fact, the information exchanged across the dotted line that you see on this chart must be as complete, accurate, and timely as possible in order for the system to be effective.

Let me take a moment to give you an overview of how the people depicted on this chart work together to ensure the safety of school lunches.

First, beginning at the top, school food service workers nationwide are trained to provide safe, healthy, and nutritious food to school children by following good hygienic and safe handling practices in preparing meals. Coupled with their efforts, State and local

[1] The chart entitled, "Who's Supplying Whom? The School Lunch Supply Chain," appears in the Appendix on page 128.

health departments work closely with the schools so they effectively follow safe food handling and preparation procedures, such as those of the Food Code, to ensure that safe food preparation indeed takes place.

Within the Federal Government, as shown on the left side of the picture, the Food and Nutrition Service (FNS), works closely with and relies heavily on the authority vested with the Food Safety and Inspection Service (FSIS), to establish, enforce, and monitor meat and poultry safety requirements.

FSIS inspects all federally-slaughtered and processed meat and poultry as well as processed egg products. FSIS uses the same inspection standards for meat, poultry, or egg products served in the National School Lunch Program as for those consumed by the general public.

FSIS also serves as the link or connector to agencies in the Department of Health and Human Services, as shown on the right side of the picture.

AMS builds on these food safety protections by requiring their own graders to be present during the production or processing of items to be purchased by USDA to ensure that their specifications are met. So close is our working relationship with AMS that FSIS gives AMS graders at meat and poultry plants the authority to detain product for subsequent review by FSIS.

Within the Department of Health and Human Services, on the right side of the chart, the Centers for Disease Control and Prevention in partnership with State and local health departments conducts surveillance through the FoodNet Active Surveillance System for foodborne illness that Dr. Crawford just spoke about. In addition, FDA is the entity that is responsible for establishing, monitoring, and enforcing food safety requirements for foods in their jurisdiction.

So as you can see, we do have a strong infrastructure, but it is important that along with an infrastructure, procedures exist to make sure that outbreaks are prevented, and if they occur, they are quickly responded to.

The commodity holds and recalls procedures (CHARP) was introduced in 2001 to achieve just that. It was designed to improve coordination among agencies in order to minimize the impact of outbreaks involving school lunches. As soon as we are alerted to cases of foodborne illness by CDC, State and/or local officials, the suspected product is immediately held at the school. FSIS alerts FNS and AMS, with FNS tracking the product to the school and AMS tracking it to the manufacturer.

The investigation of an outbreak includes FSIS, FDA, as well as CDC and local health authorities. The investigation includes victim interviews, laboratory tests, plant visits, and record reviews. Food epidemiological investigation by State health departments and CDC is crucial, since it provides us with the information needed to determine the foods that may be involved.

It is important to again note that with the CHARP system, the food in question is held even during the investigation to ensure that the outbreak does not go further. The food manufacturer is held responsible, and through enforcement, corrective actions are taken to ensure that the cause of the outbreak is addressed.

In summary, when a food safety concern is raised about a commodity product purchased by USDA for the school lunch program, the product is held, all appropriate agencies are notified, investigation is initiated, and steps are taken to ensure the problem is corrected.

USDA recognizes that school food service professionals play a significant role in ensuring food safety, and for that reason conducts numerous programs to educate these individuals in the proper handling and cooking of USDA-regulated products.

FSIS has designed educational materials for food service professionals, and these materials are shared with FNS, who funds their publication and distribution to all schools participating in the National School Lunch Program.

FNS also provides training and technical assistance to State agencies and local school food authorities that administer the National School Lunch Program. In fact, FNS has received $2 million annually for the past 4 years to promote food safety agency.

In closing, USDA agencies are working with each other and with their sister agencies at HHS to ensure the safety of food for school children and for the population as a whole.

I thank you for the opportunity to speak on this matter, and I welcome your questions.

Senator DURBIN. Thank you very much for your testimony.

Let me say at the outset that it would be unfair to blame either Dr. Crawford or Dr. Murano for this tangled mess that we have when it comes to food safety and inspection in America. This has been created over a span of 85 years, long before any of us arrived—perhaps with the exception of Senator Thurmond—in Washington, DC. But I will tell you this, that if you are going to come and testify today to defend the system, be prepared for some questions that dispute some of the things that you have said, because quite honestly, if you look at the chart and you hear the testimony, it is hard to believe that this system is as good as it gets. And then, you look at some of the evidence that has come forward—let me give you one illustration and ask you to respond.

According to David Jackson in *The Chicago Tribune,* "Georgia-based supplier Zartic, Incorporated recalled 556,000 pounds of school lunch hamburger in 1998 because a sample tested positive for listeria. Zartic officials notified hundreds of distributors about the problem, but Zartic had no idea which schools the distributors were serving. Such records are considered confidential."

Is that the standard that we want to establish when it comes to tainted hamburger with listeria going into the school lunch program, Dr. Murano?

Dr. MURANO. I would be happy to answer that question. This is something that has been so important in the agency's mind, if I can call it that as a collective, and I would like to tell you, Mr. Chairman, that we just published a final rule that allows FSIS to release distribution lists belonging to food establishments involved in a recall to State and Federal agencies.

This is one of the steps that I believe you mentioned in your opening comments, and I believe it is something that will go a long way toward helping track these outbreaks and toward helping States and other agencies have the information on the distribution

of food from a manufacturer all the way down to its final destination in order to be able to conduct a recall that is as efficient as possible.

Senator DURBIN. So this is in response to some of these concerns that have been expressed.

Dr. MURANO. Well, it is one of the things that we are doing. You might have seen the news release that we put out on April 26, as a matter of fact, exactly on this.

Senator DURBIN. We are glad that you are doing it. The object here is to protect the kids, and if it is done in a timely fashion, I support it.

But now let's talk about burritos for a minute, something also brought out during the course of *The Chicago Tribune* series. Let me see if I understand what happened here.

They started detecting problems with burritos served to school children in May and then, by October, more than 1,200 children became sick. During that time, the FDA and the USDA were trying to determine which burrito ingredient was causing the illness because, my friends, the nature of the ingredient defines which agency gets worried.

Initially, the suspicion was the meat in the burrito. The U.S. Department of Agriculture went after the meat for a long period of time and established that no, that is not the problem—it could be the flour in the burrito. Now the Food and Drug Administration becomes involved.

Let me ask you just at the outset, Dr. Crawford, can you explain that process to a family with a child that became sick from eating a school cafeteria meal with a straight face?

Dr. CRAWFORD. Well, we would of course empathize with the parents of the children and do the best we could. This issue is what is in there, and I believe in that particular outbreak, the cause of the outbreak was never really determined. The ingredients did seem to be those that were regulated by FDA, and that is obviously something that we have authority over, and we need to take care of.

Senator DURBIN. Is this a radical idea that perhaps if the same agency were looking at all the ingredients at the same time, it might be safer for the school children of America?

Dr. CRAWFORD. It is an idea that has been voiced abroad, and I do not think it is a radical idea, no.

Senator DURBIN. Thank you.

Dr. Murano, is that a radical idea?

Dr. MURANO. No, absolutely not. But let me offer a few things about that outbreak which occurred in 1998, as you said. What we public health officials always want to do is try to find not only the vehicle of infection, but the causative agent of the disease, because in that way, doctors can know how to treat it, and in that way, we can find which food item was responsible and recall it from market.

As I understand it, in this particular case, CDC was of course very much involved at some point, was helping all the other agencies in trying to determine what was the cause of the outbreak. It turns out that, as Dr. Crawford said, we never found out. We suspect it was some chemical agent, but we just have no idea. A battery of tests was performed.

But the important thing here is what do you do to minimize any more kids from getting sick. You do not just sit around, conducting tests, and do nothing.

In this particular case, it took a while for FSIS and, really, the Federal Government in general to get informed about it, because the State and local health agencies were handling the outbreak at first. But suffice it to say that we at FSIS got this company to recall 1.2 million pounds of burritos. It turns out that what everybody believes is perhaps that it was the tortillas, and that is supported by the fact that I believe one of the schools actually used the tortillas to make their own burritos with their own meat ingredients and found that got people sick as well.

Senator DURBIN. Were you aware, incidentally, Dr. Murano, that during the course of this, the owner of the company, when he wanted to trace where all the burritos had been shipped, was told that he could not get the records because the USDA had them and would not give them to the FDA?

Dr. MURANO. That is what I read, and for that reason, when you read this news release that we just put out about the distribution, that is exactly what it is intended to correct, if you will.

Senator DURBIN. Let me ask you about something else. Do you think that the USDA should require distributors and other suppliers who have contracts with schools to provide schools with the identity of the manufacturers, subcontractors, and other suppliers who provide food to the school lunch programs?

Dr. MURANO. Absolutely, it is important for the school lunch program to have such a flow of information that people can——

Senator DURBIN. You would support that?

Dr. MURANO. Absolutely. But the thing that I think we have to realize, though, is that when we talk about—as I heard Congresswoman DeLauro—and I share in her passion for food safety, I might add—when we talk about should we be supplying these schools with information regarding each plant and how they are doing and the bad actors and the good actors and so forth, it is my responsibility that there be no bad actors. I see it as a shirking of my responsibility to simply say to people: I am going to give you a list of the bad actors, and you figure out for yourself whom you want to buy from and whom you do not want to buy from.

It should not be put on the schools to do that. It should be——

Senator DURBIN. So you would not object, then, to all Federal agencies giving the schools the food safety records of suppliers?

Dr. MURANO. That is what I am saying—I do not think that is the way to go simply because it is shirking my responsibility. I think that schools, when they buy food for their programs, if it is federally-inspected food as it is supposed to be, federally-inspected meat and poultry, they should have the confidence that we are doing our job at FSIS to make sure that all meat and poultry companies that are in business are producing safe food.

Senator DURBIN. So if you inspect a company that is supplying hamburger to the school lunch program, and you find that they need to recall a product because it is contaminated, you are saying that you would never allow them to supply the school lunch program again?

Dr. MURANO. What I am saying to you is that if there is a problem that causes a recall, I am going to go after that company bigtime to see what are they doing wrong in the processing line.

Senator DURBIN. But you are not going to eliminate them, are you?

Dr. MURANO. If it warrants doing that, it might be what is necessary. What I am trying to tell you is that I am not going to allow bad actors to be supplying food not only to school lunch but to anybody.

Senator DURBIN. That is going to be your definition and your call. In some situations, you are going to continue to allow them to do business under certain changed inspection standards. I have seen that happen before.

My question is should a school official who runs a school lunch program know that you have made that judgment call.

Dr. MURANO. That I have made the judgment call of allowing somebody who should not be selling meat and poultry to do that?

Senator DURBIN. Let me be very clear in the question. Someone has violated some Federal food safety standards to the point where you have gone into their plant and said, "You have to change this process at your plant"—or, even further, "You have to recall your product"—you may or may not at that point decide to disqualify them from the school lunch program. It is possible that you may say, "You can continue in the program." But as a school official, should I know that this has taken place?

Dr. MURANO. I guess it is not a bad idea certainly for schools to know what we have done in terms of plants that have had to do recalls because of things that are obviously badly wrong with their systems.

Senator DURBIN. Thank you.

Dr. MURANO. What I am trying to say is that if we are to inundate the schools with all kinds of information on a whole variety of different things that may occur in a plant or may not occur in a plant and put it on their heads to figure out what that all means in terms of whom they should buy from and whom they should not buy from, I am just telling you that I feel personally responsible, and our agency needs to be the one to make sure that whatever is put out in commerce for a school system or not is safe. That is our responsibility.

Senator DURBIN. Thank you.

Mr. Dyckman, I am sorry I did not have time to ask you questions in this round, but I want to thank the GAO. You did a great job on this report.

Congressman Horn.

Mr. HORN. Thank you, Mr. Chairman.

Mr. Dyckman, I have some questions on the GAO situation. In your testimony today, you reemphasized that there are endemic problems in the Nation's food safety system that lead you to believe we should be considering consolidating Federal food safety activities into one agency. What remedy would you specifically request?

Mr. DYCKMAN. I think what is really needed is an assessment, which to my knowledge has not been done, of the pros and cons of not only combining inspection services into one agency, but the broader issue of combining all food safety activities.

The National Academy of Sciences was going to do this, but I do not believe they have. They were going to look at basically the costs and benefits of combining all agencies into one. But you have to also look at the legislative authority to come up with a generic food safety legislation. I think that is probably the first step.

Even if you do not combine the agencies, there should be legislation that is based on risk, and right now, we do not have that.

Mr. HORN. Have you had a chance to look at either the Senator's bill or Congresswoman Rosa DeLauro's bill?

Mr. DYCKMAN. To some extent. We support recall authority. We obviously support a single food safety agency. I do not have the bill in front of me, so I cannot comment on individual provisions. I could do that for the record if you feel that is warranted.

Mr. HORN. State and local food safety officials also play a vital role in the food safety web. Do you have any recommendations for improving their performance?

Mr. DYCKMAN. We have not looked at State and local performance, but in my statement, I indicated several actions that we felt—and they were discussed to some extent by the panel just a few minutes ago—that the Federal Government can take to place better information at the State and local level.

We were just talking about recall data, but also compliance data, and putting it into a package that is understandable. We spend $1 billion a year at the Federal level on food safety. States spend, I think, about $300 to $400 million. We should have good data systems so that all the participants in the food safety system can use the Federal information in an efficient way.

Mr. HORN. I go around the country and hear about terrorism. We talk about what happens in a city if there is a germ-type of situation where it is in a pesticide or whatever.

Mr. DYCKMAN. Bioterrorism.

Mr. HORN. How do we relate to this, and what is the responsibility of, say, the State department of health for one thing, besides the Federal side? Do you find that is one way to deal with this?

Mr. DYCKMAN. Well, the States obviously have first-response capability, but if you look at the weaknesses in the food safety system, it really does not matter whether it is deliberate contamination or accidental contamination. The consequences are basically the same—people get sick, people can die.

I think the things that we are talking about today and the things that are in the legislation that we mentioned earlier are trying to improve the adequacy of our Federal food safety system, and I think they will help us whether it is deliberate contamination or accidental contamination.

We have not done any work specifically at GAO on what actions the Federal Government is doing on deliberate contamination, although we just started an assignment to look at what food processing facilities are doing and how have they geared up since September 11, and we would be happy to report that to both subcommittees when we finish.

Mr. HORN. Thank you. I would like to ask a question or two of Dr. Murano and Dr. Crawford. Based on the testimony from the General Accounting Office, it seems that more effort goes into procuring safe foods purchased by the Department of Agriculture for

our school meal programs than foods purchased directly by local governments or schools.

Is that a fair statement?

Dr. MURANO. I am going to speak on behalf of meat and poultry. To me, everybody deserves safe food. I do not make that distinction in my mind, because the same kids who are eating the school lunch eat at other places, as are their parents, grandparents, etc.

Having said that, for that very reason, I believe we have to have a system that is going to provide the safest food possible to everybody.

Now let me speak very briefly about, for example, when we talk about ground beef, AMS, which procures the food for the school lunch program, has a requirement for an intervention strategy or a decontamination step, if you will, of ground beef processors to try to ensure that meat is as safe as possible.

Last week, FSIS announced their own directive to do exactly that, to say to ground beef establishments, you must have an intervention strategy, and if you do not, you must require it of your suppliers of trimmings, which is where the ground beef comes from, and if you do not, we will subject you to increased testing for Salmonella and E. Coli O157:H7.

So it is the way that I, as a microbiologist, know that we can really make a difference, by the action of what happens in a processing plant, the decontamination that you can have on that product is what is really going to make a difference. So I applaud AMS for having done that for a while, and I am happy to say that is what we are heading toward as well in FSIS, because I truly believe that we all have to have the same safety in our food supply, and nobody deserves any safer food than anybody else. I am committed to that.

Mr. HORN. I believe the Department of Agriculture and the Food and Drug Administration have maintained any lists of firms that have negative inspection reports or warning letters and may be considered to be problem firms that could be made available to Federal, State, and local procurement officials. I am curious, have any State or local authorities ever expressed an interest in this type of information?

Dr. MURANO. Let me just quickly answer that, and then I promise Lester I will let him respond.

Dr. CRAWFORD. Thank you very much.

Dr. MURANO. It is equal opportunity questioning; I understand that.

We publish on the FSIS Web site quarterly enforcement reports and recall information as well, and that is available to everybody—school lunch procurers and anybody else, for that matter. So that is information that they have that can give them certainly a sense of who the "bad actors" are, and I think that is important information that they welcome.

Mr. HORN. Is the information that comes from the Food and Nutrition Service the list of the school meals supplier?

Dr. MURANO. This particular information I just spoke about is our FSIS Web site, so it is not only limited to whomever supplies meals to the school lunch program, but to everybody—all meat and

poultry plants that have had recalls or enforcement actions are published on our Web site.

Mr. HORN. And that would include the Food and Nutrition Service?

Dr. MURANO. Sure.

Mr. HORN. And is that utilized? Do you see what kind of counts go in there?

Dr. MURANO. I am sure somebody does. I will get that information for you.[1]

Mr. HORN. When it is necessary to stop further use or distribution of contaminated foods, the Department of Agriculture has the authority to stop the distribution of a product for up to 20 days while they seek a court order to seek any tainted food. What should be done in your opinion to enable local authorities to stop further distribution or use of contaminated food in much of the same manner might go on?

Dr. MURANO. Well, certainly having that detention authority is extremely important. Of course, whenever meat or poultry is involved in any outbreak, whether school-related or not, that is one option that we certainly have. We, of course, let the company know that they need to issue a recall, and all of them do, but let me give you an example, Mr. Horn, of an instance where we have exercised that authority very recently.

There was a bologna-type product that came from Brazil that did not go through our inspection which was not supposed to happen, certainly. As soon as we found out about it, not only did we inform the company that they needed to recall the product, but we sent all of our compliance officers to all 30 stores where the product was and physically removed it. So it is an authority that we avail ourselves of, and I intend to use it as much as possible, and I believe that is one way that people can, "effect as efficient and thorough a recall as possible with present authorities."

Mr. HORN. Dr. Crawford, do you have anything that you want to add as to how information could be found on this, and what is the Food and Drug Administration doing to help that?

Dr. CRAWFORD. When we take actions against companies that are purveyors of food, we list it in several different ways. We have a publication called "FDA Consumer" where recalls and prosecutions are summarized. We also have a Web site where we do essentially the same thing as Dr. Murano said.

There is one other thing in terms of authorities in this direction, and that is we are aware that the so-called bioterrorism bill is currently being conferenced, and the administration has asked for several food safety proposals that I believe, if I may, may relate to what we are talking about at this juncture. Among these are registration, recordkeeping requirements, administrative detention, debarment, and increased coordination of food safety activities between Executive Branch agencies.

We think in this administration and particularly at the Food and Drug Administration that we need this in order to accomplish our job and hope it will survive the conference process.

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[1] Letter to Senator Durbin, dated July 8, 2002, from Dr. Murano with information submitted for the record, appears in the Appendix on page 130.

Mr. HORN. How easy is it for the average citizen to get the "FDA Consumer"? I assume it is on FDA's Web site in this day and age.

Dr. CRAWFORD. Yes, it is on a Web site, and we also maintain a hotline, an 800 number, as does Dr. Murano, so that we can direct consumers as to how to get on the Web site. We realize that not everyone is Web site-friendly. And the "FDA Consumer" is available to anyone who asks FDA in a number of ways, either by email, telephone, or letter.

Mr. HORN. Do you do it on a quarterly or weekly basis?

Dr. CRAWFORD. The "FDA Consumer" is published on a bimonthly basis, and the Web site is updated on a daily basis.

Mr. HORN. Thank you, Mr. Chairman. I yield back my time to the good Member from Illinois.

Senator DURBIN. Thank you.

I would like to recognize Congresswoman Schakowsky for questions.

Ms. SCHAKOWSKY. Thank you.

Let me understand. USDA is responsible for school food regardless of whether it is meat or poultry or manufactured and includes tortillas; you are the agency in charge of saying this is suitable to go to schools?

Dr. MURANO. The Food and Nutrition of USDA is; correct.

Ms. SCHAKOWSKY. Right. So let me follow through this burrito/tortilla problem a little bit and how it works. The FDA was responsible for inspecting the tortilla factory, and in 1996 and 1997, the Illinois Department of Public Health with whom you had contracted noted that there were sanitation deficiencies.

I am assuming, then, that there was some enforcement action, but nonetheless it was in 1998, when in fact there were not any inspections for the first 10 months or whatever, that the school illness took place, and there was suspicion that it was the tortillas.

I want you to comment on that, but also the fact, then, that plant continued to provide school food; they continued to manufacture. So I am trying to understand what the sanctions are and where they would come from under this current scheme of things, if either or both of you could actually respond to that.

Dr. CRAWFORD. With respect to FDA, we are responsible for the inspection of the tortilla factory. The way we do that is we have commissions, contracts, or confidential agreements with States. Illinois is 1 of 49 States that we have these arrangements with. So in effect, the FDA delegates to the State the responsibility for that inspection.

It is not what could be called super-delegation, however. We remain in contact with them, and we also analyze how well they are performing these tasks. In the case of the tortillas, as you mentioned, there were inspections, and following that, there was some stepped-up activity by the State.

However, as we also mentioned earlier, that particular foodborne disease outbreak that you mentioned could never be traced in terms of what the organism was or what the actual cause was. There is certainly scientific evidence that it did not come from the meat or poultry part, but from the FDA-regulated part. We were never able to find out what it was, whether it was a bacterial organism, a viral organism, or a chemical contaminant.

Ms. SCHAKOWSKY. Let us assume for a moment that we had determined that it was—and this is now hypothetical—a tortilla factory. What would be the remedy to improve the situation, and might we expect that they continue to have a contract to provide school food? Is it zero tolerance, is it three strikes and you are out, is it that you have to meet a certain standard? How do we know, then, that the food is going to be safe?

Dr. CRAWFORD. Let me say what FDA would do had we found the problem, let us say a chemical contamination problem, and then I will turn to Dr. Murano for what USDA would do.

We would do what we needed to do in order to protect the public health. If Illinois found, say, a chemical contamination problem, we would immediately go with the State of Illinois to the plant to see what needed to be done to interdict the contaminated product. Usually, this is worked out in direct communication with the plant, on the site. Sometimes we have to do something like seek a court order. Sometime we have to detain the product; if we do, we generally use State authority to do that, because they would have things like quarantine authority or detention authority.

Ms. SCHAKOWSKY. And at some point do you say: Look, you have failed this inspection and that inspection, and now we have a problem. You can no longer provide food to the schools?

Dr. CRAWFORD. Well, at the Federal level, we do not have the debarment capability. That is why I mentioned that in this pending legislation, there is that ability.

What we could do is, working through the State, accomplish that in a variety of ways, depending on what the State laws are.

Ms. SCHAKOWSKY. Do you ever do that?

Dr. CRAWFORD. Yes, we have done that.

Ms. SCHAKOWSKY. What about the USDA? Then it goes over to you.

Dr. MURANO. OK. Well, in this case, as you know, as Dr. Crawford just said, we suspect that it was the tortillas. But let us say for argument's sake that it was the meat in the burritos. One of the things that we did right away, as soon as we got involved in this outbreak, was to get the company to recall their product, and as I mentioned a moment ago, they recalled 1.2 million pounds of the burritos.

This particular company, about 3 months later, was bought out, and they changed their name to—a different name, let us put it that way. But we keep track of these companies by establishment number, so it does not matter how many times somebody changes their name; we know who they are.

That company, after they changed their name a few months later, was suspended. We basically shut them down because of some failures that they had, and we have done that several times since. They changed their name again and have been bought by somebody else and so forth.

What I am trying to illustrate by this example is that what we do when we find a company that is producing product, whether for school lunch or regular—to me, it is just as serious—it is our responsibility to have increased scrutiny of that company and to see what measures, what corrective actions, they supposedly took as the result of a recall that are being followed——

Ms. SCHAKOWSKY. What do you mean you shut them down?

Dr. MURANO. If you suspend inspection, if you say that we are not going to be there to inspect anymore, they cannot operate——

Ms. SCHAKOWSKY. But if it were not the meat—if it were the tortillas, but you are in charge of the school lunch program—could you shut them down, the tortilla people?

Dr. MURANO. Remember that the tortilla factory is the one that supplied the tortillas to this particular company. If this particular company is operating following all the required procedures and food safety programs that they have—in other words, they are not doing anything wrong themselves; they are just acquiring a product from their supplier that is not safe—that is something that they have to make account of in their HACCP system, if you will, who their suppliers are and what is happening with the product with the hazards that might be introduced.

So they have some responsibility in that they have to find out what is going on with their suppliers. Of course, we cannot shut down their suppliers, because it is a tortilla factory, and we do not have jurisdiction over those.

Ms. SCHAKOWSKY. Let me just say that Mr. Bode in the next panel is going to argue strongly against creating a single food safety.

It seems to me from this kind of description of who has power over whom and who can in fact intervene at the appropriate time to stop unsafe food, that this example really underscores the need. Mr. Dyckman might want to—because you spoke out in favor of a single food safety agency. We will hear testimony later that this is a bad idea. I wonder if you want to comment on that.

Mr. DYCKMAN. The basic question—and not meaning any disrespect to the witnesses—really that you should be asking is why do you have to have two agencies to answer this question? Why can't you look to one official to give you a straightforward answer?

But the issue of recalls, the issue of detaining authority, the issue of equivalence on imports—there is a list that goes on and on in terms of differences in authorities. It is not the agency's fault; that is the way Congress set it up. And obviously, if the industry is begging not to do something, you have to look pretty leery at why they do not want a change. Is it because they feel that there will be more vigilant enforcement or more vigilant regulations?

So for a variety of reasons, I agree with you.

Ms. SCHAKOWSKY. The issue of information to school districts right now has been alluded to, that might be something that could be a useful tool. What I had in mind was the notion of a single, comprehensive database that right now had information from USDA, from the FDA, and rather than saying let us not overload these school districts, in the City of Chicago, there are 400,000 children, a huge number of kids, so we are concerned, and I think someone who is diligent enough to be willing to look at these databases—yes, we want to have confidence in you, but also have a responsibility. Can't we get that information out now on a database that is useful to people in those positions of authority?

Dr. MURANO. Let me begin the answer to that question by saying that one thing that we are trying to do is work very closely with FDA as much as possible, because clearly, the reason why people

keep thinking about a single food safety agency is because they see that in the past certainly there has been a lack of coordination. That is certainly what has been mentioned here, and——

Ms. SCHAKOWSKY. And in my view, it is inevitable if there are multiple agencies.

Dr. MURANO. But let me say something that might be relevant here, and that is that in 1999, FSIS signed a memorandum of understanding with FDA, and that helped get the relationship closer so that we would—at FSIS, since we are in meat and poultry plants every day, if we are in plants that are dual jurisdiction, for example—let us say the company that makes pepperoni pizza on one line and cheese pizza on the other line—we are there every day, and FDA is not there because of their regulations.

It enables us if we see something that is not quite right that FDA needs to know about, because we are there every day, we call FDA and we basically have a partnership going. That has really paid off in spades. Very recently, in fact, on April 24, there was another press release put out that talked about a company in Chicago, a food distribution firm—I think Senator Durbin probably knows about this particular situation—but a legal action resulted. It was really the first joint prosecution between FSIS and FDA under our MOU where this particular company really suffered, was sentenced on two misdemeanors and a felony count for selling adulterated poultry. It is the first time ever that this has happened, where the two agencies have collaborated to prosecute a company that really did not need to be in business, and were successful at doing that. So that is an example of what we can do.

Ms. SCHAKOWSKY. Well, to me, it speaks to the need for a single agency; so it is not just isn't it great that we happened to be in the same plant. Thank you very much.

Thank you, Mr. Chairman.

Senator DURBIN. I would like to add that it almost sounds like the Middle East peace negotiations, but now we have the FDA and the USDA speaking to one another. This is a breakthrough, and I hope it leads to lasting peace and food safety.

I would like to recognize Congresswoman Maloney from New York. Thank you for joining us.

OPENING STATEMENT OF HON. CAROLYN B. MALONEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mrs. MALONEY. I would like to thank Chairman Durbin and Ranking Member Schakowsky, along with Chairman Horn, for holding this hearing. This is a tremendously important issue, and it sounds like you are making progress toward one agency that is more accountable.

I represent New York, and I am certainly keenly aware of the problems that have existed, and food safety is tremendously important. We have a school system that feeds over 1.1 million students in 1,200 public schools.

Since we have the USDA here, I wanted to ask a question that really concerns New York. I would like to ask the Department of Agriculture's assistance on a very troubling issue in New York now. Due to the terrorist attacks on September 11, the public schools in

the city, many of them, particularly in that area, were closed for a number of days, some for months. Because of this, the New York City Board of Education experienced significant revenue losses because of lost lunch sales. Under the Federal school lunch program, school districts are paid based upon the lunches that are served, and because of this closure, the board still must pay fixed costs such as salaries for lunch room monitors and cafeteria workers. I am being told that the board of education will not be reimbursed for these losses which total roughly $3 million. The city is suffering tremendously. We have a deficit breach of over $4 billion in our budget, a budget gap.

So I would like to request that USDA assist the city in following up with the Emergency Management Agency regarding this issue and either waive the loss of the funds due to September 11 or work with FEMA, which is denying reimbursing them for the loss.

I would like to ask if Mr. Crawford could be helpful with this.

Dr. CRAWFORD. Ten years ago, I could have, but I have moved over to FDA.

Dr. MURANO. I am told by my colleagues at FNS, Food and Nutrition Service, who would be the appropriate folks to help out in this regard, that they will get back to you very quickly with what you need.

Mrs. MALONEY. Thank you very much.

I feel that the issue that we are looking at is more than consolidating, but really, having the information so that people who are selling faulty food—that we cannot only get the information, but they should be barred from selling food to our school children.

I would like to know your response to that. In the City of New York, if you are a contractor who does faulty work, you are barred from doing future contracts in the city. There is a Federal statute that says that certain contractors who have mismanaged projects or whatever are barred from getting Federal contracts. Well, certainly supply food to children is critically important, I would say more important than repairing our roads.

Why don't we have a standard that you are barred from selling food if you have a history or you have bought faulty food? You say this particular business bought food that was bad. Maybe they should require them to taste it and eat it before they put it into our school system. Someone has got to be held accountable. To say it is not their fault because they bought it from someone else, I find an inexcusable Federal standard. I think someone has got to be held responsible, and companies that sell faulty food should be barred from selling food to U.S. school children, and it should go on their record on the Internet so that if anybody else wants to buy from them, they know that their food kills.

What is your response to that?

Dr. MURANO. You go first.

Dr. CRAWFORD. I was going to mention that the Bioterrorism Preparedness Act and the Public Health Security and Bioterrorism Response Act currently being considered would give us, FDA, the right to debar. We do not have that authority now. So we again encourage the Congress to look carefully at that, and that is the administration position.

Dr. MURANO. I would just like to add that I truly believe that you are absolutely right. In fact, people who produce "faulty, unsafe food" do not need to be selling it to anybody, and that is the point that I have tried to make here this afternoon. It is not just to the school lunch program, but to anybody. And that is our responsibility as the Federal inspection agency that inspects meat and poultry, to make sure that does not happen. That is our responsibility, and holding them accountable through our enforcement actions is exactly what we do on a daily basis.

Mrs. MALONEY. Well, we appreciate your efforts. You have saved millions of lives. But we need to get better at it, and I certainly would support authority to debar. I think it is very important to have enforcement.

I thank the Chairman for holding this timely and important hearing. Thank you.

Senator DURBIN. Thank you, Congresswoman Maloney.

Dr. Murano, you have said several times today that it is going to be zero tolerance in terms of the school lunch program—if they are selling contaminated food, they are going to be disqualified—and that is a matter of record now, so this will be the standard that we are going to hold you to. I think you are going to find this a difficult standard to deal with in light of the history of this program and your agency.

Let me also add for the record, and it has been brought out repeatedly, but just so we understand the size of the armies that we have represented here—the U.S. Department of Agriculture has 7,600 employees involved in inspecting 6,500 facilities—more than one inspector for each facility. The Food and Drug Administration has 770 inspectors for 60,000 facilities; that is 1 for every 80 facilities.

So when we start talking about these burritos and how many people are going to look at them in what stage of the process, you have 80 soldiers at USDA for every one that they have at FDA, which does not make any sense at all if you both have the responsibility of protecting our school children as you want to.

I think Congressman Horn had a suggestion about your schedules. Congressman Horn.

Mr. HORN. We would like to get the next panel to come up, and we would like you to wait and get some dialog here. I have found time and time again—and that is the way I do it on the House side—that the people who have responsibility are not in the room when the victims testify, and we would like to be able to react to their testimony.

So we have three seats here, and the clerk will bring two more chairs, and we will get everybody around the same table.

We will now call up panel 2, which includes Caroline Smith DeWaal, Sue Doneth, John Bode, Cheryl Roberts, and Mary Klatko. And anybody, either with the government or non-government, whom we are going to ask to answer questions, please affirm or not. Affirm means that you will be able to give us the information we seek.

Panel 2 will stand and raise your right hands, as well as any people assisting you; the clerk will take their names down, too, for the hearing record.

[Witnesses sworn.]

The clerk will note that those people affirmed that oath.

We thank you very much for coming, and we can begin with Caroline Smith DeWaal, Director, Program on Food Safety at the Center for Science in the Public Interest.

You might tell us a little bit about that, Ms. DeWaal.

TESTIMONY OF CAROLINE SMITH DeWAAL,[1] DIRECTOR OF FOOD SAFETY, CENTER FOR SCIENCE IN THE PUBLIC INTEREST

Ms. DEWAAL. Thank you so much, Chairman Horn, and also thanks to Chairman Durbin and Representative Schakowsky for your attention and your questions today.

I am Caroline Smith DeWaal, and I direct the Food Safety Program for the Center for Science in the Public Interest.

CSPI advocates for food safety and nutrition improvements on behalf of our 800,000 subscribers to Nutrition Action Healthletter.

Last December, *The Chicago Tribune* ran a series of investigative reports that exposed huge gaps in food safety protections in the national school breakfast and lunch programs. Contaminated food is particularly dangerous to school children because this population is among those at risk of contracting a serious foodborne disease which frequently can result in hospitalization or even death.

Because children are especially vulnerable, many food safety messages are targeted at parents, but when parents send their children off to school, they rely on the school system and the government to ensure the safety of the food their children eat. Unfortunately, as we have seen today and as *The Chicago Tribune* exposed, their trust is misplaced.

I am going to talk about three gaps in the system. One is in the area of outbreak recognition; second is in the area of outbreak response; and the third is in the area of outbreak prevention.

Several years ago, CSPI began tracking food poisoning outbreaks to identify food and pathogen combinations. Our list contains many school-based outbreaks. For example, our list contains outbreaks that involved over 19 different pathogens or toxins, including some very serious ones like E. Coli O157:H7. Some of the outbreaks that CSPI has identified are quite large. In one outbreak in Arkansas, over 200 grade school children became sick from a turkey dressing served as part of one of the pre-Thanksgiving meals that people like to have at their schools. This outbreak was never reported to the CDC because of gaps in our outbreak reporting system.

Now I will shift over to the response issues. Because the Food and Drug Administration and the U.S. Department of Agriculture lack mandatory recall authority, once a harmful food is identified the Federal Government must rely on the plant itself, or in some cases, on local or State Government, to initiate a recall.

In the burrito outbreak which we talked about earlier today that affected 1,200 school children, the plant manager who was trying to direct the recall found that he could not obtain his own shipping

[1] The prepared statement of Ms. DeWaal with attachments appears in the Appendix on page 93.

records to give to FDA, because they had previously been given to USDA.

According to *The Chicago Tribune* report, the manager asked the age-old question which applies not only here but in many different instances when it comes to Federal food safety regulation: Who is in charge?

Sometimes the Federal Government is not involved in managing and controlling a school food poisoning outbreak. Instead, consumers must rely on the effectiveness of State, county, and local governments. But two recent surveys have found that State and local governments that inspect restaurants and other food service establishments—including nursing homes, schools, day care centers, and others—these inspection systems are chronically underfunded, poorly-staffed, and often are not enforcing food safety standards that comply with national recommendations.

Finally, I will come to the issue of preventing food poisoning outbreaks in schools. Preventing these outbreaks is largely dependent on the two government agencies that we have heard from today—USDA and FDA. But because FDA's food plant inspection rate is so low—GAO recently estimated that FDA actually gets to visit a plant only once every 5 years. This system is not adequate to protect the safety of the food going into the school lunch program.

The desire to minimize cost with food purchased by the school lunch program means that in some places, the program may actually purchase low-quality food. In one shocking example of this, USDA unsuccessfully tried to shut down a major supplier to the school lunch program for food safety violations. During that same year, the company, called Supreme Beef, sold $23 million of beef to the government for the 1999–2000 school year. This was the same year that USDA was trying to close the company down. This ground beef represented over 15 percent of the total frozen beef purchased by the program that year.

In 2000, USDA responded to this unacceptable situation by tightening its requirements for ground meat purchases and rejecting ground meat that tests positive for Salmonella and E. Coli O157:H7. Two years later, this has been a successful program because USDA today has a ready supply of affordable beef for school lunch meals, and our children are getting better and safer products.

We have five recommendations that we would like the Subcommittee to consider. First, the Federal food safety agencies need mandatory trace-back and recall authority.

Second, Congress really needs to give FDA more resources to inspect the 60,000 domestic food plants under its jurisdiction.

Third, USDA should require processors of ground meat who want to sell to the school lunch program to test their meat much more frequently, and in addition, they should increase the government testing frequency. Right now, they are just testing meat going to the school lunch program once a day; that is not enough. In addition, USDA should continue to reject positive lots.

Fourth, we believe that USDA and the States should conduct audits to ensure that food plants and schools are being inspected regularly, and where local programs are weak, States should maintain

a separate inspection force that goes into schools, day care centers, nursing homes, hospitals, and prisons.

Finally, we urge Congress to pass the Durbin-DeLauro Safe Food Act. This bill offers a much-needed strategy to consolidate food safety regulatory functions into a single food safety agency.

Thank you very much.

Mr. HORN. We thank you very much, and those 800,000 consumers who are helping to fund you are doing the right thing.

Next, we have a witness who I know has to leave for other areas. Sue Doneth, I know you have to catch a train, and we certainly want to hear your testimony.

Please go ahead.

TESTIMONY OF SUE DONETH,[1] MARSHALL, MICHIGAN, ON BEHALF OF S.T.O.P., SAFE TABLES OUR PRIORITY

Ms. DONETH. Thank you.

Before I begin my testimony, I would like to thank Senator Durbin for inviting me to participate in this hearing today.

My name is Susan Doneth, and I am the mother of a child who became extremely ill with Hepatitis A after eating frozen strawberries served in her school lunch.

My daughter Lindsay innocently consumed a strawberry dessert at school, and 28 days later became extremely ill.

I am a member of S.T.O.P., Safe Tables Our Priority, and I am submitting this testimony in order to share with you the devastating effects of foodborne illness.

When Lindsay first began exhibiting symptoms, she complained of severe body aches, headache, and abdominal pain. She had a high fever and began to vomit. Assuming that Lindsay had the flu, I kept her home from school.

After 4 days, it became apparent that something was seriously wrong. Lindsay was no longer able to eat or drink, and she would sob because her abdominal pain was so severe.

Alarmed, we took Lindsay to the emergency room. She was severely dehydrated, and her urine was the color of weak coffee. The physician immediately suspected Hepatitis and admitted Lindsay to the hospital. Lindsay was so dehydrated that the medical personnel had difficulty finding a vein to start an i.v. I had to leave the room as my husband and the nurses held my screaming child down in order to get a needle in her arm.

Lindsay would remain in the hospital for 6 days. During that time, my husband and I would sit by her bed and pray that she would stop vomiting. I have never seen a child so sick, and I cannot describe to you what it is like to witness a child so ill, especially when that chid is your own. At one point, Lindsay stopped communicating with us and would barely open her eyes. We watched helplessly as she groaned in her sleep while tears silently rolled down her cheeks. She was only able to whisper: "Mommy, it hurts everywhere."

Lindsay had not eaten or had anything to drink in over a week, yet she continued to dry-heave, trying to expel the poison in her body. She was on continuous i.v. fluid, pain medication, and anti-

[1] The prepared statement of Ms. Doneth appears in the Appendix on page 108.

nausea drugs. During her hospitalization, she lost 10 percent of her body weight. For months after she left the hospital, she battled hair loss, fatigue, and suffered from excruciating shingles twice. She continued to complain of unexplained back pain, and we returned often to the doctor.

In the weeks following Lindsay's illness, hundreds of Michigan school children became ill with Hepatitis A, most of them in the town where I live.

Contaminated frozen strawberries had somehow slipped through the supposed food safety net and been widely distributed in the school lunch program. As a consumer, I was baffled as to how this could happen; as a mother, I was outraged.

I began asking questions and demanding answers that no one could give me. Nobody could explain to me how such a thing happened. I learned that there are so many different agencies involved in overseeing the safety of our food supply, there are gaping holes that exist in the present system. I also learned that even though school lunches are served to children, who are the most vulnerable population in terms of foodborne illness, there is little in place to ensure their safety.

Companies supplying food to be served in school lunches should have to meet a higher standard of safety, not a lower one. More important, there must be trace-back capability and accountability when a foodborne outbreak occurs. We must be able to pinpoint exactly where the food came from and make sure that it is not further distributed.

In addition, if a company has had critical violations in the past or has distributed something that is contaminated, they should be forever barred from doing further business with the Federal school lunch program.

There are a few important points that I would like to make. First, foodborne illness victims continue to be ignored as real victims. Often, the source of their foodborne illness is never discovered because it is often impossible to trace back the contaminated product to its source. We should have the ability to track our food from the farm to the fork; only then will there be adequate accountability which will help improve the safety of the food we are consuming.

Second, there should be a single food safety agency charged with overseeing the safety of the food supply. The fragmented system currently in place is clearly not working. Currently, there are more than a dozen agencies involved in overseeing the safety of the food supply. This severely complicates matters when the source of a foodborne illness falls into multiple jurisdictions. In the case of the contaminated frozen strawberries that caused the Hepatitis A epidemic, FDA oversees fruit, but USDA has jurisdiction for the Federal school lunch program. Ultimately, nobody is willing to take responsibility, and it leaves room for blame-shifting and a lot of red tape.

Third, I would like to address public education. Although public education about foodborne illness and its prevention is extremely important, I believe that too much emphasis is placed on this by industry and often by government. As a consumer, I am not responsible for cleaning up dirty food, or cooking cow feces, out of my

hamburger meat. The food that my family consumes should not be contaminated to begin with. After my daughter Lindsay became ill, I became very educated about foodborne illness. I did everything possible to protect my family, and still we were not protected.

Tragically, 18 months after Lindsay was stricken with Hepatitis A, my oldest daughter, Sara, then 14 years old, was poisoned with E. Coli O157:H7. She spent over 2 weeks in the hospital and went into the life-threatening complication, hemolytic uremic syndrome. She went into kidney failure. She was rushed by ambulance to a children's hospital in another city; there, she endured blood tranfusions, endless pain and vomiting, bloody diarrhea, and her pancreas was severely compromised. Again I had to watch as another child of mine was held down by hospital personnel while needles, tubes, and various equipment were attached to her.

The team of pediatric nephrologists treating Sara was trying to prepare my husband and me for the possibility that our child might die because she was so ill. I remember sitting in the hospital in denial, still not believing that such a thing could be happening to my family a second time. I had done everything right. I had educated myself about foodborne illness. I had become politically involved in the issue, and I had done everything in my power to protect my children. Clearly, it was not enough, and it did nothing to protect us from becoming victims again.

Sara now has permanent kidney damage, high blood pressure, and continues to see a pediatric nephrologist on a regular basis. I thank God every day that my daughter is still with us and did not lose her life as many victims have.

We were never able to trace the source of Sara's illness. Because hundreds of people had not become ill, it was never investigated thoroughly by the local health department. Sara could have gotten sick from something I cooked, from something she ate at a restaurant, or she could have been poisoned by something served in her school lunch. We will probably never know, and that is the difficult thing to live with. Incredibly, she was not important enough to even warrant an investigation.

As a mother, I refuse to sit back while industry points their fingers at consumer education and somehow insinuates that I am to blame for my children getting sick, or that it was not prevented because of something that I did not do. My children and I did nothing wrong, and we are not to blame.

As a citizen, I expect public health and safety to be the paramount concern of lawmakers. The Lindsay and Sara Doneths of this world are not expendable in the pursuit of cheaper, less burdensome regulations. Furthermore, when the government is entering into contracts with food suppliers, the contract should not go to the lower bidder if it is not also the safest bidder.

As citizens, we should insist on maintaining zero tolerance for E. Coli and Salmonella in school lunch meat. Foodborne illness victims should be given the opportunity to tell their stories in forums such as this hearing today. It seems that participating in government as a citizen is almost impossible if one works full-time and lives outside the beltway. Most foodborne illness victims and their families are average people like myself and not politicians—but no-

body understands this issue better than someone who has experienced it.

I hope that when you are reading your statistics and making your decisions, you will remember that these statistics are not just numbers—they represent real people, many of whom were not as lucky as my daughters and paid for their trust in the current food safety system with their lives.

In closing, I guess I would just like to emphasize that the fact that I had two children get sick within a 2-year time span after being educated, after being involved, and after doing everything I was supposed to do—the system in place for ensuring food safety failed miserably—failed my family and failed my children—and it needs to be corrected.

Thank you.

Mr. HORN. We thank you for this heart-rending story, and we thank you for coming. I know you have to get that train, so we are conscious of that.

Ms. DONETH. Thank you.

Mr. HORN. Our next witness is John Bode, Counsel for the National Food Processors Association.

TESTIMONY OF JOHN BODE,[1] COUNSEL, NATIONAL FOOD PROCESSORS ASSOCIATION

Mr. BODE. Thank you, Mr. Chairman.

I am John Bode, Counsel for the National Food Processors Association. NFPA appreciates the opportunity to present testimony at this hearing.

NFPA is the largest food-only trade association in the United States, representing the $500 billion U.S. food processing industry on scientific and public policy issues involving food safety. Known as "the food safety people," NFPA has three laboratories in the United States, and its members are strong supporters of the organization precisely because of its assistance providing scientific and technical services to the industry in support of food safety.

Because I understand that my testimony as submitted will be placed in the record, I would like to take this opportunity to address several of the points that have been raised previously. I think that might advance the discussion best.

Mr. HORN. And by the way, all of your written statements automatically go into the record when we call you up as a witness.

Mr. BODE. Thank you.

Regarding mandatory recall authority, the National Food Processors Association respectfully disagrees. We do not support mandatory recall authority.

Mandatory recall authority is unnecessary because industry cooperation in response to Federal requests for recall has been very strong. There is a great record of industry cooperation with recall requests and recalls have been highly effective.

Also, mandatory recall authority can actually undermine the effectiveness of our current voluntary system.

Only if a recall system is mandatory, must due process requirements be met.

[1] The prepared statement of Mr. Bode appears in the Appendix on page 112.

Another is if the government requires a recall who bears responsibility for an inappropriate recall? Certainly, there are a number of times when recalls are undertaken when it turns out that it was not warranted by a threat to food safety.

What is most important is recall effectiveness. That is why we have pressed for strong coordination of recalls. Both FDA and USDA require that when industry undertakes a recall, there be a recall coordinator, which is a focal point of control on the industry side. We feel that it is important for a focal point of control to exist on the government side, as well. So, a recall can be more effectively accomplished by the industry recall coordinator having one person to deal with on the government side.

Coordination of recalls has not been a problem between USDA and FDA, but it can be in dealings between the Federal level, especially FDA, and regulatory officials of States and localities.

I have never heard reference to country of origin labeling as an aid to recalls and would respectfully submit that does not make sense. It is distribution records that are effective when dealing with recalls, not the country of origin.

I would not think that killer foods are against the law. It is simply against the law to sell foods that are going to make people sick. A violation of procurement requirements for the school lunch program is certainly something that can be a basis for debarment under school lunch authorities today. So authority to debar from the school lunch program for sale of adulterate foods exists now. There have been debarments exercised by the Food and Nutrition Service for violations of procurement, and I believe some debarments where food adulteration was involved.

Regarding recall announcements, it is very important that announcements enhance recall effectiveness. That is what industry works for so fiercely: When a recall is undertaken, we strive to effectively get the word out and get that food back. That is the paramount concern.

Unfortunately we have had a number of experiences with recalls. In one of them, there was a unique circumstance that enabled CDC to collect data from the very people who purchased the food. In that case, we found out that a surprising number of consumers—I believe it was over one-quarter—not only got word of the recall, understood the recall notice, understood that it related to the food in their freezers, but they went ahead and ate it anyway. I refer you to CDC for that information.

So it is essential to get an appropriate response from the public when a recall is undertaken. We have got to get the word out in a manor that aids in getting the food back. Saturating the public or schools with information that does not require action can have the effect of dulling response and undermining recall effectiveness.

The Supreme Beef situation was mentioned. I would simply note that in the Supreme Beef case, the Department of Agriculture did appeal until I gather the Department of Justice indicated that appeal was pointless because the courts consistently ruled that the Salmonella performance standards simply do not measure food safety. If they measured food safety, that standard would have been upheld, and operations at Supreme Beef would have been

stopped. As it is, Supreme Beef was bankrupted, even though they prevailed at every point of the litigation.

Finally, regarding a single food agency, it was suggested that the written testimony that I provided was adamantly opposed to a single food agency. Senator Durbin, we do not regard the single food agency as a radical idea, but we do respectfully submit that a single food agency is simply not likely to provide the kinds of benefits that have been suggested.

The fundamental differences that exist between the agencies are due to differences in the underlying statutes. Some of the other witnesses have suggested that as well. Simply merging the agencies will not change those differences in regulatory systems or even the cultures of the agencies. I think you would have a two-branch food safety system that works very much the same way as the current two agencies do separately.

I would note that I have had some involvement with Federal reorganizations, and there is a very significant loss in productivity of agency personnel when an agency reorganization occurs.

I will stop there, because I take it I have gone over my time. I appreciate your consideration of our views. The National Food Processors Association is very dedicated to science-based efforts to advance food safety, and we appreciate the opportunity to work with the subcommittees.

Mr. HORN. Thank you very much.

Our next witness will bring some tears, and that is Cheryl Roberts, from Comer, Georgia. She, too, is a member of S.T.O.P., Safe Tables Our Priority.

Ms. Roberts.

TESTIMONY OF CHERYL ROBERTS,[1] COMER, GEORGIA, MEMBER, S.T.O.P., SAFE TABLES OUR PRIORITY, ACCOMPANIED BY TYLER ROBERTS

Ms. ROBERTS. Thank you.

This is my son Tyler, and he is the victim of a foodborne illness.

On behalf of my family, Safe Tables Our Priority, and all the victims of foodborne illnesses, thank you for having me today.

When Tyler was 11, in April 1998—he is 15 now—he ate just a few bites of a contaminated, undercooked hamburger at school. He realized that it was raw and stopped eating it, but not soon enough. It takes only three to five E. Coli O157:H7 bacteria to kill a child. Tyler had eaten enough that his next few weeks and ours would be filled with horror that he would die.

Within the next few days, he became very ill. He had diarrhea, pain, vomiting; it came and went for days. We visited the doctor, who was concerned but not yet connecting his symptoms with hemolytic uremic syndrome, which is an outcome of E. Coli O157:H7 poisoning, since there had been no other reported cases of this in our area.

For the next week, Tyler's condition was up and down; at times, he was doubled over with severe stomach cramps. We felt helpless because there was nothing we could do, and he was in so much pain.

[1] The prepared statement of Ms. Roberts appears in the Appendix on page 122.

As his conditioned got worse, the doctor sent us for more extensive blood work. We were horrified to find out that Tyler had kidney failure. He was hospitalized in Atlanta, 80 miles from our home. We were told that in most cases, children with Tyler's kidney function would be on dialysis, but due to his existing diabetes and age near puberty, we were told that if he went on dialysis, he would probably have to be put on a transplant list.

Tyler had to have diuretics, blood transfusions, his color was the color of a sheet, he had severe fatigue, he cried and had horrible nightmares of monsters coming to take him away.

He was in the hospital for approximately 1 week, and it would be well over a year before Tyler had his color and strength back and began to act and look like a normal child again.

All of this because he ate an undercooked, contaminated hamburger served at his school for lunch. We had told the doctor at the hospital about the hamburger. It was reported, and someone went to school the next day and took the leftover hamburgers. They went to two different laboratories and tested positive for E. Coli O157:H7 bacteria. It was sheer luck that they obtained and identified pathogen and source. Often, there is no food leftover to be tested, or the time window has passed, or the lab makes an error. In this case, it was clear that there was E. Coli O157:H7 in the meat that Tyler had been served at school, which should have sparked a community-wide effort to make sure that other children who had eaten the same meat were identified and followed up on and received the necessary medical care. Instead, local health officials and the media tried to make it appear that Tyler got sick because he was diabetic.

Local health officials did not want anyone to know that the meat was contaminated. They did not even tell us. The health department reacted as though it was our fault that he was sick and that it could not be a problem with the school lunch. It was as if they did not want to believe it could happen in our community.

The principal and the superintendent were the ones who notified us. Other parents with sick children—and there were many who called us afterward and told us that their children had the same symptoms—were encouraged to believe that their children had a virus. This endangered other children in our community, because E. Coli O157:H7 is easily passed between children playing, in day care and after-school facilities, in swimming pools. The E. Coli outbreak in an Atlanta water park that sickened two dozen children and killed one child a few years back was almost certainly of foodborne origin.

Another S.T.O.P. member who could not be here today has a 6-year-old daughter who suffered neurological damage and will endure years of kidney transplants due to E. Coli O157:H7 that she contracted playing with other children who picked up the germ from their school lunch tacos.

We should not be putting our children in danger from the simple fact of eating a government-approved lunch. Our story more than anything demonstrates how crucial it is to ensure that food safe from pathogens is being sent to school systems, where contaminated food can be mishandled by a distracted worker or cross-con-

taminated and have a disastrous effect on the health of a captive population of children.

Tyler was very sick because his hamburger was first of all contaminated, and second, incorrectly prepared. His age and weakened immune system put him at an especially vulnerable condition for severe food poisoning. We feel very blessed because victims with even fewer health problems have died from this brutal illness.

Our story also highlights the fact that victims are all too often treated like second-class citizens by health officials and other workers, whose main interest is covering up for misdeeds and not protecting the public health. This attitude comes at the expense of a community. We live in a very small town, and the impact on our community from this has been huge and divisive. Those who had children with symptoms were concerned and on one side, while those who did not and who knew little about the bacteria were on the other, feeling that this could not be happening in our small community. No lawsuits were filed against the school, but people still act as if we were out to hurt the school.

This is not an attack on schools. It is a cry for help. The subject of this hearing is to determine what steps our government should be taking to prevent foodborne diseases in the schools, and we have outlined some recommendations in our written testimony. But really, the answer is simple, as Tyler can tell you and all the other children who have been poisoned by this disease in their government-sponsored lunches. The answer is very simple: Every step you can take will help.

Thank you.

Mr. HORN. Well, thank you both. I see that your family is here, and I hope things are working out fine.

I might add on that, just to get it on the record, in terms of hamburger, let us say, what is the Fahrenheit that should be cooked to, and would that solve a lot of this if it is properly heated?

Dr. MURANO. Yes, sir; 160 degrees Fahrenheit internal temperature.

I certainly do not want to take up the time of the next witness, but I do want to say that Ms. Roberts is the reason why I came to Washington. Had a good career at Texas A and M University and, as I like to tell people, I did not come here because I like to ride the Metro. I came here because I believe in making food as safe as possible.

Her story I believe underscores if anything the fact that zero tolerance, which is what we have with E. Coli O157:H7 in ground beef, does not equal zero risk, because you can say you have zero tolerance, you can test, but you cannot test the problem away.

What makes the difference in controlling hazards is having a decontamination step or require their trimming suppliers to have one. It is the only way that we are actually going to make progress, and it is why we put out this directive last week, because testing does not solve the problem. Chasing after zero is not going to guarantee safety, and what we are trying to do is make sure that we do the things that are going to work.

Thank you.

Mr. HORN. Well, how do most people who have small restaurants—and big restaurants—do that—simply with the thermometer?

Dr. MURANO. Yes, sir.

Mr. HORN. And are there inspections on that?

Dr. MURANO. The local health departments of course are the ones that go into restaurants and make sure that safe food handling and food preparation practices are being followed. But certainly, again, the thought that having a testing program that is going to give us what we are after, which is safe food, is something that, if anything, can give us a false sense of security.

We know from our own data, for example, that last year, all the ground beef establishments that had to recall product because it contained E. Coli O157:H7 had passed their Salmonella performance standards. So again, as a microbiologist, I can tell you this is why HACCP was developed, because we want to prevent and not be chasing after these bugs. We want to get rid of them, and that is what the directives that I mentioned a while ago are aimed to do.

Thank you.

Mr. HORN. When I order a hamburger, I look at it, and if I see one bit of red meat still around that is not browned, I do not eat it; and I tell them how I want it to start with. Does that help?

Dr. MURANO. Absolutely, it does, because we certainly know that if you thoroughly cook the meat, you will kill these pathogens. But the important thing is to remember that along the food chain, everybody has a role to play—processors do, as I just mentioned; certainly the food preparer does, and the food handler does. We all have to work toward the same goal, and the link of the chain, so to speak, that is under my oversight is where we are going to make as much of an impact as possible, and we appreciate the efforts that others have made in terms of not only helping us do our job but also in educating the public and consumers regarding exactly the questions that you were just asking—what should be the correct internal cooking temperature and so forth.

Mr. HORN. Dr. Crawford, on behalf of FDA, is there anything else we can do other than what Dr. Murano has suggested?

Dr. CRAWFORD. No; I think Dr. Murano summarized it very well. The E. Coli O157:H7 is something that has not always been in our food supply. We hear people all the time say, "I have eaten raw hamburgers all my life, and I have never gotten ill, and I am going to keep doing it." What they do not know and do not bother to find out is that many of these things are new and emerging, and they make foods that were otherwise completely, or not nearly completely safe years ago unsafe. Raw oysters, for example, did not have an organism in them 30 years ago that they do now. So we just have to keep up with that.

It is the responsibility of FDA and other agencies dealing with food safety to convey that information to the public and also to do our job of enforcing food safety standards.

Mr. HORN. What causes the organisms to develop this way? You just cited an example.

Dr. CRAWFORD. Well, I will ask Dr. Murano, who is certainly an expert in this area. The organisms evolve or mutate, and they have

been doing that, of course, since time began, so they change in some form or another to become more dangerous to humans.

The other thing that happens is that they enter a new species of animal. For example, we have a form of Salmonella that is now prominent in eggs which was not the case many years ago, called Salmonella enteritidis. So they find a new niche, and they also evolve, and then, organisms like viruses that have never been detected before all of a sudden just appear. Maybe they were here all along in another niche, but also, they could have just evolved.

Thank you.

Mr. HORN. We will now turn to the last presenter, who is Mary Klatko, who is the Food Service Director with Howard County Schools in Howard County, Maryland. She is speaking here for the American School Food Service Association.

TESTIMONY OF MARY KLATKO,[1] ADMINISTRATOR, FOOD AND NUTRITION SERVICE, HOWARD COUNTY PUBLIC SCHOOLS, HOWARD COUNTY, MARYLAND, ON BEHALF OF THE AMERICAN SCHOOL FOOD SERVICE ASSOCIATION

Ms. KLATKO. Senator Durbin and Representative Horn, I am Mary Klatko, Food and Nutrition Service Administrator for the Howard County Public School System in Howard County, Maryland. We are a school district of 45,000 students, with 67 schools located between Baltimore and Washington. I am also the coordinator of a purchasing cooperative which serves 12 Maryland counties—approximately half of the State—with an enrollment of 235,000 students in 375 schools.

With me today is Barry Sackin, Staff Vice President, Public Policy, for the American School Food Service Association.

Thank you for this opportunity to speak to you about food safety in school nutrition programs.

The American School Food Service Association is a member organization of more than 57,000 school food service professionals. Among our members, we count the directors of most of the 5,000 large districts in this country serving almost 70 percent of school meals. More than half of our members have received ASFSA certification, a professional standard that includes having completed and passed a comprehensive food safety program.

I do not know of one school food service professional who is not deeply concerned about the safety of the food they serve. The concern stems primarily from our commitment to the children in our care. I am proud of the record we have established over many years, which clearly shows that school meals are among the safest served in this country.

In February 2000, the Government Accounting Office submitted a report to Congress requested by Senator Harkin. This report stated in part that there were over 20 outbreaks of foodborne illness in schools reported to CDC during 1997 and 1998. Eight of those were attributed to school meals and affected 1,609 children.

ASFSA is very concerned about every 1 of these 1,609 children. And it is difficult sitting next to you, Tyler, knowing that you were

[1] The prepared statement of Ms. Klatko appears in the Appendix on page 126.

one of those. It really has an effect on someone to put a face with a name and a problem.

ASFSA is very concerned, but the numbers do have to be put in context. Each day, at more than 92,000 schools in this country. school food service professionals serve more than 7.8 million breakfasts and 27.6 million lunches. This means that during the 2 years included in the GAO study, schools provided approximately 13 billion school meals as well as an unspecified number of other customers served through a la carte sales, catering activities, and other programs that many school food service programs run, such as Head Start and Meals on Wheels.

We attribute this remarkable record to the care taken in handling, preparing, and serving food. Quality school food service programs emphasize food safety, and we constantly train and retrain employees in safe handling practices.

The first line of defense is and always will be the people who handle the food. Part of this commitment includes training staff to receive food deliveries in ways consistent with healthful, safe practices, including checking for freshness, the proper temperature on receipt, and handling, and that products do not show any signs of adulteration.

ASFSA food safety training recommends that school districts strictly monitor food safety from the time food is received to the time it is served. The Association offers "Serving It Safe," a nationally accepted sanitation and food safety course for food service staff, to help them keep their kitchens safe, clean, and sanitary.

Marcia Smith, President of the American School Food Service Association, said: "Our Association has offered training opportunities to thousands of our members in order to increase their knowledge and practice of food safety. We consider this a top priority."

In keeping with this philosophy, one way that we think Congress can address the issue is to provide resources to assist school districts in training staff; also, many school districts are developing HACCP, or hazard analysis critical control point-based models, for their food service facilities. This development is resource-intensive, and it would be helpful and appropriate for Congress to assist in developing model programs and providing the means for districts with the best practices to share their processes with other schools.

The Chicago Tribune article that has been discussed today cited the poor physical condition of some of the Chicago schools they visited, mentioning peeling paint and equipment in disrepair. Today, in tight budget times, schools are hard-pressed to allocate funds for updating school facilities. A section of the National School Lunch Act which was repealed in 1981 would have allowed Congress to contribute toward modernizing school cafeterias. ASFSA supports reinstating this provision of the law called "the Non-Food Assistance Program."

Mr. Chairman and other Members of the Subcommittees, there may be schools in this Nation where some of the negative situations mentioned in *The Chicago Tribune* article do exist. In a few schools, food service staff may not be certified or given enough training. School kitchens are frequently the last in line for facility modernization. However, most schools around the country have well-trained, certified professionals running exemplary programs in

sanitary food production facilities, and most vendors in school meal programs are beyond reproach in their attention to safe processing and handling of the foods they prepare and sell.

On behalf of the Association, I thank you for your attention and interest. We would be happy to answer any questions that you may have.

Mr. HORN. Well, thank you very much, Ms. Klatko. Your testimony today indicated that the American School Food Service Association concentrates its efforts on recommending that schools strictly monitor food safety from the time food is received to the time it is served.

I would like to explore with you if you have concerns about ensuring the safety of products purchased by the schools before they reach the cafeterias. This would appear to be the first line of defense.

How do you feel about that, how you can really do something with it?

Ms. KLATKO. Mr. Horn, my background is in business and administration. I do not have the scientific training that many of the people at this table do. I know how to handle food when it gets to the school serving line and through the process. I have to rely basically on blind faith for what happens prior to the food getting to me.

I have not had any bad experiences with food handling or food safety prior to getting to me or when it has been in our school system or the other school systems I have worked in. I guess I have been very fortunate, but I do still believe that our food supply is the safest in the Nation. I do have to rely on Congress and the administration to come up with whatever you feel is necessary to make the food supply as safe as it possibly can be for those of us who are responsible for feeding children in our program and for the health and safety of the students such as the one sitting next to me.

Mr. HORN. In your testimony, you did not mention the guidance that the Department of Agriculture does provide to local schools on how to procure safe foods. What are your thoughts on that guidance?

Ms. KLATKO. The National Food Service Management Institute does provide a procurement course. NFSMI is under the jurisdiction of USDA. I have taken the course. It is called "First Choice." It does teach practices that you should use when you are purchasing food. I learned a lot from it, and that is what has helped us with our cooperative. It has been very helpful for that to be available.

I also know that USDA has a Web site, and I have used that Web site and have been able to find information concerning a variety of things, including procurement practices.

Mr. HORN. Most universities have accredited programs for nutritionists and people who relate to home economics. Do those people get training in any way to assure accreditation when a campus turns out a number of people to go into the hospitals and nursing homes and all the rest, in terms of food and what you do with it?

Ms. KLATKO. I am sure they do, because my prior experience in food service was in hospital work, and yes, in my bachelor of science training, I did receive that kind of information.

I will tell you that in small school districts throughout the country, that is not going to happen; you are not going to have a person with that kind of education or degree. You are going to have people who are coming right from the community to work in this field. But there is ongoing training available through ASFSA, through USDA, through the conferences that we hold, and the local health departments do have standards in many, many jurisdictions, and I know that throughout the entire State of Maryland, you do have to have a certified manager on site when you are preparing food.

Mr. HORN. Those of you who stayed from the government side, thank you. Is there anything that you would like to say after hearing some very moving affiliation on what we are talking about?

Dr. CRAWFORD. I appreciate the opportunity to stay. We are mindful of these situations, and of course, as Dr. Murano so eloquently said, they are the reasons that we are working in food safety and doing what we can do to make the food supply as safe as anywhere in the world.

We need a couple more things in FDA to get that done, as I have mentioned before, three times. Once again, that bioterrorism bill does contain some things that would help us do our job. But let me assure you, Mr. Chairman, that the commitment is certainly there to do everything within our power to make the food safe and also to prevent illnesses such as we have heard described so well today.

Mr. HORN. Mr. Bode, what are your thoughts about there being no need to provide recall authority?

Mr. BODE. I have two thoughts, sir. One is that Tyler's story is of course very compelling. It is especially frustrating to know that he got so sick from meat that may have been purchased—and for all we know, it was—under the USDA Commodity Purchase Program, with its specifications of a zero tolerance for Salmonella. Yet E. Coli O157:H7 was present.

E. Coli O157:H7 could have been completely controlled, had USDA specifications for that ground beef not prohibited the use of irradiation. Irradiation is a proven food safety technology that effectively controls pathogens, including E. Coli O157:H7. Unfortunately, when USDA put its zero tolerance specification for Salmonella in place, they also prohibited use of irradiation. It is a problem when we bar the use of recognized safe and effective food safety technologies.

Regarding recall authority, the food processors are very dedicated to effective recalls. We feel that mandatory recall authority is not necessary because we have an extensive body of experience with effective recalls being undertaken at the request of Federal agencies, and many recalls are initiated by companies that identify a problem and notify the regulatory agency that a recall is being undertaken.

I would also note that one of the facts that has been used to justify mandatory recall authority is that sometimes a very small percentage of the recalled product is recovered. A low recovery rate is not because the recall was voluntary instead of mandatory. There is absolutely nothing to indicate that the amount of product recov-

ered would have been any different had a recall been mandatory. Generally, a low recovery rate occurs because the recall was initiated relatively late, the product was already out on the market for quite some time, and it was a perishable product. That has been my experience.

The overall key is to move more aggressively to good, science-based systems to better prevent problems to identify problems more quickly and then to respond to problems more effectively.

Mr. HORN. Dr. Murano, how do you respond to Mr. Bode's point on irradiation?

Dr. MURANO. I absolutely agree. I am sitting here next to the Roberts family, and had that beef been irradiated, Tyler would not have become sick. We know that.

It is frustrating for me as a microbiologist who studied several decontamination strategies as a researcher back at Iowa State University and at Texas A and M University, when I know that there are methods out there, if you will, that will in a sense make the food safer, and if we do not avail ourselves of those, we are doing a disservice to consumers.

I would like to end my comments if I can by restating what I think needs to be said, which is the fact that FSIS, certainly USDA, is committed to enforcing the regulations. That is what we do every day. We shut down plants as required by law when we find that sanitation is not adequate, when we find that the plants are not following their HACCP programs adequately.

I know that the issue of Supreme Beef has been brought up, and somebody mistakenly asserted—I am not sure who it was—that we are no longer able to shut down plants and that we are not testing for Salmonella and so forth. I am here to tell you that we are continuing to test for Salmonella as we always did, but we are using the Salmonella test as a verification of what the plant is actually doing. Again, we know from science that it is not testing that is going to ensure food safety; it is what the plant actually does in the process. It is the steps that the plant is actually taking to control the hazards.

Hazard control is the key, and this is what we work on every day at meat and poultry plants to make sure that it is happening, and when it does not happen, we take enforcement action and take it swiftly and have continued to do so after the Supreme Beef decision and will continue to do that.

Mr. DYCKMAN. Could I make a point?

Mr. HORN. Certainly.

Mr. DYCKMAN. You had asked if any government witness had a response or a comment, and I would like to offer a couple of comments if I may.

First, on recall authority and the government's record on recall, we issued a report in August 2000 where one of our objectives to look at how timely are Federal Government recalls. Quite frankly, we could not determine that because the government, USDA and FDA, did not keep records in terms of how timely their recalls, the ones that they voluntarily asked firms to conduct, took place, because USDA and FDA at that time did not tell companies within what timeframes they expected them to act, plus they did not keep records in terms of tracking the extent and the timeliness of re-

calls—although from memory, FDA officials told us that 9 recalls out of 3,000 they remembered were not timely, and we document that. And we had a set of recommendations to get better data on the extent of timeliness of recalls.

One other point is that several witnesses referred to our earlier report in terms of the number of school outbreaks in 1997 as being 20. In our latest testimony, we updated that; CDC has now revised that data to 39. But the really important point is that both of those figures clearly understate the severity of the problem. We all know that outbreaks are just the tip of the iceberg, because we have 76 million cases of illness, while these 39 outbreaks only represent about 2,000. But even if you look at all the other outbreaks, 767 in 1987, that only caused 16,000—we are not talking about millions of illnesses which are occurring.

So outbreak data is important, but in some respects, it really diminishes the extent of the problem unfairly.

One final point that Mr. Bode made concerning single food safety agency was that, really, the problem is overlapping jurisdiction. If you look around the government, you will find many cases where agencies have overlapping jurisdiction, but generally, there is some logical reason for it. In this case, I really do not believe there is a logical reason for it, and I think we can make a change.

Mr. HORN. Mr. Dyckman, if you have looked at these bills and the idea of moving information to people who need it but have not been receiving it, do you think the Senator's bill and the Representative's bill which is the House version will solve the problem?

Mr. DYCKMAN. I think they are clearly in the right direction. As I indicated earlier, I would like to have a chance to answer that for the record if I may.

Mr. HORN. OK. Without objection, Mr. Chairman, we will put that in the record at this point.[1]

Senator DURBIN. Thank you very much, and I apologize for stepping out for a few moments, but we are trying to juggle schedules, as I am sure everybody else in the room is, too.

Even though he is not sworn under oath, we are going to take a chance here and ask Tyler Roberts—how are you doing?

Mr. ROBERTS. I am doing fine, thank you.

Senator DURBIN. Are you?

Mr. ROBERTS. Yes.

Senator DURBIN. Do you have any long-term problems from this terrible experience?

Mr. ROBERTS. Well, I still have protein in my urine, but we do not know, so—I should be fine.

Senator DURBIN. Good. And how about your eating habits—have they changed?

Mr. ROBERTS. Yes.

Senator DURBIN. Tell me how they have changed?

Mr. ROBERTS. Well, if I do have a hamburger, it has to be cooked by my dad so we know it is cooked safely, because I just will not take a chance.

Senator DURBIN. How about restaurants—do you order hamburgers in restaurants?

[1] Information submitted by Mr. Bode appears in the Appendix on page 133.

Mr. ROBERTS. I have not in a while, not in a long time.

Senator DURBIN. Understood—because dad is not cooking, right?

Mr. ROBERTS. Yes.

Senator DURBIN. Well, thank you for being here today, and Ms. Roberts, thank you very much. I am sorry that Ms. Doneth had to leave, but between the two of you, you really have put a human face on this. We talk about statistics and 80-year-old agencies, and we forget about the kids who really go through this.

Mr. Bode, I am really kind of at a loss, and that is something for a Senator. It is a $500 billion U.S. food processing industry. What we are talking about is taking an 80-year-old-plus system that has been cobbled together and condemned for 40 years and finally turning it into one, single, scientific food agency that would give people more confidence in the product that you make, and every time we have a hearing, you come in and tell us this is an awful idea, this is a terrible idea, and you suggest that we are going to put under one roof all these different standards and laws and just call them the new agency. Trust me—the bill does not do that. That is not our intention.

Why are the national food processors so afraid of change? Why are you afraid to come into the 21st Century and use science? Why are you afraid to walk away from the old politics and the old chairmen and the old agencies and do something that is really thoughtful and really looks ahead? What are you afraid of?

Mr. BODE. Senator Durbin, the food processors are not afraid of a thing that is science-based and rational in its approach. That is our big objective. With all due respect——

Senator DURBIN. Is this rational?

Mr. BODE. With all due respect, we did not say "awful," and I did not say "terrible."

Senator DURBIN. But is this rational? Is our current system rational?

Mr. BODE. I am certainly not here to tell you that we feel this was the ideal way to design a food safety system. I did not want to give that impression.

Senator DURBIN. Is the current system either rational or science-based? Can you say either of those things on the record, under oath?

Mr. BODE. I think it is historically based. It is not the way that we would design a scientific, rational system from scratch today—most certainly, it is not.

Senator DURBIN. Then, why do you defend it? Why are you so afraid to change it?

Mr. BODE. Sir, our point is that merging the agencies to form a single food agency is not going to change the food safety issues that we have talked about.

Senator DURBIN. Trust me for a second. We are not going to just change the name on the door; we are not going to put them in a new building and keep these same laws that are so crazy. We have to go to a science-based system and one agency that eliminates the duplication and the craziness. Why do you oppose that?

Mr. BODE. Repeatedly over the years, the food processors have pressed for moving forward on science-based food systems, repeatedly they have petitioned the agencies for new regulatory require-

ments, and that is why, for example, they are credited with solving the problem of botulism in this country. It is moving forward with science-based systems that we support, and we most certainly support risk-based inspectional programs.

Senator DURBIN. Let me just suggest to you that we can improve the current system, but I am reminded of former Governor Ann Richards, who said: "You can put lipstick on a pig and call her 'Monique,' but it is still a pig."

We can go ahead and change at the edges this system and make it a little bit better here and a little bit better there, and yet we still have the FDA inspecting 80 plants for every single inspector, and the USDA with more than one inspector per plant. We have this crazy patchwork quilt of responsibility when it comes to food. And we can nibble at the edges and work on this—and Dr. Murano says the USDA and the FDA are actually speaking to each other. They have a memorandum of understanding. There is a peace treaty. This is all well and good, but don't you understand how short of the mark it is?

Mr. BODE. I do understand that it is not enough for them to merely be speaking to one another. We are thrilled that they are working together very effectively. Nobody feels the pressure from problems between the regulatory agencies more quickly than the food industry, especially those parts of it that are driving for strong science-based systems.

Let us be clear about what each change will accomplish. To simply have a single food agency will not change the differences in our food inspectional systems because those differences are rooted in underlying statutes. You have got to change those authorizing statutes——

Senator DURBIN. I want to send you my bill, because it is not just a matter of putting a new name on the door; it is changing the law to base it on science—and you know it is—or, I think you do.

Dr. Murano, you said earlier that sharing information with school districts about the sources of food was not something that you would object to. You think that if they want to have this information before they decide to buy from a certain vendor, you think that is reasonable; is that correct?

Dr. MURANO. It is reasonable, but again, Senator, I think I maybe have overstated it, and at the risk of stating it one more time, I truly, philosophically—if we just think philosophically right now—do believe that it is our responsibility in regulatory agencies to make sure that whoever buys food, whether it is a school for a school lunch program, whether it is a mother to make food at home, whatever the circumstance, that when they go and buy that food, if it is meat or poultry—and my colleague will attest to the other foods—it is as safe as possible and that we have made sure of that.

As far as information, that is certainly something that, if people want, it may or may not help them. The point is that to make a real difference, we have to hold the industry accountable, we have to do our jobs right, and that is why I am very big on even our inspector force being held accountable when they do not do their jobs right, because it is our responsibility to make sure that we do not put that on somebody else.

Senator DURBIN. I understand that. That is all of our goal, it goes without saying. But what I said to you at a previous hearing I will say again: The only people involved with the USDA who are for a single food agency are those who have retired from the USDA. As soon as they leave your agency, they are for it; and those who are not in your agency, unless they are with the National Food Processors, like the idea, too.

So I am just hoping that since, as you said, you came to Washington not because you like the Metro but because you want to make a difference, you will join me in this process.

Let me address recall for just a second if I can. Mr. Bode says—and I am trying to look through his rhetoric to what he is actually saying—that the problem with mandatory recall is due process. I read into that "lawyers," and being a lawyer myself, I understand it, which basically says if you want me to have a mandatory recall of a product, be prepared to go to court.

The second thing you said was if USDA says recall a certain product, and you do, and it turns out to be a mistake, there could be legal problems. Well, I have to tell you now that if I understand the current system, if USDA waves a red flag—does not have recall, but waves a red flag—and says "We have a problem here with some food," what I have found is that in most instances, the producers automatically snap to attention and say, "Bring it all back, because we are going to lose consumer confidence, and we may be inviting thousands of lawsuits."

Well, waving that flag could invite the same "due process" questions. Waving that flag could invite the same questions about mistakes. What is the difference between a voluntary recall and a mandatory recall when it comes to those two issues?

Mr. BODE. Sir, an agency suggesting to a food company that there is evidence to indicate that the food is likely to be adulterated does not trigger due process requirements. That is what I hear agencies say to food companies on those occasions. The food company response is immediate, as you point out, to initiate a recall.

Senator DURBIN. I do not follow you.

Mr. BODE. I am sorry if I was incomplete. If there is a mandatory recall situation, then you have authority for the Federal Government to require a recall if it deems it appropriate——

Senator DURBIN. OK, but let us start from the beginning——

Mr. BODE [continuing]. And upon the issuance of the recall notice, then due process requirements are invoked. Due process requirements do not have to be met in court, of course; they could be met in an administrative hearing——

Senator DURBIN. Please, let me—please.

Mr. BODE. Yes.

Senator DURBIN. We have "Bode Hamburger Company," OK? You have a big problem. You just put meat on the market, and Tyler Roberts is sick, and USDA just heard about it. Now, under the current voluntary system, they call you, Mr. Bode, and say, Guess what, you have a sick kid down in Comer, Georgia. What are you going to do about it?

Well, I know what you are going to do. You are going to pull back all the product that you can get your hands on because they think it is adulterated, and they think it is contaminated.

Now let us take it from a different direction. It is "Bode Hamburger Company," and you get a call from USDA saying, "It is worse; it appears to be bioterrorism. It appears now that there is something contaminated in your product that does not make this 11-year-old kid sick for a year but could be killing people right and left."

Now, are we going to rely on your voluntarily deciding to call your product back, or should Dr. Murano have the authority to say, "No ifs, ands, or buts—call it back or else?"

Which do you think is more important for public safety in America?

Mr. BODE. The immediate response from the food company would be to recall in that situation, as well. In all of my experience, if——

Senator DURBIN. But it is voluntary.

Mr. BODE. But let us talk about what happens if the food company does not respond in a voluntary recall system. USDA certainly has the authority to detain that product. That product also can be seized. Specifically, while that food is detained, USDA can go to court and obtain a seizure order. They also can go to court and get injunctive relief from the courts for recall of the product.

Senator DURBIN. Ms. DeWaal.

Ms. DEWAAL. Thank you so much, Senator Durbin.

One of the big issues about mandatory recall does not always impact just the domestic industry. And as Mr. Dyckman stated, GAO has documented a number of occasions where recalls were delayed as a result of this voluntary system. But the real problem is with imported food. And in the situation you just laid out of this potential bioterrorist issue arising in food, how do our government agencies go to an importer and say you have to recall, but it is a voluntary system?

We need mandatory systems to ensure not only that our domestic industry is in compliance but that our importers are as well, because while some of them—the vast majority—are upstanding, there have been examples with FDA-regulated product where importers did not comply with agency requests, and they refused to turn over distribution lists, and they refused to order the recall of their products.

All they can do is send out a press release, but there is no other action that the government can take.

Senator DURBIN. I have gone over my time, but I just want to close by saying, Dr. Murano, that I still believe that this is a power that you ought to have. I hope you never have to use it.

And to Mr. Bode, I am sorry, but using a voluntary system—there are good guys and bad guys in this country and outside this country, and if the National Food Processors wants to defend all the bad guys, it is not going to be good for your industry.

I just hope we can take this hearing which started off on school lunch and return it to school lunch. There are some things that we have proposed here today which I hope will move us toward a safer food supply for children in schools. That is what this was all about. It always brings us back to the key issue. We have too many agencies stumbling over one another in Washington with different standards and different laws, and unfortunately, very little science

backing them up under the current scheme. I think we can do better. I thank you all for joining us.

Mr. HORN. Thank you, Mr. Chairman.

We have a tradition on our side of thanking the staff who worked on this from the House side. The Staff Director and Chief Counsel, J. Russell George, is right behind me. President Bush has nominated him to be Inspector General of a very fine agency, and we never know when he is going to leave, and we would like to keep him there, but it is up to the Senate, as you know. So he is doing his homework.

Bonnie Heald, our Deputy Staff Director, is back with communications; Henry Ray, Senior Counsel; Earl Pierce, Professional Staff Member; Justin Paulhaimus is our Clerk, and he is always busy during these things, moving things around.

For the minority, we have David McMillen, Professional Staff Member; and Jean Gosa. It is a great team for the minority.

The court reporter is Annie Hayes, and we are glad to have you do all of this; we mumble once in a while, and you un-mumble us, so thank you.

Senator DURBIN. Mr. Chairman, this is like the credits at the end of a movie, so I want to add at least two names—Emily Kirk on my staff, and Marianne Upton, for their work in putting this together.

Thank you very much.

This Subcommittee meeting will stand adjourned.

[Whereupon, at 5:45 p.m., the joint hearing was concluded.]

APPENDIX

Statement of the Honorable Rosa L. DeLauro
Joint Hearing of the Senate Subcommittee on Oversight of Government Management and the House Subcommittee on Government Efficiency
April 30, 2002

Mr. Chairman and Members of both Senate and House Committees, thank you for the opportunity to testify on this important health issue that affects our children. I would especially like to thank Chairman Durbin for all his efforts to improve our nation's food safety. We have worked closely on this issue for many years, and I look forward to working together with you in the future. I would also like to thank Chairman Horn and Ranking Member Schakowsky. It is great to see my House colleagues here today.

The National School Lunch program was established to improve children's nutrition, increase lower-income children's access to nutritious meals, and help support our nation's agricultural economy. On an average day in 2001, more than one of every two children in America ate a School Lunch program meal. In my own state of Connecticut, 1,093 schools and about 272,000 students participated in the program. The School Lunch program is a key component to the health of our children and we need to ensure that the food is safe.

There is no question that this program is vitally important, but we must remain vigilant to ensure the safety of the food that is served to our kids. This is a special concern because foodborne pathogens that might only mildly affect an adult could seriously sicken or even kill a child whose immune system has not fully developed. I have had personal experience with this problem. When I was child, I contracted salmonella, a food borne illness. I was put in a hospital quarantine for several days, away from my parents and family. I understand the devastating effects of foodborne illness.

A February 2000 GAO report concluded that "few outbreaks of foodborne illness" were reported in the School Lunch and School Breakfast programs. But at the same time, I understand that the Chicago Tribune reported last year that there has been a 56% increase in school food outbreaks from 1990 to 1997. It is imperative that we determine the scope of this problem. To further ensure the safety of our children, we must address these issues.

As the Tribune series reported last year, some schools no longer prepare their meals from scratch. According to the series, 15 percent to 20 percent of schools currently contract out their lunch programs. Meals are factory-frozen and "pre-plated"; manufactured according to portion size and nutrition requirements of the school lunch contracts. As a result of these techniques, harmful pathogens can contaminate these food trays, and sicken more children. The largest cases of foodborne illness have included 400 children sickened by staphylococcus aureus in spaghetti in 1996 and the 213 students sickened at 23 Michigan schools from strawberries contaminated with hepatitis A.

We should also be concerned about the conditions of the cafeterias where these meals are served. Again, using the Chicago area as a case study, the Tribune provided vivid examples of

unsanitary conditions and unsafe food handling practices. An inspector found wastewater had spilled from a leak in a freezer at the North Side Pierce School, soiling several cases of frozen hamburger patties. Rather than get rid of the food, the inspector instructed the lunch room manager to simply move the patties to another freezer. Other problems include rodent infestation or droppings in areas where food is prepared, and peeling paint in food storage preparation and storage areas. In some cases, the peeling paint contained lead, which can ultimately cause brain damage in children who eat it repeatedly. These are only some of the examples. If this is the case in Chicago, it's probably occurring across the country. Something must be done.

Another concern is the current federal oversight of the safety of the food in the School Lunch Program. While the School Lunch and other federally assisted meal programs are administered by the Food and Nutrition Service at USDA, the safety of school meals is monitored by USDA's Food Safety and Inspection Service and the Food and Drug Administration. FSIS is required to ensure the safety of all meat, poultry and some egg products and FDA is responsible for all other foods including fruit, seafood, vegetables and other products. As a 2001 GAO report stated, "the current food safety system is a patchwork structure that hampers efforts to adequately address existing and emerging food safety risks." Further, "the resulting fragmented organizational and legal structure causes inefficient use of resources, inconsistent oversight and enforcement, and ineffective coordination, which together hamper federal efforts to comprehensively address food safety concerns." (GAO-02-47T)

Even if contaminated food is identified, neither FSIS nor FDA has the ability to order a mandatory recall of the product. Instead, both agencies can only request manufacturers to start a recall voluntarily and announce if a manufacturer has started a recall to keep the public informed. But as the GAO reported, "the announcements do not include detailed information, such as whether the recalled food was delivered to a USDA food assistance program or was USDA-donated food." (GAO/RCED-00-53) In addition, in some cases, because of record-keeping flaws and a complex distribution chain, USDA cannot trace back the product to its original source. In response to an outbreak of e. coli at a school in Minnesota, the Health Department reported, "USDA cannot positively say what beef was used in the hot dish and which plant it came from."

How can we address these critical issues? First, schools must be given the tools they need to make sure the food they serve is safe. This includes ensuring that kitchens and cafeterias are clean and training food service employees in safe food handling practices. The Chicago Tribune examples of dirty kitchens, improperly handled food and undercooked meals should serve as a wake up call to action. Ensuring that foods are properly handled from the farm to, in this case, the cafeteria is critical to the safety of our children.

At the federal level, we can also do more. I believe we need to consolidate and streamline the various agencies that are responsible for protecting our food and put authority into one food safety administrator. To that end, in May 2001, I introduced the Safe Food Act. Like Senator Durbin's bill, the legislation would establish an independent agency called the Food Safety Administration with responsibility for all federal food safety activities. It would transfer all food safety activities to the new agency from parts of USDA, FDA and the Department of Commerce. Currently, my bill enjoys 43 bipartisan cosponsors who believe this is the right thing

to do.

Second, I think we should give USDA and FDA the authority to conduct a mandatory recall to ensure that contaminated food does not make it into the school cafeteria. In looking at recent data, in some cases USDA has only been able to recover a small part of a contaminated product. For example, in 2000 one company initiated a voluntary recall of 22,000 pounds of ground beef tainted with e. coli. While the case is still open, so far only 10 pounds of the product have been recovered. We need to be able to move swiftly, and I believe giving USDA and FDA the authority to institute a mandatory recall would do that.

Finally, we must maintain the zero-tolerance salmonella standard for ground beef used in the School Lunch program. A recent PBS Frontline program entitled, "Modern Meat" exposed a variety of issues in the production of the meat that we all should be concerned about. I urge you all to watch this documentary. The program described the numerous challenges we face in ensuring the safety of our meat supply. It included the story of Supreme Beef, a manufacturer who was supplying as much as 45 percent of the meat for the National School Lunch program. In 1999, the company failed USDA's salmonella standard three times. In the first instance, almost 50 percent of its meat was contaminated with salmonella. Rather than cleaning up its act, Supreme Beef sued, alleging that the government created arbitrary and onerous standards. USDA lost the case and consequently its ability to enforce this critical standard. As a result of the verdict, Supreme Beef kept supplying the school lunch program until they failed yet another round of salmonella tests in June 2000.

In response, USDA instituted a "zero tolerance" standard so that children would not be exposed to this pathogen. As a result of this standard, USDA rejected millions of pounds of ground beef that was to be used in the school lunch program. Yet in the spring of last year, the Department proposed to reverse course and sample for other "indicator organisms" to identify contaminated products. I thought this was the wrong thing to do. Working with Senator Durbin and others, we made sure the zero-tolerance standard was maintained. I believe this is a critical component to the safety of the food used in the School Lunch Program.

Our school children need to be able to sit down at lunch and know that everything possible has been done to ensure their food is free from contamination. There is no higher priority than the safety and health of our children.

Thank you for the opportunity to testify today, and I look forward to working with you in the future.

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia, Committee on Governmental Affairs, U.S. Senate, and the Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations, Committee on Government Reform, U.S. House of Representatives

For Release on Delivery
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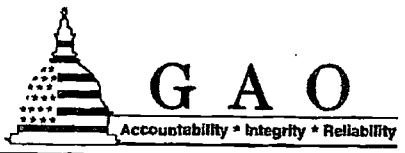
Tuesday, April 30, 2002

FOOD SAFETY

Continued Vigilance Needed to Ensure Safety of School Meals

Statement of Lawrence J. Dyckman, Director, Natural Resources and Environment



GAO-02-669T

Mr. Chairmen and Members of the Subcommittees:

I appreciate this opportunity to come before you today to discuss the safety of the foods served in our schools. As you know, more than 27 million children are provided low-cost or free meals daily through two federally assisted programs administered by the U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS)—the National School Lunch and School Breakfast programs. In fiscal year 2001, these programs were funded at about $8 billion dollars. According to the Centers for Disease Control and Prevention (CDC), between 1990 and 1999, nearly 300 outbreaks of foodborne illness occurred in schools affecting approximately 16,000 children. Outbreaks of foodborne illness in our schools are of particular concern because of children's vulnerability to harmful pathogens. According to CDC, only a fraction of foodborne illnesses are routinely reported, and since most foodborne illnesses are sporadic, only a small number are identified as being part of an outbreak.[1]

In February 2000, we reported that USDA should take actions to better ensure the safety of foods served in federal school meal programs.[2] In response to your request, Mr. Chairmen, our testimony today (1) provides information on the frequency of outbreaks of foodborne illness in schools between 1990 and 1999, (2) discusses the status of our February 2000 recommendations to better safeguard the food served in our schools, (3) offers additional observations on how the safety of the school meal programs could be further enhanced, (4) discusses the status of efforts to minimize the risk of deliberate contamination of school meals, an issue of heightened importance in the wake of recent events, and (5) because the safety of the school meals hinges on the effectiveness of the nation's overall food safety system, our testimony summarizes several endemic problems that we have found in the federal food safety system as a whole.

Results in Brief

Our current analysis of CDC's outbreak data shows an increase in the number of school-related outbreaks reported to CDC between 1990 and 1999 (the last year for which complete outbreak data is available). Overall, our analysis of these data indicates that the rise in the number of

[1] CDC defines an outbreak as an incident in which two or more persons experience a similar illness after ingestion of a common food.

[2] U.S. General Accounting Office, *School Meal Programs: Few Outbreaks of Foodborne Illness Reported*, GAO/RCED-00-53 (Washington, D.C.: Feb. 22, 2000).

outbreaks reported in schools since 1990 mirrors the rise in the number of outbreaks reported in the general population. We cannot determine the extent to which foods served in the school meal programs are the cause of reported outbreaks because CDC's data also includes outbreaks that are attributable to foods brought from home or other sources. Our examination of 20 large school outbreaks in 1998 and 1999 does show, however, that the majority of the outbreaks in those years were caused by foods served through the school meal programs. CDC attributes much of the increases in reported outbreaks to the improved data collection procedures initiated in 1998, when it began encouraging states to report foodborne outbreaks and to verify the data they submitted. CDC also suggests that increased resources for outbreak investigations and greater pubic awareness regarding foodborne disease might also account for the increased number of reported outbreaks. However, after accounting for CDC's more active surveillance approach, our analysis revealed an increase in reported outbreaks in schools, generally averaging 10 percent per year. Our analysis also shows that, of those outbreaks with a known cause, the most commonly identified cause of the illnesses were foods contaminated with salmonella and Norwalk-like viruses.[5]

USDA has been, for the most part, responsive to the two recommendations we made in our February 2000 report. Our first recommendation entailed USDA establishing a database to track all of the actions it takes to hold or recall USDA-donated foods that could potentially cause foodborne illness in schools. We made this recommendation so that USDA could document its responsiveness to food safety concerns and potentially identify problematic vendors or foods. USDA agreed with our recommendation and established a database that currently contains records of 11 food safety actions. We also recommended that USDA revise its school food service manual to include guidance for state and local school authorities on enhanced safety provisions that are normally included in USDA's procurement contracts for donated foods. USDA plans to address our recommendation by revising its school procurement guidance to include an example that addresses safety concerns. However, we believe USDA should include more information that would be useful to schools. We made this recommendation because state and local school food authorities

[5] Food contaminated with salmonella may cause nausea, vomiting, diarrhea, and headaches. Nausea, vomiting, diarrhea, and abdominal pain also characterize Norwalk-like viral infections. Headache and low-grade fever may also occur.

purchase 83 percent of the dollar value of foods for the school lunch program.

Based on the limited work we conducted in preparing for this testimony, we have identified two other issues that may warrant additional study and could contribute to improving the safety of school meals. First, as we reported in February 2000, USDA's procurement officials have routine access to the federal inspection and compliance records of potential suppliers, and they take these records into account when considering bids before contracting for donated foods. However, our recent interviews with USDA officials suggest that there is currently no mechanism for state and local authorities to easily and routinely access such information. Because state and local school authorities purchase the majority of foods for school meals, they may benefit from having ready access to the inspection and compliance information that the U.S. Department of Health and Human Services' Food and Drug Administration (FDA) and USDA collect. Such data sharing could enable them to make more informed purchasing decisions. USDA officials stated that this idea would have to be explored further to address potential legal impediments to such information sharing. FDA officials said that the idea might have merit. Second, in the course of preparing for this testimony, we observed that FNS has an established process for holding and recalling USDA-donated foods when safety concerns arise. As the single common point of contact for all schools participating in the school meal programs, FNS may want to study the possibility of extending its hold and recall procedures to include school-purchased foods. In this manner, FNS would coordinate and track safety actions pertaining to all foods served in the school meal programs rather than just those pertaining to USDA-donated foods. USDA officials agreed with this concept and indicated that they intend to share the hold and recall procedures with schools in fiscal year 2003.

USDA and FDA have not developed specific security provisions to protect food served in the school meal programs from potential deliberate contamination. But, according to USDA and FDA officials, actions designed to enhance the security of the federal food safety system as a whole would also enhance the security of school meals. As we testified in October 2001, recent events have raised the specter of bioterrorism as an emerging risk factor for our food supply. Moreover, under the current structure, there are questions about the food safety system's ability to detect and quickly respond to any such event. Since our October 2001 testimony, FDA and USDA officials stated that they are better prepared to detect and respond to such an event. The agencies are in the process of conducting risk assessments to determine where in the farm-to-table food

continuum the food supply may be most vulnerable. In addition, FDA has issued voluntary guidelines to the sectors of the food industry that it regulates to enhance, among other things, the physical security of processing and storage facilities. USDA is also working on a similar set of guidelines. Finally, agency officials told us that they have asked their field personnel to be on heightened alert for potential security concerns.

Finally, Mr. Chairmen, as we have frequently reported in the past, a series of structural weaknesses in our federal food safety system can affect all consumers, including children who eat school meals. As we reported in February 2000, while no federal agency specifically monitors the safety of school meals, USDA and FDA are responsible for enforcing regulations that ensure the safety of the nation's food supply. As we testified in October 2001 the existing food safety system is a patchwork structure that hampers efforts to adequately address existing and emerging food safety risks whether those risks involve inadvertent or deliberate contamination.[4] The food safety system is affected by a series of overarching problems that impede efforts to address public health concerns associated with existing and emerging safety risks. For example, when unsafe foods are detected, neither USDA nor FDA has the authority to recall them from distributors, although the appropriate agency can request manufacturers to do so voluntarily. Therefore, today we re-emphasize the need for the creation of a single food safety agency with new legislative authority. Such an action would go a long way toward improving overall food safety.

Background

The extent of foodborne illness in the United States and its associated costs are significant. CDC estimates that unsafe foods cause as many as 76 million illnesses, 325,000 hospitalizations, and 5,000 deaths annually.[5] In terms of medical costs and productivity losses, foodborne illnesses associated with seven major pathogens cost the nation between $7 billion and $37 billion annually, according to USDA's estimates.

[4] U.S. General Accounting Office, *Food Safety and Security: Fundamental Changes Needed to Ensure Safe Food*, GAO-02-47T (Washington, D.C.: Oct. 10, 2001).

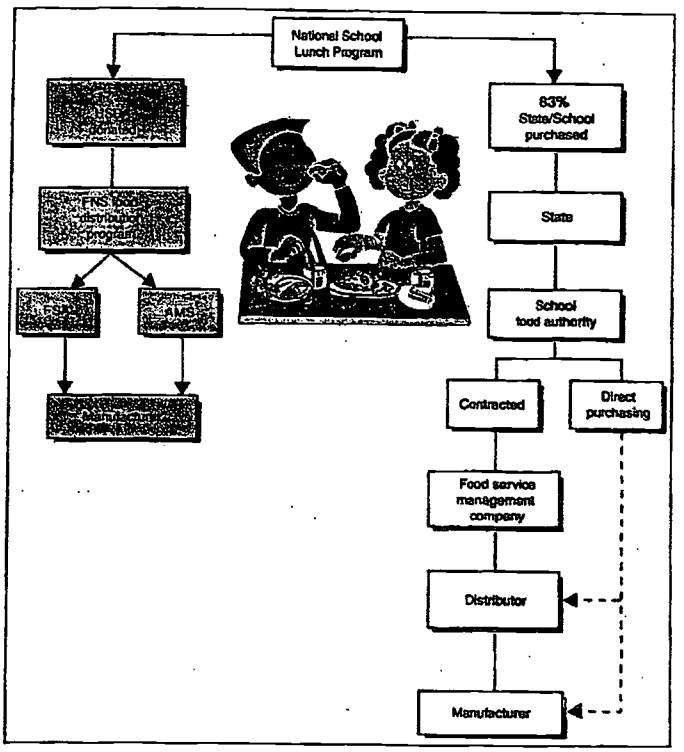
[5] On Apr. 19, 2002, CDC reported that there has been a decrease in several major bacterial foodborne illnesses, including infections due to salmonella, campylobacter, and listeria. However, CDC has not revised its estimates of the overall incidence of foodborne illness in the United States.

The National School Lunch Program and the School Breakfast Program share the goals of improving children's nutrition, increasing lower-income children's access to nutritious meals, and supporting the agricultural economy. The school lunch program is available in almost all public schools and in many private schools. About 70 percent of those schools also participate in the breakfast program. Schools participating in the school lunch or breakfast programs receive a per-meal federal cash reimbursement for all meals they serve to children, as long as the meals meet federal nutrition standards. In fiscal year 2001, school meal programs provided lunch, breakfast, and snacks to over 27 million school children daily.

At the federal level, FNS administers the school meal programs. At the state level, the program is usually administered by state education agencies, which operate them through agreements with local school food authorities. Overall, USDA donates about 17 percent of the dollar value of food that goes on the table in school lunch programs through its Food Distribution Program. USDA purchases and distributes commodities to remove surpluses from the marketplace and to provide nutritious foods to the nation's children. Schools purchase the remaining 83 percent of the dollar value of food served using USDA's cash reimbursement and their own funds. In fiscal year 2001, the total cost of the school meal programs—including cash reimbursements to schools, USDA purchases of donated foods, and program administration—was nearly $8 billion. By far the largest component of the school meal programs is the school lunch program. In fiscal year 2001, the school lunch program cost about $5.7 billion.

The procurement process for foods served in school lunch program differs depending on whether federal or state/local food authorities procure the foods (see figure 1).

Figure 1: School Lunch Program Procurement Process



USDA's Agricultural Marketing Service (AMS) and Farm Service Agency (FSA) are responsible for procuring USDA-donated foods. The Agricultural Marketing Service purchases meat, poultry, fish, and fruits and vegetables for donation; the Farm Service Agency purchases grains, oils, peanut products, dairy products, and other foods. USDA contracts for the purchase of these products with manufacturers that are selected through a formally advertised competitive bidding process. FNS, through its Food Distribution Division, provides the donated foods to state agencies for

distribution to schools. Schools then purchase the remainder of food for school meals independently using their own procurement practices, either purchasing foods directly from manufacturers or distributors, or contracting with food service management companies that procure the foods for them.

USDA provides little guidance to promote safety in school food procurements. FNS' guidance to schools emphasizes safe food handling because, according to USDA officials, most cases of foodborne illness at schools are due to poor food storage, handling, and serving practices. Therefore, the priority is on guidance to ensure food safety through proper handling and preparation of foods at schools. For example, manuals are provided that address appropriate temperatures for reheating ready-to-eat foods and for hot-holding potentially hazardous foods. Similarly, FNS provides information on employee personal hygiene and how it relates to cross-contamination of foods.

Data Show an Increase in School Outbreaks

CDC's outbreak data shows an increase in the number of school-related outbreaks since 1990. Between 1990 and 1999 (the most recent year for which complete outbreak data is available from CDC), 292 school-related outbreaks were reported to CDC, averaging 17 outbreaks in the first 4 years of the decade, 28 in the next 4 years, and 57 in the final 2 years (see table 1). In total, approximately 16,000 individuals, mostly children, were affected.[6] For those outbreaks with a known cause, the most commonly identified cause of the illnesses were foods contaminated with salmonella or Norwalk-like viruses.

[6] According to CDC, foodborne illnesses are underreported because (1) milder cases are often undetected; (2) pathogens that are transmitted through food may also be spread through water or from person to person, obscuring the role of foodborne transmission; and (3) some proportion of foodborne illness is caused by pathogens or agents that have not yet been identified and thus cannot be diagnosed. Furthermore, CDC relies on states to voluntarily report outbreak information.

Table 1: Outbreaks and Illnesses in Schools and Non-School Settings, 1990-1999

Year	School Outbreaks	Other Outbreaks	School Illnesses	Other Illnesses
1990	25	508	1212	18,019
1991	14	517	486	14,566
1992	14	397	991	10,092
1993	15	499	676	13,404
1994	31	659	1,807	16,188
1995	9	636	436	13,061
1996	32	570	1,772	13,649
1997	39	767	2,026	16,776
1998	63	1,251	3,944	22,775
1999	50	1,294	2,882	22,404
Total	292	7,098	16,232	159,934

Note: As explained later, this outbreak data includes outbreaks caused by foods in the school meal programs as well as foods brought from home.

Source: Centers for Disease Control and Prevention data.

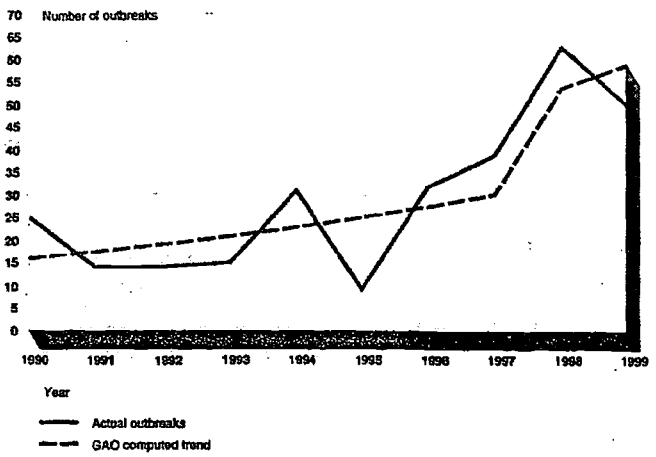
According to CDC officials, some unknown portion of the increase in reported outbreaks extends from CDC's transition from a completely passive surveillance data collection method to a more active surveillance methodology in early 1998. In effect, CDC went from accepting data from the states to actively soliciting states for more comprehensive information and having the states verify the information that they submit. As a result, states began to report more of all types of foodborne outbreaks, including school outbreaks, to CDC beginning in 1998. Moreover, CDC suggests that increased resources for outbreak investigations and greater awareness among the general public about foodborne disease might also account for the increased number of reported outbreaks.

To evaluate the trend in the number of school outbreaks, and in their number relative to non-school outbreaks, we compared the observed numbers to the estimated numbers of school and non-school outbreaks.[7] This analysis shows that there is an upward trend in foodborne illness outbreaks reported in schools between 1990 and 1999 and that not all of this increasing trend is attributable to changes that took place when CDC began a more active data collection effort. Outbreaks in the general

[7] We used traditional statistical tests to determine how well the different models fit the observed data and which models were preferable to distinguish the pattern in the observed data from random fluctuations.

population have increased by a comparable amount over the same period; therefore, there is no statistically significant difference between increased outbreaks in schools and increased outbreaks in general. As figure 2 shows, our analysis of CDC's data indicates that, even after adjusting for CDC's improved data collection, the number of school-related foodborne outbreaks increased, on average, about 10 percent per year between 1990 and 1999.

Figure 2: Trends in School-Related Foodborne Outbreaks (1990-1999)



Source: GAO's analysis of CDC data.

We also analyzed trends in participation in the school meal programs over this same time period and found that the changes in school outbreaks reported did not simply mirror changes in the number of students participating in the school meal programs. While the number of reported school outbreaks doubled over the decade, and generally increased by an average of about 10 percent from one year to the next, the number of school lunch participants increased by only 12 percent over the entire decade, or by just over 1 percent per year. Thus, the increase in school outbreaks reported is not explained by the increase in children's participation in the school meal programs.

One should exercise caution, however, when analyzing school outbreak data. CDC's data must be supplemented with more detailed state or local information to determine the extent of foodborne illness outbreaks actually associated with the school meal programs in any given year. We gathered additional state and local health department information for the 20 largest school outbreaks in CDC's database for 1998 and 1999, each of which resulted in 100 or more illnesses. We determined that 13 of the 20 outbreaks (65 percent) were associated with foods served in the school meal programs. Three of the 13 outbreaks were linked to tainted burritos that were distributed to schools nationwide and are thought to have caused approximately 1,700 illnesses. The other 7 outbreaks were not linked to foods served in the school meal programs, but with foods brought to schools from home or other sources. Therefore, data limitations make it difficult to assert with complete certainty to what extent the foods served in the school meal programs are the cause of the reported outbreaks from 1990 to 1999.

USDA Has Been Largely Responsive to Our February 2000 Recommendations

USDA has, for the most part, been responsive to the two recommendations we made in our February 2000 report. First, we recommended that USDA develop a database to track the actions it takes to hold or recall donated foods when safety concerns arise regarding foods donated to the school meal programs. Second, we recommended that the agency revise its school food service manual to include guidance regarding food safety procurement contract provisions, which could be used by state and local school authorities.

We made our first recommendation because, without comprehensive records of such safety actions, USDA had no reliable basis for identifying problematic foods or suppliers, or for documenting the agency's responsiveness to concerns over the safety of USDA-donated foods. In response to our February 2000 recommendation, USDA implemented its food safety action database in April 2000. The database identifies and tracks key hold and recall information starting in October 1998. As of April 2002, the database lists 11 food safety actions, including, for example, the recall of 114,000 pounds of chicken that was contaminated with listeria in February 2000.[9] Because of the limited number of actions recorded thus

[9] Listeria is a foodborne contaminant that can cause meningitis, septicemia, and perinatal disease.

far, USDA has not conducted any analysis of the information contained in the database, but plans to continue maintaining it for future use.

We made our second recommendation because, although USDA has established procurement policies and procedures to ensure the safety of foods donated to schools, these policies and procedures do not apply to foods purchased independently by schools. For example, contracts for donated foods may specify pathogen testing for every lot of certain products that are highly susceptible to contamination, or may contain contract provisions that establish specific temperature requirements for chilled and frozen products during processing and storage at the plant, transportation between processing plants, upon shipment from the plant, and upon arrival at final destination. However, there is no requirement that state and local authorities include similar food safety provisions in their procurement contracts. According to USDA's regulations for schools participating in the school meal programs, the responsible school food authority may use its own procurement procedures, which reflect applicable state and local laws and regulations. Therefore, the extent to which schools address safety in their food procurement contracts may vary depending on state and local laws and procurement guidance that is available to them. To assist state and local authorities, we recommended that USDA provide them guidance on food safety provisions that could be included in their procurement contracts.

USDA officials told us that they plan to address our recommendation by revising the school procurement guidance to include an example that addresses safety concerns. We believe, however, that USDA should include more information that would be useful to schools. Specifically, providing a list of the specific food safety provisions found in USDA-donated food contracts would help schools in preparing their own food procurement contracts. While USDA officials contend that local school districts have little negotiating power to require safety provisions because their purchases are mainly low-volume from commercial sources, USDA's own data indicates that in the 1996-1997 school year, the latest year for which this data was available, 37 percent of school food authorities participated in cooperative arrangements that purchase in larger volume. Therefore, we believe that more detailed information on contract safety provisions could enhance the safety of foods purchased directly by schools. In particular, since local school authorities purchase 83 percent of the dollar value of school meals, it is important that they receive guidance from FNS on how best to achieve a comparable level of safety precautions through their procurement process.

Potential Opportunity to Further Enhance the Safety of School Meals

Based on limited work conducted in preparation for this testimony, we offer two additional observations that, if validated by further study, may contribute to greater safety for school children at minimal cost. First, USDA's procurement officials told us that they have routine access to federal inspection and compliance records of potential suppliers and that they consider this information when they review bids before contracting. However, there is currently no established mechanism for state and local authorities in charge of purchasing food for schools to easily and routinely access such information. It may be desirable for USDA to consider whether it should provide state and local school officials with access to information collected through FDA's and USDA's inspections of school lunch food suppliers, potentially enabling them to make more informed purchasing decisions. USDA officials stated that this idea would have to be explored further to address potential legal impediments to such information sharing. FDA officials commented that this idea is worth considering.

Second, FNS has developed a process for holding foods suspected of contamination that applies exclusively to food commodities that USDA purchases for donation to schools. The hold allows time for additional testing and inspection prior to asking for a recall of donated foods when safety concerns arise. Because FNS is the single common point of contact for all schools participating in the school meal programs, and because it does provide guidance to the schools on food nutrition and quality, an extension of FNS' hold and recall procedures to include non-donated (school-purchased) foods would seem logical. USDA officials agreed with this concept and indicated that they intend to share the hold and recall procedures with schools in fiscal year 2003.

There Are No Special Security Provisions for the School Meal Programs

USDA and FDA have not developed any specific security provisions to help protect food served through the school meal programs from potential deliberate contamination. But, according to USDA and FDA officials, actions designed to enhance the security of the federal food safety system as a whole would also enhance the security of meals served at schools. As we testified in October 2001, however, recent events have raised the specter of bioterrorism as an emerging risk factor for our food safety system. We further stated that under the current structure, there are questions about the system's ability to detect and quickly respond to any such event. Since our October 2001 testimony, both FDA and USDA have stated that they are better prepared to detect and respond to such an event. Both agencies are in the process of conducting risk assessments to determine where in the farm-to-table food continuum there is a critical

need to provide additional resources. In addition, FDA staffing has already increased inspections of imported foods, added more inspections of domestic producers, and more laboratory testing of food products. Further, FDA has issued voluntary security guidelines to the sector of the food industry that it regulates on the need to (1) ensure physical security of processing and storage facilities, (2) ensure that chemical and biological agents that may be kept in their facilities or at in-house laboratories are under appropriate controls, and (3) verify the background of plant employees. Currently, the agency is receiving public comments and expects to revise the guidelines. USDA is also working on a similar set of guidelines that meat, poultry, and egg products processors could voluntarily adopt. Finally, agency officials told us that they have generally asked their field personnel to be on heightened alert for potential security concerns. We are initiating a review to determine how these guidelines are being implemented and how federal agencies plan to monitor their implementation.

Overarching Problems in the National Food Safety System Also Affect the Safety of School Meals

As we reported in February 2000, while no federal agency monitors the safety of school meals, USDA's Food Safety and Inspection Service (FSIS) and FDA are responsible for enforcing regulations that ensure the safety of the nation's food supply. FSIS is responsible for the safety of meat, poultry, and some eggs and egg products, while the FDA is responsible for all other foods, including fish, fruit, vegetables, milk, and grain products. However, as we stated most recently in our October 2001 testimony, the existing food safety system is a patchwork structure that hampers efforts to adequately address existing and emerging food safety risks whether those risks involve inadvertent or deliberate contamination. The food safety system is also affected by other overarching problems, such as the challenge of effectively coordinating the food safety activities of multiple agencies including coordinating multi-state outbreaks. For example, the current organizational and legal structure of our federal food safety system has given responsibility for specific food commodities to different agencies and provided them with significantly different regulatory authorities and responsibilities. As a result, we have inefficient use of resources and inconsistencies in oversight and enforcement.

USDA and FDA oversee recalls when the foods they regulate are contaminated or adulterated. If a USDA-regulated company does not voluntarily conduct the recall, USDA can detain the product for up to 20 days. On the other hand, FDA, which currently does not have administrative detention authority for food under the Federal Food, Drug, and Cosmetic Act, must seek a court order to seize the food. Moreover, as

we reported in August 2000,[9] neither USDA nor FDA had provided guidance to industry on how to quickly initiate and carry out food recalls that involve potentially serious adverse health risk. We recommended that such guidelines instruct companies on time frames for quickly initiating and carrying out recalls, including procedures that expeditiously notify distribution chains and alert the public. USDA has revised its guidelines, and FDA is in the process of revising its guidance and expects to reissue the guidance in September 2002.

Finally, Mr. Chairmen, in working on food safety issues over the past decade, we have reviewed USDA's and FDA's inspection systems and identified weaknesses in both. The agencies agreed with most of our recommendations and have either taken steps or are taking steps to improve inspections. We have also focused on specific products, many of which are included in school meals. For example, because of concerns about the risk of salmonella in eggs, we reviewed the adequacy of the federal system for ensuring egg safety. Our work shows that the current regulatory and organizational framework for egg safety makes it difficult to ensure that resources are directed to areas of highest risk. Similarly, we evaluated the seafood and shellfish safety program and determined that theses programs do not sufficiently protect consumers because of weaknesses in FDA's implementation of the new science-based inspection system. FDA agreed with most of our recommendations. We also reviewed USDA's oversight of meat and poultry products and concluded that, in order to better ensure safety, USDA needed to ensure that inspectors are properly trained on the new science-based system. USDA agreed with our recommendation and is providing enhanced training. In January 2002,[10] our report on mad cow disease concluded that, although bovine spongiform encephalopathy (BSE) has not been found in the United States, federal actions do not sufficiently ensure that all BSE-infected animals or products are kept out of the country or that if BSE were found, it would be detected promptly and not spread. FDA, USDA, and Customs generally agreed with the report's recommendations.

[9] U.S. General Accounting Office, *Food Safety: Actions Needed by USDA and FDA to Ensure that Companies Promptly Carry Out Recalls*, GAO/RCED-00-195 (Washington, D.C.: Aug. 17, 2000).

[10] U.S. General Accounting Office, *Mad Cow Disease: Improvements in the Animal Feed Ban and Other Regulatory Areas Would Strengthen U.S. Prevention Efforts*, GAO-02-183 (Washington, D.C.: Jan. 25, 2002).

Conclusions

Mr. Chairmen, in conclusion, schools face the difficult task of providing healthy, nutritious meals to millions of children daily. As the data indicate, the number of school-related foodborne illness outbreaks reported between 1990 and 1999 has generally increased despite the efforts of these schools, as well as the federal regulatory agencies, to prevent tainted food from reaching cafeteria plates. We believe that to make substantial improvements in the safety of school meals will require, in part, addressing the overarching problems that affect the nation's federal food safety system as a whole. Nevertheless, as we have discussed today, there are steps that USDA could take within the existing safety system to better ensure the safety of school meals, such as providing state and local school authorities with specific food safety provisions that could be included in their procurement contracts. Additionally, continued vigilance is necessary to determine the true extent and cause of the problems, to ensure that schools obtain the safest food possible for our children, and also to ensure that unsafe foods are promptly and effectively withdrawn from schools when illnesses occur.

Mr. Chairmen, this completes my prepared statement. I would be happy to respond to any questions you or other members of the Subcommittees may have.

Contacts and Acknowledgments

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
Rockville MD 20857

STATEMENT OF

LESTER M. CRAWFORD, D.V.M., PH.D.

DEPUTY COMMISSIONER

FOOD AND DRUG ADMINISTRATION

DEPARTMENT OF HEALTH AND HUMAN SERVICES

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, RESTRUCTURING AND THE DISTRICT OF COLUMBIA

UNITED STATES SENATE

AND THE

COMMITTEE ON GOVERNMENT REFORM

SUBCOMMITTEE ON GOVERNMENT EFFICIENCY, FINANCIAL MANAGEMENT, AND INTERGOVERNMENTAL RELATIONS

U.S. HOUSE OF REPRESENTATIVES

APRIL 30, 2002

RELEASE ONLY UPON DELIVERY

Good afternoon, Mr. Chairmen and Members of the Subcommittees. I am Dr. Lester Crawford, Deputy Commissioner of the Food and Drug Administration (FDA or the Agency). I am accompanied today by Dr. Paul Mead who is Chief of the Outbreak Response and Surveillance Unit in the Centers for Disease Control and Prevention (CDC). Thank you for this opportunity to discuss the safety of Federal school lunches. Ensuring the safety of the food supply is a top priority for FDA, the Department of Health and Human Services (HHS), and the Administration. I am pleased to be here today with my colleague from the U.S. Department of Agriculture (USDA), Dr. Elsa Murano.

I appreciate this opportunity to explain FDA's role with regard to the safety of Federal school lunches and the food supply in general. I would like to describe FDA's role in responding to reports of foodborne illness and our coordination with other Federal, State, and local agencies and to mention some of our recent food safety efforts that are directed toward children.

The Role of FDA

As you know, FDA has responsibility for all of the food supply, with the exception of meat, poultry, and egg products, which are regulated by USDA. FDA's jurisdiction covers approximately 80 percent of domestic and imported foods that are marketed in interstate commerce. The Agency seeks to ensure that these products are safe, nutritious, wholesome, and properly labeled. FDA has jurisdiction where food is produced,

processed, packaged, stored, or sold. In addition to jurisdiction over food establishments, FDA's purview also includes approval and surveillance for new animal drugs, animal feeds, and all food additives that can become part of food.

USDA administers the Federal school lunch program. FDA is not involved in the procurement of foods for this program. However, FDA works closely with USDA and other Federal, State, and local agencies when reports of illnesses related to foods in the school lunch program are received. FDA's various food safety activities all help to ensure that the foods served in school are safe. Our food safety activities include research, risk assessment, outbreak response, the development of preventive controls, inspection of domestic and imported food, enforcement, and the development of educational materials for consumers, health officials, and industry.

FDA recognizes State and local governmental jurisdictions as having primary responsibility for the regulation of the retail segment of the food industry. FDA provides assistance to local, State, and Federal governmental bodies to ensure that the food that is provided to consumers by retail establishments is not a vehicle for transmitting foodborne illness. The Agency publishes a model Food Code that represents FDA's best advice for a uniform system of regulation to ensure that the food sold or offered for human consumption in retail outlets such as restaurants, grocery stores, and institutions (including schools and nursing homes) is safe, properly protected, and honestly presented. Many jurisdictions have adopted FDA's Food Code, or an amended version of it, as their regulatory standards. FDA, the Conference for Food Protection, and the

Association of Food and Drug Officials (AFDO) are working together to promote adoption of the Food Code by all food safety agencies at the Federal, State, tribal nation, and local levels. According to a recent report by AFDO, a majority of the States and territories have adopted a version of the Food Code. Most of the remaining States and territories are actively pursuing Food Code adoption. Adoption of the Food Code represents a successful Federal/State/local partnership to improve food safety. Widespread adoption and implementation of the Food Code will help protect schoolchildren by ensuring that school food service managers and workers have up-to-date, science-based guidance on safe food preparation practices.

Outbreak Response and Coordination

Responsibility for responding to foodborne disease outbreaks is shared among local, State, and Federal governments. Local and State governments are often the first to detect the occurrence of an outbreak and initiate an investigation if appropriate. It is important to note that many episodes of foodborne illness are addressed exclusively at the local or State level. Local and State governments play a major role in outbreak surveillance and investigation.

The role of the Federal agencies in large or complex multi-state outbreaks is to assist the State and local agencies in preventing additional cases of illness from occurring. CDC, through its surveillance systems, detects and investigates outbreaks of foodborne illness. CDC also assists Federal, State, and local agencies in investigating outbreaks. FDA

becomes involved when FDA-regulated food products may be implicated. FDA has stationed an employee at CDC in the Foodborne Diarrheal Diseases Group to assure seamless communication on foodborne outbreaks. FDA's objectives in outbreak investigation and response are verification of the association with a regulated product, identification of the source of the product and the extent of distribution, prevention of any further exposure to the contaminated product, and initiation of regulatory action if indicated. An additional critical role of outbreak investigation is to identify contributing factors in order to prevent any future outbreaks from a similar problem.

FDA has worked closely with USDA's Food and Nutrition Service and Food Safety and Inspection Service in responding to several school-related outbreaks, such as the one involving hepatitis A in frozen strawberries in 1997, one associated with burritos in 1998, and one involving burritos and tortillas in 1998. FDA also has provided laboratory analysis assistance to USDA.

In conjunction with activities related to the Food Code, FDA initiated a project to establish a baseline for the occurrence of the risk factors identified by CDC that contribute to foodborne illness in retail food establishments. A recent survey of risk-related conditions in food service covered nine different facility types, one of which was elementary schools. For the food service operations in elementary schools, an initial survey identified problems such as failure to ensure adequate handwashing and failure to maintain potentially hazardous foods at proper temperatures. This kind of information is useful in addressing risk factors and in measuring the success of new initiatives. CDC is

currently working with the National Association of City and County Health Officials to develop a standardized inspection form that could be used by local health department inspectors to assess risks in schools. HHS and USDA are working toward the HHS Healthy People 2010 food safety objective of reducing the occurrence of the CDC-identified foodborne illness risk factors in institutional food service establishments (including schools), restaurants, and retail food stores by 25 percent by October 1, 2010.

To improve outbreak detection and response by the Agency and our State and local partners, FDA has developed several training courses. FDA's satellite training courses on food microbiology, foodborne disease epidemiology, and product traceback related to outbreak investigations, have been attended by thousands of government and industry representatives from around the country. FDA has also invited representatives of the governments of Canada and Mexico to attend these training sessions. In addition, FDA has conducted presentations at numerous conferences in the U.S., Mexico, and Latin America on foodborne outbreaks and tracebacks to determine the source of the outbreaks.

In 1998, FDA initiated an effort known as the National Food Safety System Project to improve coordination and communication among public health and food regulatory officials at all levels of government, particularly in connection with foodborne illness outbreaks. This project is a collaboration of FDA, CDC, USDA, the Environmental Protection Agency, and State and local officials from health, agriculture, and environment agencies. Five workgroups were formed to generate ideas for action that

would promote an integrated food safety system. One of the groups, the Outbreak Coordination and Investigation Workgroup, produced guidelines last year for improving coordination and communication during multi-state foodborne outbreak investigations. These guidelines provide a framework for local, State, and Federal agencies to effectively respond to multi-state foodborne outbreaks. The concepts, principles, and checklists in the guidelines can also be used to recognize and respond to public health emergencies associated with other foodborne hazards.

Enhanced surveillance systems are also important tools for improving the response to outbreaks. For example, PulseNet, developed by CDC, enables a national network of public health laboratories to "fingerprint" bacteria that may be foodborne and compare results through an electronic database maintained by CDC. Now a collaborative effort among CDC, FDA, USDA, and participating State and local public health laboratories, PulseNet can help public health authorities recognize that cases of foodborne illness occurring at the same time in geographically separate locales are caused by the same strain of bacteria and may be due to a common exposure. PulseNet has been key in rapidly detecting and containing numerous outbreaks of foodborne illness, including multi-state outbreaks. For example, PulseNet aided in the identification of a multi-state outbreak of *Salmonella* Agona infections linked to toasted oats cereal. Since the illnesses were dispersed among 20 States, the comparative matching of the disease-causing organisms made possible via PulseNet facilitated the epidemiological investigation that led to the recall of two million pounds of contaminated product. Without PulseNet, it is unlikely that these cases would have been identified as coming

from the same source. Similar systems are now under development for viruses and parasitic agents that are associated with foodborne illness.

Another system, which was proposed by some workgroups of the National Food Safety System Project, is the electronic Laboratory Exchange Network (eLEXNET). It is the nation's first Internet-based, interagency food testing reporting system developed to provide access to critical food testing data in Federal, State, and local food safety laboratories. eLEXNET has not only facilitated data information sharing and communication, but has also provided a means for collaboration among food safety experts. At present, 36 laboratories in 24 States are participating in eLEXNET. FDA is working to expand the system to include at least two laboratories from each State – a public health lab and an agriculture lab. The system includes data on *Escherichia coli* O157:H7, all *Salmonella* species, *Listeria monocytogenes*, and *Campylobacter jejuni*.

Thanks to all the efforts described above, the response to outbreaks is faster and better coordinated than ever before. A rapid response is critical in containing an outbreak and preventing further illnesses from occurring.

FDA Activities for Schoolchildren

FDA is involved in numerous food safety activities that are specifically aimed at reducing the incidence of foodborne illness among schoolchildren. For example, FDA has been working with USDA's Food and Nutrition Service on its project with the National Food

Service Management Institute of the University of Mississippi to revise the "Serving It Safe: A Manager's Tool Kit." This information is designed to help school food service managers achieve adherence with the safe food preparation practices in the Food Code.

FDA has also been participating with CDC in the National Coalition for Food-Safe Schools. This coalition includes school administrators, school nurses, educators, sanitarians, State representatives, FDA, USDA, and others working together to develop a comprehensive school health program. The coalition has just produced a draft Food-Safe Schools Action Guide that provides a coordinated framework of identifying and monitoring school food safety policies, programs, and practices to reduce the incidence of foodborne illness.

In a partnership to educate students themselves about food safety, FDA and the National Science Teachers Association (NSTA), developed a curriculum for middle and high school students. This program, "Science and Our Food Supply," teaches the scientific principles of all aspects of food safety, from the farm to the dinner table, and introduces students to the wide variety of careers in food science. Students learn about bacterial growth and how pathogens pose a risk of causing illness; how practices on the farm, such as safe composting, can lead to safer crops; how food processing technologies, such as ultra-high temperature pasteurization, are leading to new products; and how safe food handling practices in restaurants and at home can reduce foodborne illness.

This year, FDA and NSTA will be hosting their third conference to train teachers in the curriculum. At each conference, 50 middle and high school teachers are trained. Each of these teachers agrees to train other teachers in their States during the following school year. We expect that this curriculum will help reduce the incidence of illness by teaching students safe food preparation habits they can practice throughout their lives. As more high school students are employed in restaurants than in any other industry, this training will help ensure that food served in restaurants is safely prepared.

A video that was developed as part of this curriculum won an Emmy Award from the National Academy of Television Arts and Sciences Mid-Atlantic Region last year. "Dr. X and the Quest for Food Safety" introduces and reinforces the science concepts of food safety from the farm to the table. The "Science and Our Food Supply" education kit that includes the video is available free of charge to middle and high school teachers through NSTA.

As part of the Food-Safe Schools initiative, FDA is also participating in other working groups to improve school food safety, such as the advisory committee for the national non-governmental organizations funded by CDC which include the National Association of County and City Health Officials, the American Nurses Foundation, and the American School Food Service Association.

In my statement today, I have described just a few of the many food safety activities FDA is pursuing. We are working closely with our Federal, State, and local partners, as well

as with industry, consumer organizations, and academia to reduce the incidence of foodborne illness for school children and the general population to the greatest extent possible.

Thank you for the opportunity to discuss FDA's food safety activities. We look forward to working with both subcommittees on ways to continue to improve the safety of the nation's food supply. I would be happy to answer any questions.

STATEMENT OF DR. ELSA MURANO, UNDER SECRETARY FOR FOOD SAFETY U.S. DEPARTMENT OF AGRICULTURE BEFORE THE SENATE GOVERNMENTAL AFFAIRS COMMITTEE SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, RESTRUCTURING AND THE DISTRICT OF COLUMBIA AND THE HOUSE GOVERNMENT REFORM COMMITTEE SUBCOMMITTEE ON GOVERNMENT EFFICIENCY, FINANCIAL MANAGEMENT AND INTERGOVERNMENTAL RELATIONS

APRIL 30, 2002

Introduction

Mr. Chairmen and Members of the Subcommittees, I am pleased to appear before you today to discuss the role of the U.S. Department of Agriculture (USDA) in ensuring the safety of product used in the National School Lunch Program (NSLP). I would like to take a second to reintroduce myself and to introduce my USDA colleagues. I am Dr. Elsa Murano, Under Secretary for Food Safety. With me today on behalf of the Department are Eric Bost, Under Secretary for Food, Nutrition, and Consumer Services, and Barry Carpenter, Deputy Administrator for Livestock and Seed at the Agricultural Marketing Service.

I also am pleased to be here today with Dr. Lester Crawford, my colleague from the U.S. Food and Drug Administration (FDA). Although we are both relatively new on the job, we've had numerous opportunities to work together on issues of mutual concern.

Overview of the School Lunch Program

The NSLP plays an important role in ensuring access to safe, nutritious, and healthful diets for all Americans. The program was established under the National School Lunch Act, signed by President Harry Truman in 1946. Since the modern program began, more than 180 billion lunches have been served. The Food and Nutrition Service (FNS) administers the NSLP at the Federal level. At the State level, the program is administered by State education agencies, which operate the program through agreements with school food authorities. The program is operating in more than 97,700 public and private schools and residential child care institutions. It provides nutritionally balanced, low-cost or free lunches to more than 27 million children each school day.

School districts and independent schools that choose to take part in the lunch program receive cash subsidies and donated commodities from USDA for each meal they serve. In return, they must serve lunches that meet Federal nutrition requirements, and they must offer free or reduced-price lunches to eligible children. States select entitlement foods for their schools from a list of various commodity foods purchased by USDA and offered through the school lunch program.

FNS coordinates with the Agricultural Marketing Service (AMS) and the Farm Service Agency (FSA), who purchase the entitlement food, or "commodity product" that is donated by USDA to participating schools. AMS purchases meats, poultry, fish, fruit, vegetables, egg products, dry beans, and tree nuts while FSA purchases grains, oils, peanut products, and dairy products for distribution in the NSLP and other Federal food assistance programs. Not all food served in school cafeterias is part of the NSLP. In fact, only 17 percent of the dollar value of food used in the NSLP is from commodity products. The schools contract independently with food processors and distributors for the remaining food. The following activities relate only to those products purchased by USDA for use in the NSLP.

In general, firms become identified as potential suppliers to USDA of foods for distribution to the National School Lunch Program through AMS' outreach initiatives and through the firms' own marketing efforts to USDA. To qualify as bidders, firms must demonstrate that they meet responsibility standards for financial and other business factors as outlined in Federal Acquisition Regulations. In addition, firms must demonstrate that they are capable of complying with all product specifications and contractual requirements related to a specific food product. Firms that meet these requirements and successfully bid for USDA food purchase contracts are identified in publicly disseminated Food Purchase Reports.

For purchases of meat, poultry, and egg products, AMS relies fundamentally on the Food Safety and Inspection Service (FSIS) to determine if a facility or firm produces foods that are safe, wholesome, and in compliance with the requirements of the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act. AMS builds on the basic food safety protections provided by FSIS in several ways. First, AMS requires the presence of AMS graders during the production or processing of items to be purchased by USDA. By having an AMS employee in the plant during production, added assurance is provided that all contract provisions are met. AMS has the authority to retain product produced at any plant for any suspected defective production or product condition, until further review by FSIS is conducted. Second, AMS includes prescriptive terms in its contracts regarding the handling of its products. For example, timing and temperature requirements for the freezing of product, temperature requirements for cooked products, and packaging requirements are fully described and monitored. Third, for potentially higher risk products, AMS specifications stipulate that samples of finished product can be taken for microbiological analysis, including testing for *E. coli* O157:H7 and *Salmonella*.

Fruit and vegetable products, as well as fish products, are subject to FDA requirements under the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act. Plants supplying processed fruit and vegetable products undergo an annual survey by AMS inspectors to ensure compliance with the FDA's Good Manufacturing Practices, current water certification, and effective pest control measures. Fish products purchased by AMS must be

produced in facilities operating under the National Marine Fisheries Service voluntary seafood inspection program.

In addition to donated commodity products, AMS, under various procurement options, purchases additional products on behalf of schools and States. These purchases allow schools and States to benefit both from USDA's purchasing power and its enhanced oversight of the food production process for foods going into the NSLP. Also, AMS inspectors are available for a fee to be paid by the vendor to oversee the production of products that schools or States purchase directly.

USDA purchase specifications and contract requirements are readily available on the AMS website. Through its active partnership with State and national associations representing State distributing agents and school food service personnel, AMS conducts numerous workshops and interactive sessions on USDA purchase specifications and contract requirements.

For those products purchased outside of USDA commodity purchase programs, FNS works closely with and relies heavily on the authority vested with FSIS and FDA at the Federal level to establish, enforce and monitor food safety requirements. FSIS inspects all federally slaughtered and processed meat and poultry, as well as processed egg products. FSIS uses the same inspection standards for meat, poultry, or egg products served in the NSLP and for those consumed by the general public. The FDA has inspection jurisdiction over all other food products.

In addition, State and local health officials play a vital role in establishing and monitoring food safety requirements related to schools. USDA's child nutrition programs are Federal-State partnerships. The Department relies on the judgment and professionalism of school food service workers nationwide who have been trained to provide safe, healthy and nutritious food to schoolchildren. These professionals also work within State and local health codes that help ensure the safety of food service in each State.

I would like to share in greater detail, how USDA's agencies coordinate internally and with their sister public health agencies to ensure safe product for the NSLP and the public at large.

A Strong, Coordinated Infrastructure

Inspection

Ensuring the safety of USDA-regulated products requires a strong infrastructure. FSIS has the bulk of the responsibility in this area and, not surprisingly, has a large workforce of approximately 10,000 employees, most of whom are stationed in the field, dedicated to inspection. More than 7,600 inspection personnel are stationed in approximately 6,000 meat, poultry, and egg products plants and are responsible for the inspection of more than 8.5 billion birds, 133 million head of livestock, and 3.5 billion pounds of liquid egg products annually.

Surveillance

While critically important, inspection addresses only part of the food safety system infrastructure. Surveillance is another, because a strong food safety system requires a mechanism for identifying new food safety problems rapidly. USDA and FDA conduct surveillance of the food supply while the Centers for Disease Control and Prevention (CDC),

in partnership with State and local health departments, conducts surveillance for human foodborne illness. In July 1995, USDA and the Department of Health and Human Services (HHS), in conjunctions with several states and localities implemented FoodNet, a collaborative project in several sites to collect more precise information on foodborne illness. FoodNet is an active surveillance system that helps us to better quantify the incidence of foodborne illnesses, better identify the causes of those illnesses, and help document the effectiveness of new food safety control measures.

Outbreak Response

Outbreak response also is key. In the past, an outbreak most likely affected a small local population and involved locally prepared food products with limited distribution. Increasingly, outbreaks involve larger populations and are likely to be multi-state or even international. Delay in identifying the causative agent can allow the outbreak to spread. Coordination is also essential, and we have taken steps in previous years by forming interagency working groups to improve upon outbreak response and coordination. A document was released last year by the National Food Safety System project entitled *Multi-state Foodborne Outbreak Investigations: Guidelines for Improving Coordination and Communications.*

To coordinate food security functions throughout the government, we formed the Food Threat Preparedness Network (PrepNet). A charter establishing PrepNet is being finalized, which will coordinate the homeland security activities of various government agencies with responsibilities for food safety, to facilitate the flow of information among its various components and to promote the sharing of scientific and laboratory assets. PrepNet will focus on prevention, preparedness, and response to the intentional introduction of microbial, chemical, radiological, or physical contaminants into the food supply, along the farm-to-table chain. PrepNet is co-chaired by the Administrator of FSIS and the Director of the Center for Food Safety and Applied Nutrition (CFSAN) at FDA. Other participants include representatives from the Animal and Plant Health Inspection Service (APHIS), the CDC, the Department of Defense (DoD), and the Environmental Protection Agency (EPA), and a representative from the states. PrepNet, is working in conjunction with the White House Office of Homeland Security.

In addition to FoodNet and PrepNet, USDA participates in PulseNet, a national network of public health laboratories supported by HHS. These laboratories aid outbreak response by performing DNA fingerprinting of foodborne bacteria and comparing results through an electronic database maintained by CDC. PulseNet permits rapid and accurate detection of foodborne illness outbreaks and traceback to their sources, including detection of a linkage among sporadic cases. PulseNet has been key in enabling Federal agencies to rapidly detect and control outbreaks of foodborne illness.

USDA conducts emergency response activities on a routine basis. When adulterated or mislabeled product is found, FSIS works with the company to recall the product. Upon learning that there is an outbreak of foodborne illness possibly attributed to meat, poultry, or egg products, FSIS then works with Federal, State, and local public health entities involved in the outbreak. These actions by FSIS are not limited to products used in the NSLP. FSIS coordinates recalls for all federally inspected product under its jurisdiction and aids in the investigation of any outbreak potentially attributable to meat, poultry or egg products.

For the purposes of this hearing, however, I will focus upon USDA's activities with its sister public health agencies in the event that a commodity product must be recalled. There is a process for handling the recall or hold of commodity product used in the NSLP. The process was developed jointly by FNS, AMS, FSA, FDA, and FSIS in July 2001. It was specifically designed to address cases when a food safety issue is raised about a USDA purchased commodity, but has applications for all products used in the NSLP. USDA's food recall and hold process; defines Federal, State, and local agency roles and obligations; improves communication at all levels; provides information to State and local agencies more quickly; and facilitates of removal adulterated USDA commodity product from recipient agencies more quickly.

Commodity Holds and Recalls

The hold and recall process is a coordinated effort designed to provide maximum protection for school children when a commodity is suspected to be unsafe. The responsible regulatory agencies, FSIS or FDA (depending upon the product), receive notice of food safety concerns from many sources including hotlines, sampling and testing programs, vendor notification, and State and local agencies including health departments. When a food safety concern is raised about a USDA purchased commodity product, USDA agencies initiate the Commodity Hold and Recall Procedures. The first step is to immediately hold the product and alert FNS, as well as the appropriate procuring agency (AMS or FSA) that there is a potential health threat associated with the product and a recall may be conducted. An investigation of the product is then initiated by FSIS or FDA. FSIS acts as the liaison with FNS for all commodity product recalls, including FDA-regulated products such as fruits, vegetables, fish, grain, and nuts. As an added health protection, the Procedures require a decision to be made on the safety of the product within ten days. after ten days, the investigation or testing is inconclusive, USDA will remove the product from the schools to a separate and secure location, such as a warehouse, to prevent inadvertent use or consumption of the product in question. The product will be held until a decision is made to release or recall the product. FNS communicates that decision to the affected recipient agencies (RA). The hold provides USDA with additional time to conduct more testing and data collection and prevents a school from inadvertently using a product, which may pose a health threat.

Once notified of the potential recall, FNS starts a response and resolution database. At the same time, the procuring agency identifies the potential destinations and the amount of product involved. AMS tracks the product from production up to the point of delivery. At delivery, FNS is responsible for tracking the product to the school. In effect, all products are fully traceable and identifiable to USDA.

Meanwhile, FSIS and FNS prepare a news release to alert State and local agencies in the event that they decide to conduct a recall. The release provides details as why the product has been recalled and reiterates the procedures the local agencies should follow. This provides local agency directors with information helpful in responding to inquiries from parents, local government officials, and the media.

If the product is found to be safe, FNS immediately informs the procuring agency of the decision so they may immediately contact the vendor. If the product was put on hold, then

FNS issues a notice informing all FNS regional offices (RO) and relevant State distributing agencies (DA) that the product is safe. The distributing agencies, in turn, contact the schools.

If the product is found to be contaminated, and must be recalled, FSIS immediately notifies the plant or vendor that produced the product and is responsible for contacting all entities that received the product, as well as FNS and the procuring agency. FSIS prepares a recall notice and recommended press release with supporting information and supplies it to FNS.

Upon learning of the recall decision, FNS immediately notifies the State DAs and provides them with the recall information, press release, and other information helpful in tracking the product. The State DAs share the information with the affected recipient agencies and vendors, who bear the responsibility of notifying recipients about the problems with the product, and work to isolate the product to avoid accidental use. While talking with the vendors, the recipient agencies must track the location and quantity of unused product, as well as the amount of product already consumed. They must then notify the State DA of this information within 10 days. This ensures that USDA contracting officers will be able to contact the vendor to expedite the removal and replacement of the product. It also ensures that USDA can continue to track the scope of the recall.

The goal of this procedure is to ensure that potentially dangerous product is not used by a school and is removed from the NSLP. Heightened coordination at the Federal, State, and local level aids in ensuring that the process goes smoothly. Increased communication at all levels is made easier by the process, which specifies each entity's role and ensures that each party may quickly reach its counterpart. One example of this is that the State participants must designate officials and provide their contact information and that of their alternates to USDA.

The details on the new process, along with a toll-free contact number for the FNS commodity hotline, was provided to all designated State officials as well as RAs.

Food Safety Education Initiatives

Educating Food Service Professionals

USDA recognizes that consumers and food service professionals play a significant role in ensuring food safety. For that reason, USDA conducts numerous programs to educate these individuals on proper handling and cooking of USDA-regulated products. As the last handler of the product before it is consumed, these individuals are the last link in ensuring food safety.

FSIS has designed educational materials for food service professionals to teach them proper handling and cooking techniques. These materials are frequently provided in both Spanish and English. To further conquer the language divide, FSIS is working on a silent video that will enable all food preparers to understand food safety concepts. These materials are shared with FNS, who funds the publication and distribution of the materials to all schools participating in the NSLP. For example, FNS printed pocket cards and posters using the Partnership for Food Safety Education's *Fight BAC* message as a training tool and as a daily reminder of basic safe-food preparation techniques. Similarly, FNS utilized FSIS' Thermy consumer campaign to introduce Thermy to school food service managers and to encourage the use of thermometers in school food service establishments.

Training and Technical Assistance

As I mentioned earlier, the authority to enforce food safety requirements for schools lies outside of FNS' purview, so FNS works closely with FSIS and FDA to establish, enforce, and monitor food safety requirements. In addition, FNS has chosen to focus its food safety efforts on training and technical assistance to State agencies and local school food authorities who administer the NSLP. FNS has received $2 million annually for the past four years to promote food safety. Much of this has gone to the National Food Service Management Institute (NFSMI) to develop food safety projects and products. These include a cooperative effort with FSIS to develop and distribute safe food handling education materials to support a teleconference on food safety and sanitation for front-line food service staff; distribution of food safety posters to all schools; a nationally broadcasted teleconference on HACCP for school food service administrators; and development of a Food Safety Instructor Network (Train the Trainer) to provide regional training on food safety to food service operators.

To expand training and technical assistance efforts to schools, NFSMI is currently developing *Guidelines for the Handling of Holds and Recalls of Food Products;* a revised *First Choice: A Purchasing System Manual* that integrates food safety information on specifications, transporting, receiving and storage; and an updated *Serving It Safe - A Manager's Tool Kit*, a comprehensive training package on food service sanitation and safety. We believe that these types of products have and will continue to positively impact food safety in the schools.

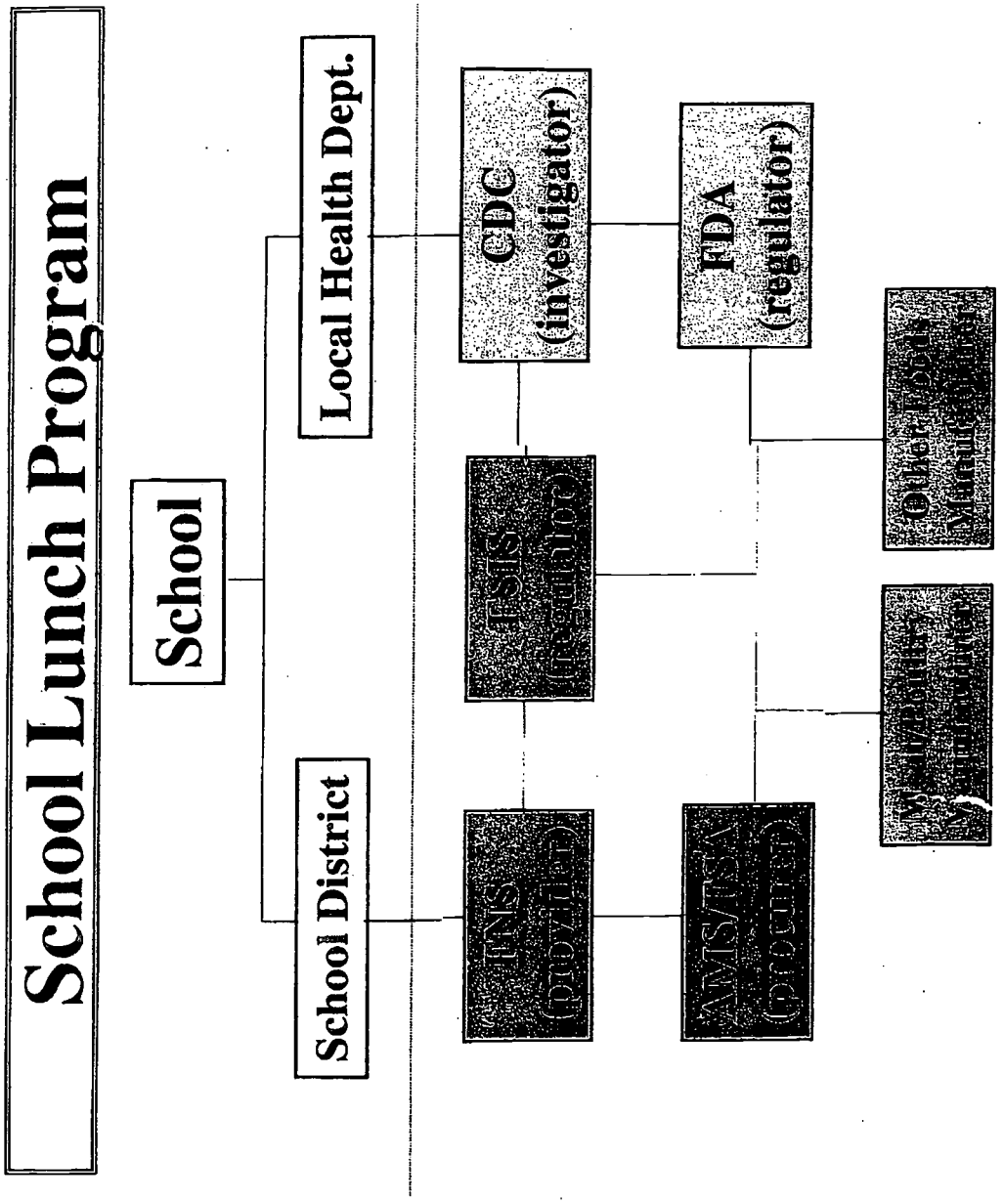
National Coalition for Food Safe Schools

FNS and FSIS also participate along with CDC and FDA in the National Coalition for Food Safe Schools, which is preparing a Food Safe Schools Action Guide to show school officials the proper food safety techniques. USDA has reviewed the guide and worked with FDA to provide input regarding cooking times and temperatures for USDA-regulated products.

Conclusion

By working together, USDA's agencies are working cooperatively, both internally and with their sister agencies at HHS, and are using their resources efficiently and effectively in an effort to ensure the safety of the food supply, as a whole, not just within the NSLP.

I thank you for the opportunity to testify on behalf of USDA and welcome your questions.



CSPI CENTER FOR SCIENCE IN THE PUBLIC INTEREST
Publisher of *Nutrition Action Healthletter*

Testimony of Caroline Smith DeWaal
Director of Food Safety for the
Center for Science in the Public Interest
on "Kids and Cafeterias: How Safe are Federal School Lunches?"

before the Senate Subcommittee on Oversight of Governmental Management, Restructuring and the District of Columbia and the House Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations

April 30, 2002
Washington, D.C.

Good afternoon. My name is Caroline Smith DeWaal, and I am director of food safety for the Center for Science in the Public Interest. CSPI is an advocacy and education organization focused on food-safety and nutrition issues. We are supported principally by the 800,000 subscribers to our *Nutrition Action Healthletter*.

Last December, the *Chicago Tribune* ran a series of investigative reports that exposed huge gaps in food-safety protections in the national school breakfast and lunch program.[1] This program serves meals to some 27 million children[2] and provides an essential nutritional foundation for our nation's school-age population.

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[1]David Jackson, "School Lunches: Illness on Menu," *Chicago Tribune*, Dec. 9, 2001, p.1; David Jackson and Geoff Dougherty, "Meat from Troubled Plants Sold to U.S. Lunch Program," *Chicago Tribune*, Dec. 9, 2001; David Jackson, "Schools Flunk Food Safety," *Chicago Tribune*, Dec. 10, 2001, p.1; David Jackson, "Vendors Reap Millions From Schools," *Chicago Tribune*, Dec. 10, 2001, p.15; Lori Olszewski and David Jackson, "Duncan Vows Food Safety," *Chicago Tribune*, Dec. 11, 2001, p. 1.

[2]USDA, Food and Nutrition Service, National School Lunch Program, Participation and Lunches Served, <http://www.fns.usda.gov/pd/slsummar.htm>.

Contaminated food is particularly dangerous to school-aged children because this population is among those at risk of contracting a serious foodborne illness resulting in hospitalization or death. Because children are especially vulnerable, many food-safety messages are targeted at parents. But when parents send their children off to school, they rely on the school system and the government to ensure the safety of the food their children eat.

The *Chicago Tribune* reporters uncovered many recent breaches and gaffes in the school lunch program, ranging from an uninspected Chicago tortilla factory, suspected of sickening 1,200 children nationwide, to school health officials more willing to blame the children than the lunchroom for illnesses. But this is not the first time that major outbreaks from school lunches have been discovered. In 1997, over 300 school children in five states were sickened from frozen strawberries harvested in Mexico and processed in California. One Michigan county was particularly hard hit, with 242 Hepatitis A illnesses, and another 10,000 people had to be immunized with gamma globulin to protect against the disease.[3] In an outbreak in Arkansas, over 200 people, most of whom were grade-school students, got sick from turkey dressing served in a pre-Thanksgiving meal served at a school.[4]

While those are dramatic examples, they represent just the tip of the iceberg. Food poisoning illnesses frequently go unrecognized and outbreaks are rarely reported.[5] There are

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[3]Testimony of Susan J. Doneth before the Senate Committee on Agriculture, Nutrition and Forestry, June 5, 1997.

[4]Caroline Smith DeWaal, Kristina Barlow, Lucy Alderton, and Michael F. Jacobson, Ph.D., *Outbreak Alert! Closing the Gaps in Our Federal Food-Safety Net*, Center for Science in the Public Interest, Oct. 2001; Telephone Conversation with Sharon Williams, Arkansas State Health Department, June 12, 2001.

[5]Even when foodborne illnesses are reported, children who complain of illness are sometimes suspected of "faking it" according to a school health official quoted in David Jackson, "Schools Flunk Food Safety," *Chicago Tribune*, Dec. 10, 2001, p.1.

probably numerous small outbreaks that are never recognized but that result in serious illnesses and lost time from school.

Several years ago, CSPI began tracking food-poisoning outbreaks, so we could better identify which foods were actually making people sick. CSPI's database of foodborne-illness outbreaks, published annually in "*Outbreak Alert!*," documents more than 1,600 over the last decade.[6] Even so, our database includes only a small fraction of those that actually occurred, because outbreaks so often go unreported.

An analysis of CSPI's *Outbreak Alert!* database shows that since 1990, there were at least 67 documented outbreaks, with more than 4,000 illnesses, in schools. (See Attachment I.). Those outbreaks were caused by 19 different pathogens and toxins, including *E. coli* O157:H7, *Salmonella*, and *Campylobacter*, and affected children and teachers in more than 25 states. In addition, it shows that the Centers for Disease Control and Prevention's (CDC) database is incomplete. Of the 67 school outbreaks in CSPI's database, nearly 10% were reported by sources outside of the CDC. The fact that school outbreaks continue to occur, and major ones have gone unnoticed by the CDC, shows that there are still serious gaps in our country's food-safety systems.

The problems with school lunch safety provide a microcosm of the overall condition of the food-safety system. The responsibility for food safety is split among at least nine federal agencies–from the Department of Agriculture (USDA) to the Bureau of Alcohol, Tobacco and

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[6]Caroline Smith DeWaal, Kristina Barlow, Lucy Alderton, and Michael F. Jacobson, Ph.D., *Outbreak Alert! Closing the Gaps in Our Federal Food-Safety Net*, Center for Science in the Public Interest, Oct. 2001.

Firearms.[7] As the school lunch issue amply demonstrates, balkanization and inflexible restrictions on applying resources result in many gaps and inconsistencies in the federal government's oversight of food safety.

Foods regulated by the Food and Drug Administration (FDA), such as vegetables, eggs, and seafood, account for almost 80 percent of the outbreaks in the *Outbreak Alert!* database, while the meat and poultry regulated by USDA account for less than 20%. The lion's share of federal inspection dollars go to USDA, which has approximately 7,600 inspection personnel for about 6,500 meat, poultry, and processed-egg plants. The FDA has only about 770 food inspectors for the 60,000 plants it oversees. That imbalance between risk and resources led CSPI and other consumer organizations to call on Congress and the President to develop a single, coherent food-safety statute that is implemented by a single, independent food-safety agency. Such an agency could allocate its resources according to risk. Under the current system, USDA's meat and poultry inspectors cannot be assigned, if an emergency arises, to inspect plants that produce fish, shell eggs, or other FDA-regulated foods.

Outbreak Recognition and Response

Schools are the first place where an outbreak could be recognized but some school officials may prefer to ignore a problem, rather than blame it on the lunch room.[8] Once a school

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[7]The nine food-safety regulatory agencies are the USDA's Agricultural Marketing Service, Animal and Plant Health Inspection Service, the Food Safety and Inspection Service, and the Grain Inspection, Packers and Stockyards Administration; the FDA's Center for Food Safety and Applied Nutrition and Center for Veterinary Medicine; the Environmental Protection Agency, the Commerce Department's National Marine Fisheries Service, and the Treasury Department's Bureau of Alcohol, Tobacco and Firearms.

[8]David Jackson, "Schools Flunk Food Safety," *Chicago Tribune*, Dec. 10, 2001.

identifies an outbreak, school staff need to inform local health officials, who in turn must notify state health officials. Eventually, the outbreak may be reported to CDC, to analyze whether there is a common food source nationally, and to include in their annual outbreak listing. However, reporting to CDC is largely voluntary.

The large number of government agencies with food-safety responsibilities can delay both the recognition and the government's response to food poisoning outbreaks in the school lunch program. While CDC becomes involved in outbreaks of national significance and conducts limited food testing, it doesn't regulate the food or the processing plant. CDC must identify the suspected food, then inform USDA if it is a meat item or FDA if it is a processed food without meat. Meanwhile, the agencies frequently sit on the sidelines until CDC identifies the likely food source.

The impact of this system was clearly evident in the burrito outbreak reported by the *Chicago Tribune*. From May to October, over 1200 children became ill while the processor continued to sell contaminated food to school systems around the country. The response was slow because of the bifurcated federal regulatory system: The USDA originally assumed responsibility for investigating the outbreak as the suspected food source, burritos, contained meat. However, once the source was determined to be the burrito shell itself, FDA became the government agency in charge.

FDA and USDA lack mandatory recall authority, so once the harmful food is identified, the federal government must rely on the plant itself to conduct the recall or ask a state to initiate a recall. In the burrito case, the plant manager trying to direct the recall found he couldn't obtain his own shipping records to give to FDA because they had already been given to USDA.

According to the *Tribune* report, the manager asked the age-old question, "Who is in charge?" when it comes to federal food safety regulation.[9]

Outbreaks involving school food service don't require any federal response under the existing system. Proper handling of foods following preparation is critical to ensuring their safety. Formation of toxins can occur in food that is maintained too long at temperatures below 135°F or in hot trays that don't heat the food evenly. Sanitary conditions in the school kitchens, central kitchens, and lunchrooms are inspected by the local or county governments, with few exceptions.

In 1996, CSPI surveyed nearly 50 local and county health departments about their approach to inspecting restaurants and other food service establishments. We found these agencies were chronically underfunded, poorly staffed, and often did not enforce food safety standards that complied with national recommendations.[10]

Preventing Food Poisoning Outbreaks in Schools

Preventing outbreaks in the school lunch program is largely dependent on the existing, flawed government food-safety programs. While meat and poultry products are generally becoming safer due to USDA's new pathogen reduction/performance standard systems, the same is not true for FDA-regulated foods. Today, FDA inspects domestic food plants only about once every five years. And a recent report by the Inspector General said that over 60% of the

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[9]David Jackson, "School Lunches: Illness on Menu," *Chicago Tribune*, Dec. 9, 2001.

[10]Caroline Smith DeWaal and Elizabeth Dahl, *Dine at Your Own Risk: The Failure of Local Agencies to Adopt and Enforce National Food Safety Standards for Restaurants*, Center for Science in the Public Interest, Nov. 1996, pp. 3-5.

inspections credited to FDA were actually being conducted by the states.[11] This means that during years with economic downturns, some states may reduce their level of food plant inspections as state revenues decline. For this reason and others, we don't believe that state inspection is a reliable substitute for federal oversight. And today's FDA food plant inspection rate is so low that it is not adequate to protect the safety of food being sold directly to the public or going into the school lunch program.

Also, because of the desire to minimize costs associated with food purchased by the school lunch program, the program may in fact purchase food that is of lower quality. The Supreme Beef case exemplifies how that can occur. In December 1999, USDA tried to close a plant for repeatedly failing to meet the government limits on *Salmonella* in ground beef. Despite its failing safety record over an extended period of time, this company was a major supplier to the school lunch program, selling $23.3 million dollars of beef to the government during the 1999-2000 school year.[12] The company successfully sued to stay open but has since filed for bankruptcy.

In 2000, USDA tightened its requirements for its ground meat purchases by testing every lot of meat purchased for the school lunch program for *Salmonella* and *E. coli* O157:H7, a practice that continues today. Lots that contain the harmful pathogen are rejected. While lot testing does not guarantee that all ground meat distributed by USDA for the national school

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[11]Department of Health and Human Services, Office of Inspector General, *FDA Oversight of State Food Firm Inspections: A Call for Greater Accountability*, OEI-01-98-00400, June 2000, p. 15.

[12]Supreme Beef Processors, inc. vs. United States Department of Agriculture, United States District Court for the Northern District of Texas Dallas Division, Civil Action No. 3:99-CV-2713-G.1, May 25, 2000, p. 4-5; Julie Vorman, *US to Stop Salmonella Testing of Beef for Schools*, Reuters, April 5, 2001, 12:13pm. (USDA briefly announced that it would curtail testing ground beef for *Salmonella*, but the Bush administration reversed the decision immediately.)

lunch program is free of hazards, it helps to eliminate many contaminated lots and forces the meat industry to be more careful.

Two years after implementation, USDA has a ready supply of affordable beef for school lunch meals and our children are getting a better, safer product. This program would be even more effective if the agency required more frequent testing of meat by its suppliers. For example, some fast food restaurants require suppliers to check their ground beef every 15 minutes for *E. coli* O157:H7 and *Salmonella*. This gives a much greater level of certainty than USDA's current testing program, and school children certainly deserve the additional protection.

While the meat industry complains that the zero-*Salmonella* standard for ground meat is unfair, it is justified because children are among the most vulnerable consumers. We should serve them the safest products, not just the cheapest. No amount of financial savings could justify the illness or death of a child.

Although USDA has tightened its purchasing specifications for *Salmonella* in ground beef, it has ignored other problems. For example, just last summer, CSPI discovered that the purchasing specifications still allowed beef trimmings to have small bits of spinal cord attached, despite concerns about the spread of mad cow disease. USDA quickly eliminated that standard, but it shows that the agency's standards do not reflect current food-safety concerns.

Another gap is in the area of transportation of foods. Foods always should be transported in sanitary vehicles, and perishable items should be in refrigerated trucks. On the federal level, neither USDA nor FDA has a comprehensive regulatory program for transportation and storage of the products they regulate. FSIS has a reactive approach, only investigating products in interstate commerce that it suspects are adulterated.

Current regulations are not adequate to ensure that potentially hazardous foods are transported and stored safely. There are no uniform refrigeration or time requirements for shipment of foods; no government oversight to prevent cross-contamination in trucks or other vehicles; and no comprehensive record-keeping system so that receivers of these foods can be sure they were shipped under proper conditions.

There is also concern because of the increasing trend toward heating lunches in one school or central kitchen and then transporting them locally to a school for distribution. The problems inherent in keeping these food hot during transport as well as the potential for cross contamination en route are tremendous. Transportation of food products needs more careful oversight by federal, state, and local officials.

Recommendations

Improving the safety of school meals can only occur through comprehensive reform of the federal food safety system and specific improvements aimed at the national school lunch program, including federal, state, and local participants.

1. The federal food-safety agencies need mandatory traceback and recall authority for food products. Government action will result in faster, more efficient recalls. The federal government carries more credibility with consumers and is able to garner greater press attention, which is critical for successful recalls. Country-of-origin and state-of-origin labeling of produce and other foods would help to facilitate traceback of foods linked to a recall.
2. Congress should give the FDA more resources to inspect the 60,000 domestic food plants under its jurisdiction at least once per year. While Congress has just given FDA $97

million to beef up its food inspections as part of the bioterrorism package, the lion's share of that money will be devoted to food imports. Food for the school lunch program is required to be domestically produced, so it is vital that FDA be given additional funds to ensure much more frequent inspection of domestic food plants that it regulates. After all, the government already inspects meat and poultry processors every day.

3. USDA should require processors of ground meat products to test for *Salmonella* and *E. coli* O157:H7, increase the government's testing frequency to several times a day, and reject positive lots. USDA should also test for *Listeria monocytogenes* in all ready-to-eat meat products purchased for the school lunch program. This program would be further strengthened by passage of the Harkin/Eshoo Meat and Poultry Pathogen Reduction Act (S. 2013, H.R. 3956).

4. USDA's agency that purchases food for the school lunch program should visit every plant that sells and donates food to ensure that the plants are operating according to federal food-safety laws, and that they are regularly inspected by the appropriate state and federal agencies. Food processors and suppliers to the school lunch program should be required to regularly test their food for pathogens and other contaminants and should disclose the results to the purchasing agency or school. USDA should do additional testing during their plant audits and should also audit state inspection programs annually.

5. States who rely on strong local enforcement should regularly audit their county and local governments to ensure that they conduct monthly or more frequent inspections of school kitchens, cafeterias, and central kitchens used for the national school lunch program. Where local programs are weak, states should maintain a separate inspection force to

ensure the safe and sanitary preparation of food served in schools, day care centers, nursing homes, hospitals, and prisons.

6. School lunch programs should utilize safety systems adopted by the fast food industry. For example, Taco Bell has introduced a system in some of its restaurants designed to alert staff to temperature violations. Reheated food, such as ground beef or beans, is held on a heating table until it is assembled into food products sold by the restaurant. The heating table and the cooling equipment that holds fresh produce are connected to a monitor, which turns on an audible alarm system in the restaurants if temperatures fall outside the safety range. If the problem is not corrected within a specified amount of time, a second alarm is issued and a telephone call is automatically made to corporate headquarters.[13]

7. The CDC should require states to report foodborne-illness outbreaks. The CDC has established reporting on only five foodborne pathogens. While some states voluntarily give the CDC information on outbreaks caused by other foodborne pathogens, the CDC does not monitor the states that do not. As a result, the CDC's listing of food-poisoning outbreaks is incomplete. CDC also needs to publish outbreak reports and line-listings in a timely fashion. At the present time, the CDC reports on outbreaks months, or even years, after they have occurred. Without timely information, public-health officials and consumers can do little to manage and prevent outbreaks.

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[13]Caroline Smith DeWaal and Elizabeth Dahl, *Dine at Your Own Risk: The Failure of Local Agencies to Adopt and Enforce National Food Safety Standards for Restaurants*, Center for Science in the Public Interest, Nov. 1996, p. 27.

8. Weaknesses in our government programs could set the stage for a crisis in consumer confidence, a crisis that we would like to see prevented. That is a compelling reason to create an independent food-safety agency with responsibility from farm-to-table. Such an agency must be strongly oriented to protecting public health as a means of protecting public confidence. In addition, it would provide a single regulatory checkpoint with which the CDC and the states could interact during an outbreak. We urge Congress to act this year to pass the Durbin/DeLauro Safe Food Act of 2001, a bill that offers a much-needed strategy to consolidate food safety regulatory functions in a single federal agency.

Attachment I

(updated) 4/24/2002

Outbreaks Occurring in Schools (1990-2001)
Source: CSPI's Outbreak Alert Database

No.	Date	Vehicle	Etiology	Cases	States	Ref.*	Location
1	Jan-90	Guanabana juice	Annonaceous acetogenins toxin	80	TX	5	nursery school
2	Feb-90	Bernaise sauce	*Salmonella* Enteritidis	23	CT	1	school
3	Feb-90	Milk shake/ raw eggs (suspected)	*Salmonella* Enteritidis	10	MD	1	school
4	Apr-90	Canned turkey	*Clostridium botulinum*	7	PR	6	school
5	Apr-90	Tacos	*Clostridium perfringens*	26	FL	1	school
6	May-90	Chicken casserole	*Staphylococcus aureus*	54	MO	1	school
7	May-90	Ham	*Staphylococcus aureus*	100	RI	1	school
8	Nov-90	Pizza wheel sandwich (suspected)	*Escherichia coli* O157:H7	10	MT	1	school
9	1991	Peanut butter and crackers	Hepatitis A	9	IL	3	school
10	Apr-91	Steak (USDA); cheese (FDA); bun (FDA)	*Salmonella* Reading	107	VA	1	school
11	Jun-91	Home-made ice cream (cooked eggs)	*Salmonella* Enteritidis	22	MD	1	school
12	Jun-91	Watermelon	*Salmonella* Javiana	39	MI	1	private home/school
13	Jun-91	Bread pudding (pooled eggs)	*Salmonella* Enteritidis	105	MA	1	school/private home
14	Dec-91	Punch	Unspecified chemical	25	MN	1	school
15	May-92	Taco meat	*Clostridium perfringens*	91	GA	1	school
16	Oct-92	Taco meat	*Clostridium perfringens*	41	WA	4	school
17	Nov-92	Hamburger buns; cookies	Norwalk-like virus	250	MN	1	school
18	Dec-92	Spaghetti with meat sauce	*Staphylococcus aureus*	40	NY	1	school
19	Jan-93	Pasta with sauce	*Salmonella* Heidelberg	160	OH	1	school
20	Jan-93	Pasta salad	*Staphylococcus aureus*	26	IN	1	school
21	Jan-93	Chili; roll	Norwalk/ Norwalk-like virus	171	WY	1	school
22	Apr-93	Salsa (suspected)	*Salmonella* Enteritidis	26	NM	1	school
23	May-93	Spam (USDA); rice (FDA); orange drink (FDA)	*Staphylococcus aureus*	44	HI	1	school
24	Oct-93	Chicken sandwich	*Salmonella* Enteritidis	33	NY	1	school
25	Mar-94	Cheese; lettuce; tomatoes	*Shigella sonnei*	300	MN	1	school
26	May-94	Shrimp; rolls; chicken salad	Norwalk/ Norwalk-like virus	46	MD	1	school

No.	Date	Vehicle	Etiology	Cases	States	Ref.*	Location
27	May-94	Taco salad with beef	*Staphylococcus aureus*	9	HI	1	school
28	Sep-94	Salad bar	*Escherichia coli* O157:H7	26	TX	1	school
29	Nov-94	Steak fingers	*Escherichia coli* O157:H7	20	NM	1	school
30	Nov-94	Beef (USDA); noodles (FDA); mashed potatoes (FDA); ham & cheese sandwich (FDA)	*Salmonella* Enteritidis	109	KS	1	school
31	Nov-94	Turkey	*Salmonella* Enteritidis	55	OH	1	school
32	Nov-94	Turkey (USDA); dressing (FDA)	*Staphylococcus aureus*	219	AR	7	school
33	Dec-94	Hamburger, ground turkey	*Clostridium perfringens*	60	WA	1	school
34	Oct-95	Pasta bar	*Staphylococcus aureus*	32	IN	1	school
35	Feb-96	French dip beef	*Staphylococcus aureus*	30	CA	1	school
36	Feb-96	Roast beef	*Clostridium perfringens*	40	CA	1	school
37	Mar-96	Marinara sauce	*Bacillus cereus*	22	FL	1	school
38	Mar-96	Beef tacos	*Salmonella* Heidelberg	118	MA	1	school
39	Mar-96	Fruit rolls (suspected)	Norwalk/ Norwalk-like virus	14	ID	1	school
40	Apr-96	Chicken (USDA); gravy (FDA); mashed potatoes (FDA)	*Clostridium perfringens*	71	WI	1	school
41	Oct-96	Chocolate milk	*Salmonella* spp.	19	NV	1	school
42	Oct-96	Spam musubi	*Staphylococcus aureus*	8	HI	1	school
43	Oct-96	Cheese and ham casserole	Norwalk/ Norwalk-like virus	90	KS	1	school
44	Nov-96	Turkey	*Salmonella* Hadar	27	IL	1	school
45	Nov-96	Turkey (USDA); gravy (FDA); mashed potatoes (FDA)	*Clostridium perfringens*	15	WI	1	school
46	Dec-96	Chicken (USDA); rice (FDA); peas (FDA)	*Clostridium perfringens*	13	NY	1	school
47	Jan-97	Frozen strawberries	Hepatitis A	256	5: MI, ME, WI, AZ, LA	1	school
48	Mar-97	Fruit	Hepatitis A	21	MI	1	school
49	May-97	Ice cream bars	*Escherichia coli* O157:H7	3	IL	1	school
50	Aug-97	Submarine sandwiches	Norwalk/ Norwalk-like virus	60	OH	1	school
51	Oct-97	Spaghetti and meat sauce	*Streptococcus* spp.	122	HI	1	school
52	Nov-97	Macaroni (FDA); ground turkey (USDA)	*Staphylococcus aureus*	98	FL	1	school
53	Dec-97	Ham	*Staphylococcus aureus*	37	IN	1	school
54	Dec-97	Beef, veal	*Clostridium perfringens*	32	IL	1	school
55	Mar-98	Multiple, beans	*Clostridium perfringens*	48	CA	1	school

No.	Date	Vehicle	Etiology	Cases	States	Ref.*	Location
56	Mar-98	Hot dog	*Salmonella* Enteritidis	2	FL	1	school
57	Mar-98	Deli ham sandwich	Norwalk-like virus	125	TX	1	school
58	Apr-98	Fish sticks	*Shigella sonnei*	47	LA	1	school
59	May-98	Taco or nacho salad	*Campylobacter jejuni*	16	WI	1	school
60	Aug-98	Chicken	*Clostridium perfringens*	50	NM	1	school
61	Oct-98	Spaghetti sauce	*Clostridium perfringens*	78	VA	1	school
62	Oct-98	Macaroni and cheese, turkey ham	*Staphylococcus aureus*	19	NY	1	school
63	Oct-98	Taco meat	*Escherichia coli* O157:H7	11	WA	4	school
64	Nov-98	Pork, rice, beans	*Escherichia coli* O157:H7	21	FL	1	school
65	Dec-98	Beef and macaroni casserole	*Clostridium perfringens*	300	OH	1	school
66	Mar-00	Ground beef	*Escherichia coli* O157:H7	18	MN	2	school
67	Apr-00	Ground beef	*Escherichia coli* O157:H7	43	NY	2	school

Total Outbreaks	**67**
Total Illnesses	**4,249**

*References:

1. Centers for Disease Control and Prevention, U.S. Foodborne Disease Outbreaks, 1990-1998 updated February, 2002. <http://www.cdc.gov/ncidod/dbmd/outbreak/us_outb.htm>
2. Centers for Disease Control and Prevention, *E. coli* O157 Outbreak Summaries, years 1994-1997 obtained by FOIA, years 1998-2000 obtained online at <http://www.cdc.gov/ncidod/dbmd/outbreak/ecoli_sum.htm>
3. Centers for Disease Control and Prevention, Food-Safe Schools Action Guide (Draft).
4. Washington State Health Department, Confirmed Outbreaks of Foodborne Disease, Washington State, 1990-1999.
5. State-health department news release; publication or report.
6. Trade publication.
7. Newspaper or internet report verified by call to public-health official.

S.T.O.P. – Safe Tables Our Priority
Working Together To Make Safe Food A Reality

Testimony of the Mother of a Victim of Hepatitis A Transmitted by School Lunch

Susan Doneth
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April 30, 2002

"Kids and Cafeterias: How Safe are Federal School Lunches"
Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia
House Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations

Before I begin my testimony, I would like to thank Senator Richard Durbin for inviting me to participate in this hearing today.

My name is Susan Doneth and I am the mother of a child who became extremely ill with Hepatitis A after eating frozen strawberries served in her school lunch. My daughter, Lindsay, innocently consumed a strawberry dessert at school and 28 days later, she became extremely ill. I am a member of S.T.O.P. - Safe Tables Our Priority, and I am submitting this testimony in order to share with you the devastating effects of foodborne illness.

When Lindsay first began exhibiting symptoms, she complained of severe body aches, headache, and abdominal pain. She had a high fever and began vomiting. Assuming that Lindsay had the flu, I kept her home from school. After four days, it became apparent that something was seriously wrong. Lindsay was no longer able to eat or drink and she would sob because her abdominal pain was so severe. Alarmed, we took Lindsay to the emergency room. She was severely dehydrated and her urine was the color of weak coffee. The physician immediately suspected *Hepatitis* and admitted Lindsay to the hospital. Lindsay was so dehydrated that the medical personnel had difficulty finding a vein to start an IV. I had to leave the room as my husband and the nurses held my screaming child down in order to get a needle in her arm.

Lindsay would remain in the hospital for six days. During that time, my husband and I would sit by her bed and pray that she would stop vomiting. I have never seen a child so sick and I cannot describe to you what it is like to witness a child so ill, especially when that child is your own. At one point, Lindsay stopped communicating with us and would barely open her eyes. We watched helplessly

and she groaned in her sleep while tears silently rolled down her cheeks. She was only able to whisper, "Mommy, it hurts everywhere." Lindsay had not eaten or had anything to drink in over a week, yet she continued to dry heave trying to expel the poison in her body. She was on continuous IV fluid, pain medication, and anti-nausea drugs. During her hospitalization, she lost 10% of her body weight. For months after she left the hospital, she battled hair loss, fatigue, and suffered from excruciating shingles twice. She continued to complain of unexplained back pain and we returned often to the doctor.

In the weeks following Lindsay's illness, hundreds of Michigan schoolchildren became ill with *Hepatitis A*, most of them in the town where I live. Contaminated frozen strawberries had somehow slipped through the supposed food safety net and been widely distributed in the school lunch program. As a consumer, I was baffled as to how this could happen. As a mother, I was outraged. I began asking questions and demanding answers that no one could give me. Nobody could explain to me how such a thing happened. I learned that there are so many different agencies involved in overseeing the safety of our food supply, there are gaping holes that exist in the present system. I also learned that even though school lunches are served to children who are the most vulnerable population in terms of foodborne illness, there is little in place ensuring their safety. Companies supplying food to be served in school lunches should have to meet a higher standard of safety, not a lower one. More importantly, there must be traceback capability and accountability when a foodborne outbreak occurs. We must be able to pinpoint exactly where the food came from and make sure that it is not further distributed. In addition, if a company has had critical violations in the past, or has distributed something that is contaminated, they should be forever barred from doing further business with the Federal School Lunch Program.

There are a few important points that I would like to make. First, foodborne illness victims continue to be ignored as "real" victims. Often, the source of their foodborne illness is never discovered because it is often impossible to trace back the contaminated product to its source. We should have the ability to track our food from the farm to the fork. Only then will there be adequate accountability, which will help improve the safety of the food we are consuming.

Second, there should also be a single food safety agency charged with overseeing the safety of the food supply. The fragmented system currently in place is clearly not working. Currently, there are more than a dozen agencies involved in overseeing the safety of the food supply. This severely complicates matters when the source of a foodborne illness falls into multiple jurisdictions. In the case of the contaminated frozen strawberries that caused the *Hepatitis A* epidemic, FDA oversees fruit, but USDA has jurisdiction for the Federal School Lunch Program. Ultimately, nobody is willing to take responsibility and it leaves room for blame-shifting and a whole lot of red tape.

Third, I would like to address public education. Although public education about foodborne illness and its prevention is important, too much emphasis is placed

on this by industry and often government. As a consumer, I am not responsible for "cleaning up" dirty food, or cooking cow feces out of my hamburger meat. The food that my family consumes should not be contaminated to begin with. After my daughter Lindsay became ill, I became VERY educated about foodborne illness. I did everything possible to protect my family and still, we were not protected.

Tragically, 18 months after Lindsay was stricken with *Hepatitis A*, my oldest daughter, Sara, then 14 years-old, was poisoned with *E.coli* 0157:H7. She spent over two weeks in a hospital and went into the life threatening complication *Hemolytic Uremic Syndrome* (HUS) and went into kidney failure. She was rushed by ambulance to a children's hospital in another city. There, she endured blood transfusions, endless pain and vomiting, bloody diarrhea, and her pancreas was severely compromised. Again, I had to watch as another child of mine was held down by hospital personnel while needles, tubes, and various equipment was attached to her.

The team of pediatric nephrologists treating Sara were trying to prepare my husband and I for the possibility that our child might die because she was so ill. I remember sitting in the hospital in denial. Still not believing that such a thing could be happening to my family a second time. I had done everything right. I had educated myself about foodborne illness, I had become politically involved in the issue, and I had done everything in my power to protect my children. Clearly, it wasn't enough and it did nothing to protect us from becoming victims again. Sara now has permanent kidney damage, high blood pressure and continues to see a pediatric nephrologist on a regular basis. I thank God every day that my daughter is still with us and didn't lose her life like many victims have.

We were never able to trace the source of Sara's illness. Because hundreds of people had not become ill, it was never investigated thoroughly by the local health department. Sara could have gotten sick from something I cooked, she could have gotten sick from something she ate in a restaurant, or she could have been poisoned by something served in her school lunch. We will probably never know and that is a difficult thing to live with. Incredibly, she was not important enough to even warrant an investigation. As a mother, I refuse to sit back while industry points their fingers at consumer education and somehow insinuates that I am to blame for my children getting sick, or it wasn't prevented because of something I didn't do. My children and I did nothing wrong and we are not to blame.

As a citizen, I expect public health and safety to be the paramount concern of lawmakers. The Lindsay and Sara Doneth's of this world are not expendable in the pursuit of cheaper, less burdensome regulations. Furthermore, when the government is entering into contracts with food suppliers, the contract should not go to the lowest bidder if they aren't also the safest bidder.

Foodborne illness victims should be given the opportunity to tell their stories in

forums such as this hearing today. It seems that participating in government as a citizen is almost impossible if one works full time and lives outside the beltway. Most foodborne illness victims and their families are average people like myself and not politicians, but nobody understands this issue better than someone who has experienced it. I hope that when you are reading your statistics and making your decisions, you will remember these statistics are not just numbers. They represent real people, many who were not as lucky as my daughters and paid for their trust in the current food safety system with their lives.

I thank the committee for allowing me to share these comments today.

Testimony of
John Bode
Counsel
National Food Processors Association (NFPA)
Before the
Senate Government Affairs Subcommittee
Oversight of Government Management, Restructuring,
and the District of Columbia
and the House Government Reform Subcommittee on Government Efficiency,
Financial Management, and Intergovernmental Relations
Washington, D.C.
Tuesday, April 30, 2002 2:30 p.m.

Mr. Chairman, my name is John Bode, and I serve as Counsel to the National Food Processors Association (NFPA). NFPA is the largest food-only trade association in the United States, representing the $500 billion U.S. food processing industry on scientific and public policy issues involving food safety, nutrition, technical and regulatory matters, consumer outreach and international affairs. NFPA's members use a variety of processing and packaging technologies to produce branded and private-label food and beverage products found in foodservice and retail stores. Known as "the food safety people," NFPA has three laboratory centers in the United States. Our mission is to provide the best scientific and technical services to the nation's food processors, and translate our unique food safety and food science expertise into sound public policy.

As food processors, our members are proud of their participation in the School Lunch Program and the contributions of the National School Lunch Program to the nutritional health of our school children. Processed foods play an important role in ensuring the safety of school feeding programs, and are as nutritious as fresh foods. Our members

produce many products, including juices, bagged salad mixes, canned, frozen and dried fruits and vegetables, providing convenience and enhanced safety, increased shelf life, spoilage prevention and year-round availability. Many of these products are also instrumental in helping children reach the Administration's 5 A Day For Better Health goals, of which we are strong supporters.

The Importance of Safety to the Food Industry and the Critical Role of Sound Science

Food safety is the first order of business for the food processing industry. With customer relationships and businesses on the line every day, NFPA members are the original food safety advocates, and we have been very successful in our efforts. Food processing makes foods safe. Many steps are taken by processors to keep foods safe, such as heating foods to kill bacteria, including cooking, pasteurizing, freezing, and canning.

While the U.S. has a strong and credible food safety system, and America's food supply is among the safest in the world, we are continually striving to make our system even better. The industry shares the Federal Government's goal of identifying and reducing foodborne pathogens and their associated health risks, and our ongoing and continuous efforts in food safety research, technology, education, and intervention and control methods are a testament to our resolve and commitment in this regard.

Risk Assessment, Surveillance, Prevention and Education

A strong science base is essential to accuracy in the identification, assessment and control of food safety risks. Surveillance -- knowing where the problems are and identifying new problems rapidly -- is key to managing food safety risks. The federal food safety system today has better prevention programs and surveillance systems, faster outbreak response, and more focused research and risk assessment activities, all of which have led to improved food safety. Risk assessment and surveillance methods are the two key tools necessary to identify and determine the most appropriate focus for food safety resources and research, and should be appropriately funded and utilized accordingly.

We also need science-based methods to quantify the progress being made. Many of these mechanisms are already in place or in the pilot stage, such as FoodNet, PulseNet, and Food & Drug Administration's (FDA) and United States Department of Agriculture's (USDA) Foodborne Illness Education Information Center. Clearly, proper funding levels should be maintained for these important programs as well. With the events of September 11th, these programs have become even more important than ever, and we applaud the attention and funding they are now receiving.

Because of surveillance and risk assessment activities, we know how important it is to educate children and the public at large about proper food handling. NFPA supports the messages agreed upon with government agencies, consumers, health educators and industry, such as the FightBac! Campaign, which clearly states: 1) wash hands; 2) separate foods; 3) cook thoroughly; and, 4) store properly. These simple messages

should continue to be used as key preventive steps in public education and training, and thereby assist in further reducing the risk of foodborne illness.

It should be recognized that food safety is an undertaking that must be met in a comprehensive manner. To assure success, all components of the food industry, from farm-to-table; all levels of government; and all food handlers and preparers must actively work for food safety.

Most illnesses occur when foods are cooked or handled improperly, including:

- Sanitation deficiencies (which may cause cross-contamination), such as improper cleaning of food preparation sites, hands, utensils, counters or cutting boards;
- inadequate cooking & heating, which may include improper thawing; or
- improper handling, such as deficiencies in cooling, storage or refrigeration.

Therefore, the primary focus in ensuring the safety of foods in schools and elsewhere should be placed where the greatest impact can be achieved -- educating handlers and preparers on safe food handling and preparation. The same rules apply for schools as they do anywhere else, be it a food production facility, foodservice operation or home kitchen.

Foodborne Illness Rates Continue to Decline

As we know from recent Centers for Disease Control (CDC) figures, incidences of foodborne illness in the U.S. have improved dramatically (food poisoning from a variety of harmful microbes declined by 21 percent between 1996 to 2001, according to the CDC). USDA reports continuing declines in food poisoning and bacteria found on meat and poultry as well. A recent General Accounting Office (GAO) report indicates there were only 20 foodborne disease outbreaks in schools in 1997, and only 8 were associated with foods served in the school meal programs, while the other 12 were foods brought from home or obtained from other sources.

School foodservice should be considered in the broader context of declining rates of foodborne disease. With **33 million meals** served **daily** in the National School Lunch and School Breakfast Programs, the low rate of foodborne disease incidence in school foodservice is a laudable achievement upon which we are eager to improve. There is good reason to believe that streamlined foodservice systems that rely heavily upon processed foods are part of the reason for improvements in food safety. These systems permit foodservice professionals to achieve greater control of food preparation and handling responsibilities and thereby minimize the potential for problems in sanitation, cooking and handling practices.

Foods Sold in Schools Should Meet the Same Food Safety Standards and Have Access to the Same Food Safety Technologies as Other Processed Foods

Processed foods sold for use in school foodservice are generally required to meet the same federal food safety requirements as other processed foods. Whether requirements are administered by the USDA's Food Safety and Inspection Service (FSIS) or the FDA is dependent upon the unique statutory requirements that Congress has imposed. Unique requirements may be based upon the characteristics of the regulated foods or the traditions and cultures of the responsible committees of Congress and the regulatory agencies. Nonetheless, failure to comply with the requirements of either of those agencies is an extremely grave matter, not only for the economic survival of the food processor, but potentially in matters of civil and criminal liability for responsible persons within the company. Not surprisingly, compliance with the extensive body of federal food safety requirements is routinely high and serious lapses are appropriately the focus of great scrutiny.

NFPA notes that there are two stark exceptions to the general requirement that school foodservice foods have the same food safety opportunities available for processed foods sold at retail. First, Congress enacted subsection 23(c) of the Federal Meat Inspection Act, which provides for an exemption for pizzas served in nonprofit institutions, such as schools, from the rigorous food safety requirements applied to pizzas processed for sale to retail or other foodservice establishments. Because pizza is generally a low-risk product and requirements imposed on food processing are so highly protective, those lower standards apparently have not given rise to any food safety problems. Nonetheless,

NFPA questions the prudence of adopting lower food safety standards for any food because it is to be served in nonprofit institutions, such as school foodservice.

Second, in 2000, USDA dictated, without public comment or traditional contractor consultation, that ground beef must be free of *Salmonella* and that meat products may not be treated by irradiation, an approved pathogen-reducing technology that is approved by both FDA and USDA for raw meat and poultry, and for other food products. Doing so created: 1) An untenable, unachievable, and scientifically flawed zero tolerance standard, and 2) banned the use of the one tool that can virtually guarantee the absence of salmonella in raw ground beef -- irradiation.

Salmonella is natural and unavoidable in raw meat, and taken care of by proper cooking. Even USDA acknowledges that salmonella is not an adulterant in their *Salmonella* performance standards for ground beef. Regrettably, bureaucratic inertia appears to account for the imprudent restriction against irradiation remaining in place today. NFPA submits that it is inappropriate for USDA to prohibit the use of any approved food safety technology in foods provided for school foodservice, and furthermore, that this restriction is a blunder in public education regarding irradiation and the use of approved food safety technologies.

Since food irradiation is widely misunderstood, permit me to elaborate on this food safety technology. Food irradiation is the process of exposing food to a carefully measured amount of ionizing radiant energy. This energy -- electrons, gamma rays or x-rays --

travels through the food, killing pathogens such as *E. coli* 0157: H7, without raising the temperature of the food. The process also is referred to as "cold pasteurization" because bacteria are killed without the use of heat.

Scientific studies conducted by public and private researchers over the past 50 years support the benefits of food irradiation and conclude that it poses no significant health risk. Irradiated foods look, smell and taste like traditionally processed foods and they are equally nutritious. In a report issued in 2000, GAO analyzed the available research and also concluded that the benefits of irradiation outweigh any risks. The FDA, American Medical Association and the World Health Organization agree that irradiated foods are safe. Forty countries, including the U.S., permit food irradiation.

Food irradiation is not a replacement for Good Manufacturing Practices (GMP's) and inspection methods or safe food handling practices, but rather supplements these efforts with added protection against many harmful bacteria that are naturally present in the environment and on certain foods. Irradiation also reduces spoilage bacteria, insects and parasites, thereby extending shelf-life and increasing wholesomeness.

Because of the paramount importance of food safety, it is unreasonable and unjustified to ban irradiation of foods for the School Lunch Program. The food industry should be permitted to use all food safety tools available to ensure our children receive safe food.

Single Food Policy is Needed, Not Single Food Agency

NFPA respectfully submits that the proposal to establish a single food safety agency offers no meaningful benefit to food safety or school food feeding programs directly. There is absolutely no evidence that a change in organizational structure would enhance food safety. My experience with relatively minor federal reorganizations impressed me greatly with the disruption in agency productivity that is caused by organizational changes. Quite simply, agency organizational changes prompt personnel to congregate around the coffee pots and water coolers to discuss at incredible length every imaginable reorganization scenario. As a result, productivity suffers.

Moreover, consolidation of federal food safety agencies would not alter the vast majority of differences in their regulatory requirements. The differing requirements generally have sound basis, either in regulatory systems or, more often, unique requirements of the authorizing statutes that Congress has provided. Therefore, we respectfully submit that it is Congress, not the separate federal agencies, that account for the bulk of the differences in the regulatory systems of the federal food safety agencies. With very few exceptions, merging federal agencies would not change those differences.

The current regulatory system governing food can continue to be improved through stronger communication and coordination among the responsible agencies. We believe the best way to do that is to ensure that the Federal Government, along with states and local jurisdictions, take the steps necessary to ensure the highest level of coordination between all agencies with food safety responsibilities.

coordination at the highest levels. We suggest the Council should include as members the Secretaries of Health and Human Services, Agriculture and Treasury, the Administrator of the Environmental Protection Agency, the Director of Homeland Security, a representative from the States, and other officials the President wished to designate.

We believe it would be beneficial for the Council to create a Mission Statement, including a single food safety policy to govern policy development and regulatory activity at all federal food safety agencies and that move the U.S. to a science-based, risk-based food safety system.

The Council should identify any underlying regulatory inefficiencies or problems within the current food safety system that can be addressed through executive or administrative actions (such as MOU's among the agencies), and ensure effective implementation of same.

Lastly, the Council should identify specific problems that require legislative action involving existing food safety statutes that impede coordination and cooperation among existing agencies, the efficient allocation of resources, and hinder movement to a science-based, risk-based food safety system.

* * * * *

Mr. Chairman, I appreciate the opportunity to share the perspective of the National Food Processors Association and would be pleased to assist Congress as you pursue your important work of continuing improvement upon one of the world's most successful food safety systems.

S.T.O.P. – Safe Tables Our Priority

Working Together To Make Safe Food A Reality

"Kids and Cafeterias: How Safe are Federal School Lunches?"
Testimony of
Cheryl Roberts of Comer, Georgia,
S.T.O.P. member and mother of Tyler Roberts, a victim of *E. coli* O157:H7
April 30, 2002

On behalf of my family, Safe Tables Our Priority, and all of the victims of foodborne illness, thank you for inviting me here today.

On April 23, 1998, my son Tyler was 11 years old. That day, Tyler ate just a few bites of a contaminated, undercooked hamburger at school. He realized it was raw and stopped eating it, but not soon enough. It only takes 3-5 *E. coli* O157:H7 bacteria to kill a child. Tyler had eaten enough that his next few weeks and ours would be filled with horror and the fear that he would die.

Within the next few days, Tyler became very ill. Pain and diarrhea, along with vomiting, came and went for days. We visited his doctor, who was concerned but did not yet connect his symptoms with *hemolytic uremic syndrome*, an outcome of *E. coli* O157:H7 poisoning, since there had been no other reported cases. For the next week Tyler's condition was up and down. At times he was doubled over with severe stomach cramps. We felt helpless because he was hurting so bad. As his condition got worse, the doctor sent us to have more extensive blood work done. We were horrified to find out that Tyler was in kidney failure.

He was hospitalized in Atlanta 80 miles from our home. We were told that in most cases, children with Tyler's kidney function would be on dialysis. But due to his existing diabetes, and age near puberty, we were told that if he went on dialysis, he would probably have to be put on a transplant list. Tyler had to have diuretics and his color was white as a sheet. He had severe fatigue. He cried and had horrible nightmares of monsters coming to take him away. He was in the hospital for a week. It would be well over a year before our 11-year-old son got his color and strength back and began to look like a normal child.

All of this, we then found out, was because of an under-cooked, contaminated hamburger he ate at school. We had told the doctor at the hospital about the hamburger. It was reported, and someone went to the school the next day and took the leftover hamburgers. They went to two different labs, and tested positive for *E. coli* O157:H7 bacteria. It was sheer luck that they obtained an identified pathogen and source. Often there is no food left

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Prepared with the assistance of S.T.O.P. for the Senate Subcommittee on Oversight of Government Management, Restructuring, and District of Columbia and the House Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations.

P.O. Box 4352, Burlington, VT 05406 (national office)
(802) 863-0555 • (800) 350-STOP • www.SafeEating.org

over to test, or the time window has passed, or the lab makes an error. In this case, it was clear that there was *E. coli* O157:H7 in the meat that Tyler had been served at the school, which should have sparked a community-wide effort to make sure that other children who had eaten the same meat were identified and followed up with, and received the necessary medical care. Instead, local health officials and the media tried to make it appear Tyler only got sick because he was diabetic.

Local health officials didn't want anyone to know the meat was contaminated, so they didn't tell us. The health department reacted as though it was our fault that he was sick, and it couldn't be a problem with the school lunch. It was as if they didn't want to believe this could have happened, especially in their county. The principal and superintendent were the ones who notified us. Other parents with sick children - and there were many who called us afterward, and told us that their children had the same symptoms - were encouraged to think that their children had a virus.

This endangered other children in our community, because *E. coli* O157:H7 is easily passed between children playing, and in day cares, after school facilities and pools. The *E. coli* outbreak in an Atlanta water park that sickened two dozen children and killed 1 child a few years back was almost certainly of food-borne origin. Another S.T.O.P. member who couldn't be here today has a 6 year old daughter who suffered neurological damage and will endure years of kidney transplants due to *E. coli* O157:H7 that she contracted from playing with older children who picked up the germ from their school lunch tacos. We shouldn't be putting our children in danger from the simple fact of eating a government-approved lunch.

Our story, more than anything, demonstrates how crucial it is to ensure that food safe from pathogens is being sent to school systems, where contaminated food can be mishandled by a distracted worker or cross-contaminate and have a disastrous effect on the health of a captive population of children. Tyler was very sick because his hamburger was, first of all, contaminated, and second, incorrectly prepared. His age and weakened immune system put him in an especially vulnerable condition for severe food poisoning. We feel very blessed, because victims with even fewer health problems have died from this brutal illness.

Our story also highlights the fact that victims are too often treated like second-class citizens by health officials and others whose main interest is covering up for any misdeeds, not protecting the public health. This attitude comes at the expense of the community. We live in a very small town. The impact on our community from this has been huge and divisive. Those who had children who had symptoms were concerned and on one side, while those who didn't, or who knew little about the bacteria, were on the other, feeling that this couldn't be happening in our area. No lawsuit was filed against the school, but people still acted as if we were out to hurt the school. This is not an attack on the schools. It is a cry for help.

The subject of this hearing is to determine what steps our government should be taking to prevent foodborne disease in the schools. The answer is simple – Tyler can tell you, as can all of the children who have been poisoned by diseases in their government-sponsored lunches. The answer is ***"Every step you can."***

Among those steps should be the following:

1) The mission for the school lunch program should be rewritten to emphasize food safety as a fundamental concern. The standing USDA prioritization of price above all has resulted in school lunches becoming a dumping ground for ground beef and other agricultural products of questionable safety. After my son's illness the Dept. of Agriculture closed down the business where the meat had been produced, and pulled its inspection stamp, because the product they found in the plant was contaminated, misbranded, adulterated, and unfit for human consumption. Such meat should never have found its way into the school lunch system in the first place. Purchasing policies should take into account the vulnerability of the population being served and prioritize safety accordingly.

2) Mandatory pathogen testing should be retained and greatly expanded for all ground meat and poultry products, *especially* those sold to the school lunch program. Pathogen testing is America's strongest weapon against foodborne disease. Testing for *E. coli* O157:H7, *salmonella*, *listeria* and *campylobacter* should be rigidly enforced by a federal agency with the ability to shut down plants that repeatedly produce potentially deadly products.

Although it did not succeed in killing my son, *E. coli* O157:H7 did claim a life in my son's case. The man responsible for the meat my son ate committed suicide when faced with the public realization of the fact that he had caused my son to fight for his life in a hospital bed. Unfortunately, he apparently didn't care, or understand, until he was caught. If the USDA's existing testing and inspection systems truly were effective, the contaminated meat never would have left the factory.

3) The government should place a premium on A) informing the public of all foodborne disease occurrences to promote accurate diagnoses and prevention, and B) on making corporations accountable for their products. Distributed food products that are contaminated should face mandatory recall, like defective toys and tires, rather than the current system which allows the food producer to choose whether, when, and how much to recall. Manufacturers should be forced to disclose institutional purchasers of their products so that the product can be pulled from shelves and refrigerators before they make someone sick.

Furthermore, the government should actively promote the free exchange of disease information to help identify and prevent future outbreaks rather than deliberately shielding corporate culpability. One heartbroken S.T.O.P. family who buried their 3-year-old son in August 2001 is still waiting to learn the genetic fingerprint of a million pounds of meat recalled at the time their son was sick – which the USDA has so far refused to release despite the fact that it is public information. This is in character with the contradictory mission of the USDA – one of many reasons why the move to a single food agency would be beneficial.

4) Finally, the federal government should create a federally funded victim assistance and compensation program, similar to those that exist for crime victims and traumatic brain

injury victims, to assist families suffering from the ongoing physical, emotional and financial ravages of foodborne disease. Repeated trips back and forth to the hospital for blood work and the doctor's office for followups have put tremendous strains on Tyler and our family. Even with insurance, all of our costs were not covered. Tyler faces a strong probability of kidney and other complications down the road. Children more severely affected face years or lifetimes of physical therapy, special education and counseling to recover from strokes, heart failure, neurological damage, post-traumatic stress syndrome, cerebral palsy, and other aftereffects of defects in a government regulated product. As one S.T.O.P. foodborne disease survivor recently told PBS' Frontline, "*When the ordeal was over, I had lost my spleen, my hair, a boyfriend, a normal immune system and a semester of college and had gained a quarter of a million dollars in medical bills and battle scars. The effects of these diseases go far beyond the physical.*"

Beyond this, I have nothing more to say except to urge you to act quickly to make school lunches safer. My son's illness probably saved children's lives, but unfortunately not before he suffered and our whole family and community lived through a nightmare. I ask you to make the several hundreds of children who are lying in hospital beds right now, as Tyler did, and the families who are praying for their child to recover from their food-related illnesses, the last ones who need to endure this hell because of preventable contamination of their food.

Prepared Statement of Mary Klatko
Food and Nutrition Service Administrator
for the Howard County Public School System
Howard County, Maryland
on behalf of the American School food Service Administration

Senator Durbin, Members of the Committees, I am Mary Klatko, Food and Nutrition Service Administrator for the Howard County Public School System in Howard County, Maryland. We are a school district of 45,000 students with 67 schools located between Baltimore and Washington. I am also the coordinator of a Purchasing Cooperative which serves 12 Maryland Counties with an enrollment of 235,000 students in 375 schools. With me today is Barry Sackin, Staff Vice President, Public Policy, for the American School Food Service Association. Thank you for this opportunity to speak to you about food safety in school nutrition programs.

The American School Food Service Association is a member organization of more than 57,000 school food service professionals. Among our members we count the directors of most of the 5,000 largest districts in this country serving almost 70% of all school meals. More than half of our members have received ASFSA certification, a professional standard that includes having completed and passed a comprehensive food safety program.

I don't know one school food service professional who is not deeply concerned about the safety of the food they serve. This concern stems, primarily, from our commitment to the children in our care. I am proud of the record we have established over many years which clearly shows that school meals are among the safest meals served in this country.

In February, 2000, the Government Accounting Office, GAO, submitted a report to Congress requested by Senator Harkin. The report stated in part that, "twenty outbreaks of food borne illness in schools were reported to the Centers for Disease Control and Prevention during calendar year 1997, the most recent year for which national data were available. However, the health department records of the states that reported these outbreaks and other documentation indicate that only 8 of the 20 outbreaks were associated with food served in the school meal programs. The other 12 outbreaks were related to foods that were consumed in schools but that were brought from home or obtained from other sources. Nationwide data were not available for 1998; however, the health department records of the states that reported outbreaks in schools to the Centers for Disease Control and Prevention in 1997 identified nine outbreaks associated with food served in school meal programs during 1998. These outbreaks in 1997 and 1998 affected an estimated 1,609 individuals."

ASFSA is concerned about every one of these 1609 children. But the numbers must be put in context. Each day, at more than 92,000 schools in this country, school food service professionals serve more than 7.8 million breakfasts and 27.6 million lunches. This means that during the two years included in the studies, schools provided approximately 13 billion school meals as well as

an unspecified number of other customers served through a la carte sales, catering activities, and other programs that many school food service programs serve like Head Start and Meals on Wheels.

We attribute this remarkable record to the care taken in handling, preparing and serving food. Quality school food service programs emphasize food safety and we constantly train and retrain employees in safe handling practices. The first line of defense is, and always will be, the people who handle the food. Part of this commitment includes training staff to receive food deliveries in ways consistent with healthful, safe practices including checking for freshness, the proper temperature, and that products do not show signs of adulteration.

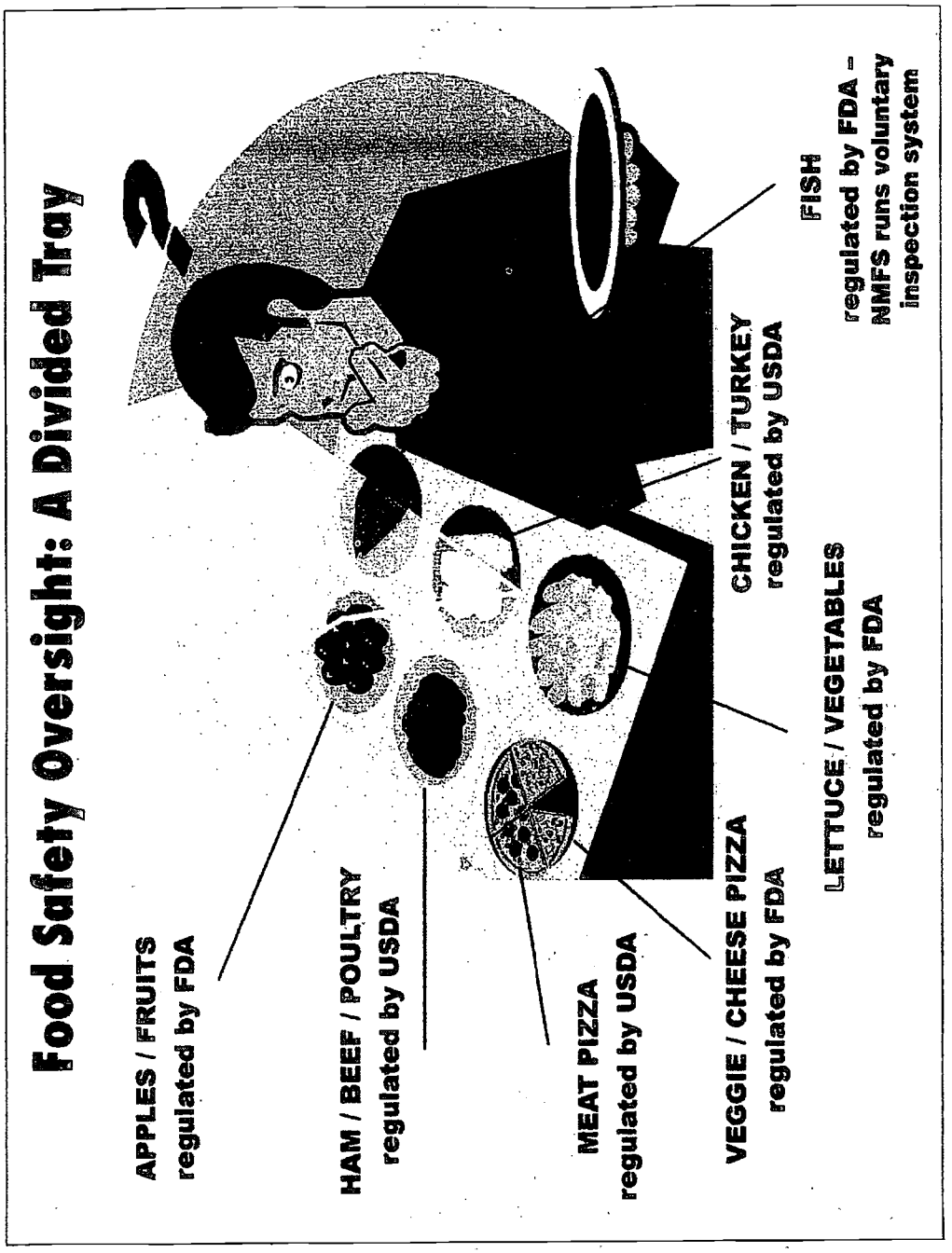
ASFSA food safety training recommends that school districts strictly monitor food safety from the time food is received to the time it is served. The association offers "Serving It Safe", a nationally accepted sanitation and food safety course for foodservice staff to help them keep their kitchens safe, clean and sanitary. Marcia Smith, president of ASFSA, said, "our association has offered training opportunities to thousands of our members, in order to increase their knowledge and practice of food safety. We consider this a top priority."

In keeping with this philosophy, one way we think Congress can address is providing resources to assist school districts in training staff. Also, many school districts are developing HACCP based models for their food service facilities. This development is resource intensive and it would be helpful and appropriate for Congress to help in developing model programs and providing the means for districts with the best practices to share their processes with other schools.

The Chicago Tribune article that has been discussed today cited the poor physical condition of some of the Chicago schools they visited, mentioning peeling paint and equipment in disrepair. Today, in tight budget times, schools are hard pressed to allocate funds for updating school cafeterias. A section of the national school lunch act, which was repealed in 1981, would have allowed Congress to contribute toward modernizing school cafeterias. ASFSA supports reinstating this provision of the law.

Mr. Chairman, members of the committees, there may be schools in the nation where some of the negative situations mentioned in the Chicago Tribune article do exist. In a few schools, foodservice staff may not be certified or given enough training. School kitchens are frequently the last in line for facility modernization. However, most schools around the country have well trained, certified professionals running exemplary programs in sanitary food production facilities. And most vendors to school meal programs are beyond reproach in their attention to safe processing and handling of the foods they prepare and sell.

On behalf of the Association, I thank you for your attention and interest. We would be happy to answer any questions you may have.



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

JUL 8 2002

The Honorable Richard Durbin
Chairman, Committee on Governmental Affairs
Subcommittee on Government Management,
Restructuring and the District of Columbia
United States Senate
439 Hart Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

On April 30th, I testified before the joint Senate Government Affairs Subcommittee on Government Management, Restructuring and the District of Columbia and House Government Reform Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations regarding the safety of the food that is used in the National School Lunch Program. During my testimony I offered to provide the Subcommittees with data on the number of visits to the Food Safety and Inspection Service (FSIS) *Quarterly Enforcement and Regulatory Report* web page. I have the following information to report regarding that data.

As you know, the FSIS Web site, www.fsis.usda.gov, is a valuable resource for consumers, food safety educators, the regulated industry, FSIS employees, government officials, and other professionals. The site contains thousands of documents including the Agency's news releases, recall information, safe food handling information for consumers, guidance on Hazard Analysis and Critical Control Point (HACCP) implementation, speeches by FSIS officials and the Under Secretary for Food Safety, regulations and directives, Agency reports and issuances, and career and employment information.

FSIS has seen dramatic increases in the number of visits to its web site since its inception in 1998. However, the Agency does not possess the technological resources to track the number of visits to each individual page on the Agency's Web site. Additional resources would be needed to allow for the development of customized reports to track the number of visits to a specific page, such as the *Quarterly Enforcement and Regulatory Reports*. In the absence of this detailed data, we have attached a chart that details the actual number of visits to the FSIS Web site from the beginning of fiscal year 2002 until April 2002. Also attached is a chart detailing the estimated number of email responses generated from the FSIS Web site between fiscal years 1998 and 2001.

I hope this information will be of use and interest. I look forward to working with you on other food safety issues in the future and hope you will share with me any comments you might have about the FSIS web site.

Sincerely,

Dr. Elsa A. Murano
Under Secretary
Food Safety

Enclosure

Cc: The Honorable Steve Horn

FSIS Web Site: Number of Visits, Fiscal Year 2002 (October-April)

Month	Number of Visits
October 2001	268,739
November 2001	647,311
December 2001	512,196
January 2002	671,060
February 2002	656,619
March 2002	692,278
April 2002	671,996
Total	4,120,199

Estimated Number of email Inquiries Via FSIS Web Site, 1998-2001

Fiscal Year	Estimated Number of Email Inquiries
1998	1,200
1999	1,200
2000	2,200
2001	5,390
Total	9,990

United States General Accounting Office
Washington, DC 20548

May 23, 2002

The Honorable Richard J. Durbin
Chairman, Subcommittee on Oversight of Government Management,
Restructuring and the District of Columbia
Committee on Governmental Affairs
United States Senate

The Honorable Steve Horn
Chairman, Subcommittee on Government Efficiency, Financial Management,
and Intergovernmental Relations
Committee on Government Reform
House of Representatives

This letter responds to your request for comments on S. 1501, the Safe Food Act of 2001, which we discussed during our April 30, 2002 testimony on the safety of school meals. We agree with the bill's concept and objectives. However, we would like to suggest an additional step that would, in our view, could enhance the bill's prospects for improving U.S. food safety.

We believe that creating a single food safety agency to administer a uniform, risk-based inspection system is the most effective way for the federal government to resolve long-standing problems and address emerging food safety issues. However, we believe that the nation's food safety laws also should be consolidated. To this end, we testified in October 2001 that the Congress should consider, as a first step, enacting a comprehensive, uniform and risk-based food safety statute. We believe that such a statute would facilitate and enhance the work of a single food safety agency.

Therefore, we recommend adding a provision to S.1501 requiring that, within a prescribed period of time–for example, one year of the new agency's establishment–its administrator develop a plan for congressional consideration to consolidate existing food safety laws into one comprehensive and risk-based food safety statute. Otherwise, the new agency would, while consolidating the government's food safety responsibilities, still have to enforce existing statutes. These statutes inhibit science-based activities for food safety and result in inconsistent and uneven use of resources.

We appreciate the opportunity to comment and hope that these suggestions are of assistance. If you have any additional questions, pleased do not hesitate to call me at (202) 512-3841.

Lawrence J. Dyckman
Director, Natural Resources
and Environment

Informatin requested for the record submitted from John Bode

Change to Food Safety Laws

I respectfully submit that S. 1501, Senator Durbin's bill to consolidate in a single independent agency in the Executive branch the responsibilities regarding food safety, labeling, and inspection currently divided among several Federal agencies, would do nothing to reconcile the inconsistencies between major federal food safety statutes. S. 1501 proposes no amendment to any of the major federal food safety statutes and certainly would not reconcile fundamental differences between them.

Recall of Imported Foods

Testimony by another witness suggested that recalls of imported foods cannot reliably be achieved. That is wrong. The same framework of extensive authorities and incentives of contract and liability law that make voluntary recalls highly effective with respect to domestically produced food also apply to food imports. Specifically, the importer of a food that proves to be adulterated would be requested to undertake a recall and the practice has been that the importer promptly does so. If the importer would not undertake a recall, the food may be detained and action undertaken for a seizure of the product. Distribution records are available to the agency. And, the Federal agency can issue its own recall notice.

What is often lost in these discussions is that criminal liability exists for entering adulterated food in interstate commerce. It is very well known that a failure to be highly cooperative with Federal food safety agency personnel in a recall situation will dramatically increase the likelihood of a referral for prosecution of both the company and responsible persons in the company. In short, failure to cooperate in a recall situation may result in responsible company officials going to jail.

Given this backdrop, the compelling tort liability risks associated with a failure to promptly respond to a Federal food safety agency request for a recall, and the capability of the agencies to effectively detain, seize and recover the food through existing authorities, it should be no surprise that the voluntary recall system has been highly effective throughout the food industry over the sweep of the decades that it has existed.

Ruth Jonen, Food Service Director
for Township High School District 211
Palatine, Illinois

Senator Durbin and Members of the Committee, my name is Ruth Jonen and I am Food Service Director for Township High School District 211 in Palatine, Illinois. I am submitting these comments as a result of a visit from Emily Kirk to school food service operations in the Chicago metropolitan area. Ms. Kirk toured school food service facilities and those of a commercial food service distributor on April 11 and 12, 2002. This visit was designed to provide a more accurate picture of school food service than the one that appeared in December, 2001 issues of the Chicago Tribune.

All of us in school food service, whether employed to work directly in school cafeterias, as brokers, sales people, vendors, manufacturers, or producers share a concern about the safety of the food we serve to our students. School meal programs have an excellent record of food safety. GAO reports show small numbers of foodborne illness outbreaks resulting from food prepared and eaten at school. One outbreak is too many; that is why we spend considerable resources in training our staff in proper food handling. The majority of my food service employees have earned the Illinois Sanitation Certificate and are required to complete continuing education in this discipline. School facilities are inspected by local health departments. We require that food deliveries be made on trucks with proper freezer and refrigeration equipment. Care is taken at every step to ensure that food is kept at proper temperatures.

One issue raised in the Tribune articles was food recalls. I have never experienced a recall or hold that was not accompanied by information on what actions to take to ensure the well-being of my customers. I believe that encouraging school food service operators to use existing internet web sites will help in this area. The web site for the American School Food Service Association posts information on food recalls and provides links to other sites that contain additional information. As is always the case, it is the operators' responsibility to remain informed.

I do have two specific concerns as an Illinois school food service professional. The first is the elimination of the technical assistance staff at the Illinois State Board of Education. In its latest round of reorganization, the technical assistance and outreach resources were eliminated. This technical assistance has been essential in providing training in all areas of school food service, but especially in the areas of nutrition and food safety. The loss of this important resource will make it more difficult than ever for school districts to address issues of food safety.

The second area of concern is the current contract for distribution of USDA commodity foods in Illinois. I require that vendors ship food to my locations on trucks that are equipped with frozen and./or refrigerated units. I understand that the ISBE has awarded the contract to distribute USDA commodity foods in Illinois to a firm whose trucks do NOT have refrigerated or frozen delivery capabilities. The theory is that the food will be on the trucks less than 24 hours. The warehouse is located in Granite City. From a purely practical and historical perspective, the food is often on the truck for more than 24 hours. This results in loss of product quality. More importantly, frozen food may not be frozen upon receipt. This is an area of enormous concern from a food safety perspective. The school food service professionals in Illinois have expressed reservations about this contract. We would greatly appreciate your investigation of this problem.

In general, there are adequate safe guards and standards in place to ensure a safe, wholesome school meal program. The issue is implementation and enforcement of current regulations and requirements. It is also an issue of continuing education and training for school food service personnel. I would encourage appropriation of funds that can support implementation of HACCP programs in school meal programs. It is unrealistic to assume that schools can take on additional costs and responsibilities for food safety in the absence of support from USDA or state agencies.

I am very grateful to Emily Kirk for taking the time to visit school meal programs. I encourage all of you to eat lunch or breakfast at schools in your own communities. I believe you will be impressed by the quality of food and the commitment to nutritious, wholesome, safe meals for America's children. I would be pleased to answer any questions you may have. Thank you for your interest in child nutrition programs.

Ruth Jonen, Director of Food Service
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Statement Before The Senate Governmental Affairs Committee and House Government Reform Committee April 30, 2002

The American Commodity Distribution Association (ACDA) appreciates the opportunity to comment on the safety of food supplied through the National School Lunch Program. ACDA is a non-profit professional trade association devoted to the improvement of the U.S. Department of Agriculture's (USDA) commodity distribution system. ACDA members include state agencies that distribute USDA-purchased commodities, agricultural organizations, recipient agencies, such as schools, and allied organizations. ACDA members are responsible for distributing over 1.5 billion pounds of USDA-purchased commodities annually to programs such as the National School Lunch Program.

ACDA appreciates and shares your commitment to providing safe food for our nation's school children. Our comments today are focused on what we know best -- the distribution of USDA commodity foods.

It is often said that the United States enjoys the safest food supply in the world, and USDA commodity foods are no exception. These products are subject to the same inspection and regulatory requirements as the entire U.S. food supply. Additionally, USDA contract specifications are often more rigorous than commercial specifications, and require federal employees to perform on site sanitation reviews and grading functions. These federal employees are not charged with monitoring food safety, but they report food safety concerns to the appropriate agency. The end result is that there is typically a greater federal presence in plants that sell product to USDA.

The Department's commodity distribution program has a history of evolving to meet the changing needs of recipient agencies and American agriculture. The most significant changes began nearly two years ago when USDA embarked on a broad effort to further improve the way it purchases and distributes food for the nutrition assistance programs. Part of this effort was a review of the process through which USDA initiates a recall of food it has purchased and distributed to recipient agencies. In July 2001, the Department issued a new policy to streamline this process. In summary, the new recall policy:

- Institutionalizes USDA's commodity food recall process;

- Streamlines and clarifies communications between USDA and other federal agencies that may be involved in a recall, such as the Food and Drug Administration (FDA);
- Streamlines and expedites communications between USDA, State distributing agencies, and recipient agencies;
- Ensures the removal of adulterated product from recipient agencies as soon as possible; and
- Ensures appropriate reimbursement of costs to State and recipient agencies and expedites product replacement.

Fortunately, we have not had the experience of testing the new policy. A copy of the Department's policy is attached to this statement, and can be found on the Food and Nutrition Service website at: www.fns.usda.gov/fdd/foodsafety/hold-recallprocedures.pdf.

Again, thank you for the opportunity to provide these comments. Your leadership in efforts to strengthen the food safety system is greatly appreciated by ACDA. If you have any questions, please contact Stephen Lacey, our Washington Counsel, at 202/789-1212.

July 12, 2001

SUBJECT: Commodity Hold and Recall Process

Attached is the U.S. Department of Agriculture's (USDA) process for handling commodity holds and recalls. It was jointly developed by the Food and Nutrition Service, the Agricultural Marketing Service, the Farm Service Agency, and the Food Safety and Inspection Service. The process is effective August 1, 2001.

This new process:

- institutionalizes USDA's food recall/hold process;
- defines Federal, State and local agency roles and obligations;
- streamlines and expedites the reimbursement process;
- defines reimbursable costs;
- streamlines and improves communication at all levels;
- provides information to State and local agencies more quickly;
- limits commodity holds;
- removes adulterated product from recipient agencies quickly.

If you have any questions, please contact your FNS Regional Office or email the Director of the Food Distribution Division at fdd-pst@fns.usda.gov.

/s/

LES JOHNSON
Director
Food Distribution Division

Attachments

Commodity Hold and Recall Process

July 12, 2001

I. INTRODUCTION

The commodity hold and recall process is used when a food safety issue is raised about a U.S. Department of Agriculture (USDA) purchased commodity. The new process pertains exclusively to USDA-purchased commodities delivered to approved entities (recipient agencies and processors). It changes the existing recall process in the following ways:

- institutionalizes USDA's commodity food recall/hold process;
- streamlines and clarifies communications among USDA agencies – Agricultural Marketing Service (AMS), Food Safety and Inspection Service (FSIS), Farm Service Agency (FSA) and Food and Nutrition Service (FNS) - and with the U.S. Department of Health and Human Services' Food and Drug Administration (FDA) and the Department of Defense's Defense Supply Center Philadelphia (DOD);
- streamlines and expedites communications between USDA and State distributing agencies (SDAs) and local recipient agencies (RAs);
- removes adulterated product from RAs as soon as possible, but not later than 30 days after recall;
- defines reimbursable costs and expedites product replacement and reimbursement to SDAs and RAs;

The process does not relieve vendors of their responsibility for replacement and reimbursement of recalled products.

To make it easier to explain the new process, this memorandum is divided into three primary areas: 1) Decision and Notification, 2) Product Disposition, and 3) Reimbursement/Replacement Process. The appropriate responsibilities among the Federal, State and local levels are discussed for each area. Attached are appendices providing acronyms and a description of allowable reimbursable costs.

II. DECISION AND NOTIFICATION PROCESS

As a reminder, if you suspect a food safety issue, immediately contact your local or State health department. In addition, please contact the Food and Nutrition Service (FNS) through their commodity hotline at 800-446-6991.

A. Federal Responsibilities

The responsible regulatory agencies, FSIS or FDA, receive food safety concerns from many sources including hotlines, sampling and testing programs, vendor notification, and State and local

agencies including health departments. When the product involved is a USDA purchased commodity the following actions will take place:

1. FSIS immediately alerts FNS and, depending on the product, the appropriate Procurement Agency – AMS, FSA, or DOD - that there is a potential recall. The procurement agency identifies the potential destinations and amount of product involved. (Note: FSIS is responsible for regulating meat, poultry and egg products. FDA regulates the remaining products including fruits, vegetables, dairy, fish, grains and nuts. FSIS will act as a liaison between FNS and the procuring agency, on all recalls, including those regulated by FDA.)

2. FSIS/FDA begins its investigation, including product testing and within **10 calendar days** makes a recommendation on the disposition of the product.

3. In the event initial testing is inconclusive, FSIS or the Under Secretary of Food Safety in conjunction with the procurement agency and FNS staff, makes a recommendation to FNS as to whether to put the product on hold. FNS will communicate hold decisions to SDAs, who will then inform the affected RAs. The hold is to provide time for additional testing and data collection and may result in a recommendation to the company for a recall.

4. When a firm recalls a product, FSIS or the Under Secretary of Food Safety communicates the recall decision to FNS and the appropriate Procurement Agency. FSIS prepares a recall notice and recommended press release and supporting information and supplies it to FNS within 24 hours of the recall decision. **FNS notifies SDAs within 24 hours of the recall and provides them with the recall notification, press release and other information needed to track the product and document reimbursable costs.** Commercial processors, where applicable, will be notified immediately if a recalled commodity has been shipped to their plant. At the same time, the Procurement Agency begins discussions with the vendor for pick-up and replacement of recalled product.

B. SDA Responsibilities

1. The SDA shall assign a State Food Safety Coordinator and alternate, and provide the names, titles, email addresses, phone and fax numbers to FNS. Contact information must be provided for contacts during and after normal work hours. The SDA shall have a similar contact list for its RAs.

2. Upon receipt of a recall notification, SDAs must contact each affected RA as soon as possible, but **no later than 24 hours** after receiving the recall notification. SDAs will disseminate the recall notification, press information and other information needed to track the product and document reimbursable costs to affected RAs.

3. SDAs should contact the appropriate distributor/warehouse, directing them to place the commodity on hold and to determine: a) the amount of recalled product still in storage at the State level, and b) the location and amount of product delivered to RAs.

C. RA Responsibilities

1. Each RA is responsible for appointing a Food Safety Coordinator and providing the name, title, email address, phone and fax numbers to the SDA.

2. In the event of a food recall, affected RAs will receive from the SDA a recall notification, press release, and request for information to be returned.

   - The recall notification will provide the name of the product, affected lot numbers and other product information.
   - Additional information will be included to assist RAs to respond to requests from media, parents, school district officials and others.
   - RAs must provide the location and quantity of product in storage, amount of product already consumed and document reimbursable costs.

3. RAs must **immediately** notify their sites of the recall, identify the location of the affected products (verify that the food items bear the product identification codes), isolate the commodities to avoid accidental use and take an accurate inventory by location.

The quantity and location of the product must be submitted to the SDA within **10 calendar days** of the recall. This quick turnaround is important for the following reasons:

- When a recall occurs, USDA contracting officers work with the vendor to expedite removal of the product and replacement of the product. During these discussions, it is important for both USDA and the vendor to know the scope (locations and quantity) of the recall;

- USDA needs the cost data as soon as possible in order to expedite the reimbursement.

II. PRODUCT DISPOSITION

A. Federal Responsibilities

As SDAs and RAs are compiling inventory information, the Procurement Agency will work with the vendor to determine the best course of action for collecting the recalled product at local or centralized locations. In certain circumstances, product may be destroyed on-site, if agreed by the vendor and approved by FSIS.

B. SDA Responsibilities

SDAs will be in constant communication with RAs and affected warehouses/distributors. In the majority of situations, the recalled product will be returned to the vendor from central locations within each State. In those situations, SDAs will contact each affected distributor/warehouse to arrange for timely pick-up of the recalled product from each school. If the distributor delivers to a central location at the RA, it is normally the RA's responsibility (depending on their contract with the distributor/warehouse) to consolidate the product from affected schools to a central location within the RA's area of responsibility for pick-up. **The recalled product should be consolidated for pick-up as soon as possible, but no later than 30 days after the date of the recall notification.**

C. RA Responsibilities

RAs will work with the SDA and the contracted warehouse/distributor to determine the appropriate method and timeframe for picking up the recalled product.

V. REIMBURSEMENT/REPLACEMENT PROCESS

On October 31, 1998, Congress enacted Public Law 105-336, the William F. Goodling Child Nutrition Reauthorization Act of 1998 (the Act). Section 15 of the Act authorized the Secretary to reimburse States for State and local costs associated with the removal of commodities if the Secretary determined that the commodities posed a health or safety risk. The law stipulates that reimbursable costs are limited to "storage, transportation, processing and distribution of the commodities."

When a recall occurs, in most cases the vendor/processor is responsible for replacing the affected product and reimbursing Federal, State and local agencies for allowable costs incurred as a result of the recall. USDA will request that vendors make restitution for those SDAs that have submitted timely documentation within **20 working days from the date of the recall notification**. Should payment from the vendor not occur, USDA may reimburse the State and local agencies for specified costs and seek reimbursement of those expenditures from the vendor/processor.

Described below are several types of recalls and holds and a discussion and corresponding replacement/reimbursement instructions:

A. Food Safety Recalls

When a commodity is recalled, USDA will proceed according to the type of commodity product involved, as follows:

1. Commodity Delivered As Purchased by USDA (e.g.; frozen ground beef, bought and delivered to the SDA as frozen ground beef.)

   - Vendor assumes responsibility for replacement and costs incurred by the SDA/RA. Should vendor default or delay restitution 20 days after notification, USDA will initiate action to replace the product and may reimburse SDA/RAs for certain costs as described in paragraph E below. USDA continues to seek reimbursement from the vendor.

2. Reprocessed Commodity Delivered to SDA/RA (e.g., bulk chicken into breaded, cooked chicken nuggets)

   - USDA purchases bulk commodities for further processing at the request of SDA's. SDA's contract directly with processors to have the commodity made into a processed product. USDA is not a party to that contract. In some cases, the raw product may be the source of contamination resulting in a health or safety risk and in other situations the source of contamination may be the reprocessor's plant. In addition, in some cases the processor may be substituting equivalent commercial product for the commodity product (called Substitution). Each scenario is unique, and resolution will proceed in the following manner:

3. When Raw Product Is Recalled (With No Substitution)

   - When bulk product that has already been further processed (end product) is determined to pose a health or safety risk, the commodity vendor is responsible for all costs incurred by the USDA, the SDA and/or RAs, including processing costs pursuant to the terms of the processing contract. Should vendor default or delay restitution 20 days after notification, USDA will initiate action to replace the raw product and reimburse SDAs/RAs for processing costs while seeking reimbursement from the vendor.

   - USDA is not a party to the processing contract and cannot make payments directly to processors – only to an SDA who in turn can pay processors. SDAs should submit copies of paid processor bills with their reimbursement package. In situations where a State has not paid a processor but the processor has incurred processing expenses, the SDA must work closely with USDA and the processor to come to an acceptable solution.

4. When Raw Product Is Recalled (With Substitution)

   - With USDA approval, processors may substitute commercial product for donated commodities to produce finished end products for SDA/RAs. The processor may then

use the USDA commodity to produce commercial product for sale to commercial outlets. This is a commercial recall and USDA will not assume responsibility for costs incurred beyond replacement of the implicated commodity. USDA will seek reimbursement from the vendor as in other cases.

5. When End Product is Recalled (Commercial Recall)

   - When the bulk product delivered to the processor is safe, but the end product is determined to be a health or safety risk, normally due to a problem at the processing plant, it will be treated as a commercial recall. The processor assumes responsibility for all costs incurred by the USDA, the SDA and/or RAs, pursuant to the terms of the processing contract. USDA will not assume responsibility for costs incurred.

B. Administrative Recalls

The Department may occasionally decide to remove products from distribution when it decides safety is a concern, even though the products technically meet purchase specification requirements and are free to move in commercial distribution channels. FNS shall be responsible for notifying the SDAs. Since these products ostensibly meet purchase specification requirements, USDA will develop strategies for disposition and replacement of the product, and reimburse States and recipient agencies for their reimbursable costs, including any incurred processing fees, within acceptable limits. Although commodities are normally delivered 6 to 8 weeks after purchase, USDA will attempt to expedite delivery of replacement products. USDA will coordinate product removal, replacement and expense reimbursement.

C. Specification Recalls

A commodity that does not meet product specifications may be voluntarily, or at USDA's request, be recalled. If recall at the direction of USDA, FNS shall be responsible for notifying the appropriate SDAs. The vendor, working with the relevant Procurement Agency, is responsible for retrieving and promptly replacing the identified commodity, and reimbursing SDAs/RAs for transportation and storage expenses.

D. Holds

Commodities may be placed on hold for up to 10 calendar days to prevent use until further testing and inspection can clarify a suspected problem. FNS is responsible for notifying the appropriate SDAs. FSIS (or FDA through the Under Secretary of Food Safety), in consultation with FNS staff and the responsible procurement agency, is responsible for making the recommendation to

FNS to put the product on hold. If a product is held beyond 10 days for further testing, USDA may instruct the SDA to immediately consolidate the product and put it under SDA control. USDA may reimburse SDAs/RAs as follows:

1. Product Placed on Hold, Then Released

   - If the hold extends beyond 10 calendar days, USDA may reimburse SDAs/RAs up to 1 month's standardized storage cost, if applicable. If held product is returned to the SDA warehouse, USDA may reimburse for one round trip (remove the recalled product to State control and return it to the RA) to and from SDAs warehouse/distributor.

2. Product Placed on Hold by Local Health Inspector, Then Released or Voluntarily Recalled by Vendor

   - In instances in which USDA, through FSIS and FDA, does not concur with local health inspectors that probable cause existed for the hold, USDA assumes no responsibility for costs incurred by the SDAs/RAs.

I. REIMBURSABLE/REPLACEMENT PROCESS AND RESPONSIBILITIES

When a donated commodity poses a health or safety risk, the vendor must replace the product and reimburse the SDAs/RAs in accordance with their contracts. Should the vendor default or delay restitution more than 20 days after notification, USDA may replace the commodities and reimburse the SDAs/RAs. Subsequently, USDA will seek reimbursement from the vendor. USDA may reimburse SDAs for the following expenses:

- One month standardized storage costs (see Appendix B);
- One round trip transport of commodities;
- On-site destruction of commodities, when approved by USDA; and
- Processing costs, when an SDA/RA has further processed the product under an approved agreement, subject to the limitations in Section IV.A.

A. Federal Responsibilities

1. The responsible Procurement Agency will closely monitor the process to attempt to ensure the vendor/processor initiates reimbursement within 20 days of the recall notification. During this time, the procurement agency will process the reimbursement documentation/invoice received from the SDAs. Should the vendor/processor delay restitution or default, AMS/FSA will authorize the National Finance Center (NFC) to electronically transmit reimbursement to each SDA within 4 working days, provided the SDA has established a vendor express account as outlined below. If the SDA has not established a vendor express account, they will be mailed a check within 10 working days.

2. For claims not received within the initial timeframes, a final disbursement will be completed **within 90 calendar days** after the start of the recall.

3. FNS Regional Offices will review documentation submitted by local agencies and the SDA during management evaluations. Findings of inadequate documentation can result in a claim against the SDA.

4. FNS and the responsible procurement agency, in consultation with the vendor, will make a decision regarding replacement of product or entitlement credit **within 60 calendar** of the recall notification. The preferred method is replacement of product. If the vendor agrees to replace the product, it will not be delivered to the SDA between April 1 and August 1, except when mutually agreeable to the vendor and the SDA.

B. SDA Responsibilities

In order to take advantage of the expedited payment system, each SDA must complete and submit to AMS a Vendor Express application. Once processed, each SDA will receive a unique Vendor Express Number. This is a one-time process. In the event that the SDA changes banks or other pertinent information, a change must be submitted to AMS.

1. After receiving the reimbursement documentation from the RAs, SDAs must consolidate this information, including any State expenses, and submit a USDA Public Voucher and documentation via fax or mail to the appropriate USDA program within **3 working days.** In other words, the Procurement Agency must receive the consolidated State information within 15 calendar days from the recall notification date (10 calendar days at the RA and up to 3 working days at the SDA). State agencies failing to meet this deadline will be reimbursed at close-out (90 calendar days).

2. SDAs are responsible for ensuring the sufficiency and accuracy of the RA documentation prior to submission to the Department. Documentation not supplied to USDA must be maintained on file as per Federal record retention requirements and be available for review

3. Upon receiving the electronic funds transfer from USDA, SDAs shall reimburse RAs in a timely manner. (Note - In some cases, the SDA does not have payment capabilities. In those instances, it is important that the SDA reach an agreement with the Child Nutrition State agency to process payments to RAs. There may also be other outlets involved (charitable institutions, Regional Office Administered Programs, summer camps, etc.) with which the SDA has no agreement. In those cases, the SDA must work closely with USDA to ensure timely reimbursement to these entities.)

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C. RA Responsibilities

The quantity and location of the product must be submitted to the SDA within 10 calendar days for the RA to be reimbursed within 30 days of the recall notification. If the RA does not meet this deadline, reimbursement will be made at the close-out of the recall process (90 calendar days). Refer to Appendix B for a discussion of reimbursable costs.

Appendix A

Commonly Used Acronyms and Definitions

AMS	Agricultural Marketing Service (USDA)
DOD	Defense Supply Center Philadelphia, Department of Defense
FDA	Food and Drug Administration (US Dept of Health and Human Services)
FNS	Food and Nutrition Service (USDA)
FSA	Farm Service Agency (USDA)
FSIS	Food Safety and Inspection Service (USDA)
Processor	Any commercial facility which further processes or repackages donated food under contract with a State agency
Procurement Agency	AMS or FSA or DOD
RA	Recipient agency (e.g. school district)
SDA	State distributing agency
USDA	United States Department of Agriculture
Vendor	A business that has a contract with USDA to provide commodities

Appendix B

Reimbursable Costs

A. Reimbursable SDA Costs

1. Transportation - In some cases, transportation charges are incurred by the SDA. USDA will reimburse for appropriate transportation costs incurred by the SDA, based on the fixed standardized charges contained in the distributor/warehouse contract (whether per case or per pound). In some cases, the SDA's costs may exceed these fixed charges because the contracted distributor/warehouse/trucker could charge more to remove the recalled product because it is a special trip or the SDA may have to contract with a different firm entirely to handle pickup. In these cases, USDA will consider, with appropriate documentation, reimbursing the actual charge.

2. Storage - USDA will reimburse for one month's storage (at the contracted price), as appropriate. If the product is stored longer than the 30 days, additional storage costs may be reimbursed at close-out.

3. Processing (State processing contracts) - USDA may reimburse SDAs for processing fees associated with the further processing of commodities. Please review Section IV.

4. On-Site Destruction - USDA may approve the on-site destruction of recalled commodities. SDAs will be reimbursed for the actual costs associated with this destruction (with proper documentation). Since this activity will not take place within the first 7 days after the notification of the recall, these costs will be reimbursed at close-out.

5. Non-Reimbursable Costs - Listed below are examples of non-reimbursable costs:

   - Overtime compensation for employees as a result of the recall;
   - Long-distance telephone calls, postage, and other administrative costs;
   - Costs associated with processing payment to RAs;
   - Value of the recalled product (since it will be replaced or credited).

B. Reimbursable RA Costs

As stipulated by the Act, allowable costs are limited to: storage, transportation, processing and destruction, where applicable. In an effort to expedite payment to RAs, USDA will reimburse using standardized costs in the following manner.

1. Transportation - USDA will reimburse for one round trip (original delivery and return of the recalled product) between the distributor/warehouse and the RA. This will be based

on the fixed standardized charges contained in the distributor/warehouse contract (whether per case or per pound). In some cases, the costs may exceed these fixed charges because the contracted distributor/warehouse/trucker could charge more to remove the recalled product because it is a special trip or the SDA or RA may have to contract with a different firm entirely to handle pickup. In these cases, USDA will consider, with appropriate documentation, reimbursing the actual charge.

2. Storage - If the RA contracts with a local warehouse to store commodities, USDA will reimburse for 1 month's storage (at the contracted price), as appropriate. In the event the product is stored longer than 30 days, additional storage costs may be reimbursed at close-out.

3. Processing - USDA may reimburse RAs, through the SDA, for reasonable processing fees associated with the further processing of commodities. Please review Section IV.

4. On-Site Destruction - USDA may approve the on-site destruction of recalled commodities. If approved, RAs will be reimbursed for the actual costs associated with this destruction (with proper documentation). Since this activity will not take place within the first 7 days after the notification of the recall, these costs will be reimbursed at close-out.

5. Non-Reimbursable Costs - Listed below are examples of non-reimbursable costs:

   - Cost of storage at the school level;
   - Overtime compensation for employees as a result of the recall;
   - Long-distance telephone calls and other administrative costs;
   - Reimbursement for commercially purchased food used in place of the recalled product (since it will be replaced or credited).

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