

## **POINTS FOR TESTIMONY**

My name is Dr. Elsa Murano, and I am the Dean of the College of Agriculture and Life Sciences at Texas A&M University, the Director of the Texas Agricultural Experiment Station, which is the agency in the State of Texas charged with conducting research in agriculture and the life sciences, and the Vice Chancellor of Agriculture for the Texas A&M University System. I am a food microbiologist by training, and hold a Masters and Ph.D. degree from Virginia Tech in Anaerobic Microbiology and Food Science & Technology. During the 1990s, I was professor of food microbiology at Iowa State University and then at Texas A&M University, where I taught and conducted research in food safety. I am very familiar with the scientific process of arriving at solutions to problems in food safety, having published dozens of peer-reviewed scientific papers, book chapters, and monographs. At Texas A&M, I also served as Director of the Center for Food Safety, in charge of research in this important area.

From 2001 to 2004, I served as Undersecretary for Food Safety at the United States Department of Agriculture (USDA), where I was

responsible for developing the policies and programs implemented by the Food Safety and Inspection Service, or FSIS. This public health Agency is charged with ensuring that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and correctly labeled and packaged. This duty is not limited to domestically produced products, but it also extends to ensuring the same for products that are imported from other countries. As Undersecretary for Food Safety, I was also responsible for representing the U.S. government at the Codex Alimentarius Commission, an international organization created in 1963 by FAO and WHO which develops food standards, guidelines and codes of practice to protect the health of consumers, ensure fair trade practices, and promote coordination of all food standards at the international level.

As I mentioned, my experience in government was principally with USDA-regulated products. However, having worked very closely with my counterpart, the Commissioner of the Food and Drug Administration (FDA), I can assure you that the same principles we applied at USDA to ensure that the products we regulated were safe, wholesome, and appropriately labeled, are also employed by FDA for

the foods they regulate.

S. 3128 would provide a national approach for establishing food safety tolerances and inserting warning information on the labels and related materials for packaged foods. The bill would thus assure a consistent approach to labeling information for all fifty States. As others have pointed out, the proposed law is not a new concept – national uniformity already exists for most of the US food supply and many other products. In fact, Congress has repeatedly established uniform requirements for nutrition labeling, allergen labeling, standards and labeling of meat and poultry products, prescription drugs, medical devices and pesticide tolerances. The laws under which I operated as Undersecretary for Food Safety at USDA are a good example. The Federal Meat Inspection Act states that

“Marking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this chapter may not be imposed by any State or Territory or the District of Columbia with respect to articles prepared at any establishment under inspection.” [21 USC § 678]

Similarly, in the Poultry Products Inspection Act the Congress established uniformity in labeling:

“Marking, labeling, packaging, or ingredient requirements (or storage or handling requirements found by the Secretary to unduly interfere with the free flow of poultry products in commerce) in addition to, or different than, those made under this chapter may not be imposed by any State or Territory or the District of Columbia with respect to articles prepared at any official establishment in accordance with the requirements under this chapter . . . .” [21 USC § 467e]

As I mentioned before, Congress has on these and many previous occasions established nationally uniform requirements for labeling, and with good reason. Uniformity in labeling would provide a consistent national approach to addressing food safety issues and communicating effectively with American consumers important information to safeguard their health.

As mentioned previously, S. 3128 focuses on food safety tolerances and warning statements for packaged foods. The bill is designed to ensure that the public is protected and well-informed, without impacting the fundamental food safety laws at the Federal or State level, or affecting any enforcement authority at the State or Federal level. In fact, it is impressive to note just how much actual or *de facto* uniformity already exists between the FDA and the USDA and the State authorities responsible for food safety. The proposed bill does not impact such uniformity at all. For example, the FDA and the State Public Health Officials cooperate through the National Conference on Interstate Milk Shipments to establish milk sanitation standards and procedures for testing and evaluation, thus assuring the safety of the nation's milk supply. FDA and the states cooperate similarly on seafood safety. Similarly, FSIS cooperates with States that like to conduct their own inspections so that the food safety systems they use are equivalent to those used by the federal agency.

Another area of cooperation between Federal agencies and their cooperation with State and local food safety authorities is the *Food*

*Code*. The FDA, the Centers for Disease Control and Prevention (CDC) and the USDA's Food Safety and Inspection Service (FSIS) have all contributed to the *Food Code* to make sure it addresses controls for risk factors that the government has identified as contributors to outbreaks of food-borne illnesses, and includes actions designed to strengthen the inspection process and improve food safety as product moves from the plant to the consumer. The *Food Code* is updated regularly taking into account current science, emerging food safety issues, and imminent health hazards related to food safety.

The Code provides food control authorities at all levels of government a

“ . . . scientifically sound technical and legal basis for regulating the retail and food service segment of the industry (restaurants and grocery stores and institutions such as nursing homes). Local, state, tribal, and federal regulators use the *FDA Food Code* as a model to develop or update their own food safety rules and to be consistent

with national food regulatory policy.”

[<http://www.cfsan.fda.gov/~dms/foodcode.html#get05>,

accessed July 24, 2006.]

The Association of Food and Drug Officials (AFDO) has reported that 48 of the 56 states and territories – or 86% representing 79% of the U.S. population - have adopted their own food codes modeled on the *Food Code*.

In fact, the *Food Code* was, and continues to be, very useful to USDA and its efforts with state food safety authorities to assure a safe food supply, as it no doubt is for FDA. In my opinion there is nothing in proposed S. 3128 that would limit, restrict or compromise the *Food Code* or the state or territorial codes modeled on it. Nor can I see anything that would impact FDA's or USDA's other cooperative food safety programs with the states.

As a trained researcher, I understand how science can be used to determine the true risk posed by foodborne hazards. As Undersecretary, I put this to use, applying the scientific principles of

hazard analysis, epidemiology, risk assessment, and statistical sampling in order to develop policies that would reduce the risk of illnesses such as those caused by *E. coli* O157:H7, *Listeria monocytogenes*, among others. As a result, the number of illnesses caused by these pathogens was reduced by 42% and 40%, respectively, as reported last year by the CDC.

In 2003, application of the scientific principle of risk assessment provided me with the information I needed to develop science-based regulations that would virtually eliminate the risk of exposure to the mad cow disease agent. This assessment, conducted by Harvard University, showed that banning brain and spinal cord from animals older than 30 months from the food supply would present the greatest protection to human health. We quickly developed regulations that banned such materials. A follow-up analysis conducted to determine the effect of our policies showed that indeed, actions we took in 2003 virtually eliminated the risk of exposure to this agent.

At USDA, our scientific experts worked very hard to develop both the underlying data used in risk assessments, incorporating research

from the entire scientific community, and the scientific models on which they are based. At the same time, they continue to pursue measures designed to reduce acute and chronic risks to public health. Establishing a uniform national system will put food safety in the hands of the nation's top food scientists and food safety experts. Just like USDA, the FDA is best positioned to assure that these scientists and experts are brought together, whether they come from Federal government, State government, or academia.

As you have no doubt seen, science is not always absolutely certain or complete, and as a result it can be interpreted differently by different people. In the area of food safety a range of different interpretations, leading to different advice or warnings in different States, is obviously problematic. The benefit of a national uniformity approach is that it will bring the best scientists together to address issues of public health significance, thereby helping to determine how best to communicate to consumers in all fifty states.

It is important to point out that simple warning statements may not always be appropriate. Sometimes the science is complex and

different population groups may be affected differently than others, and sometimes an ineptly worded warning statement could cause people to avoid certain foods and miss real benefits. This is another reason why it is better to have safety issues thoroughly evaluated on a national basis before warning statements are considered.

Sometimes, obtaining results via the scientific process can take time and all the answers to our questions may not be available as quickly as we want them to be. In these cases, the Federal agencies as well as the States have the authority and the capability to step in and protect the American public. The proposed law includes an Imminent Hazard Authority that would retain the authority of the States' health regulators to take the same protective actions on a local basis.

In other instances, there may be preliminary results that may seem to contradict existing data. In these cases, federal agencies like FDA and USDA are best positioned to protect all consumers, given their significant resources, experience, and expertise that can be brought to bear in reviewing the entire body of scientific evidence in order to issue food safety regulations that will actually protect public health.

Sometimes a safety issue appears locally, not nationally. But because we have a national food supply, an action taken locally may not help all consumers. If there is a true safety issue, state authorities should bring it to the attention of the federal agencies so that it can be confirmed and together they can take a national approach to protect all US consumers. The proposed law provides a process to establish national standards in order in order to protect all consumers, not just some.

Similarly, on occasion, the data will show that a safety issue could truly be local, and advice or a warning should be provided to consumers in that area. The proposed law recognizes this and allows for an exemption from national uniformity when a safety issue is demonstrated to be unique to a specific state.

Again, S. 3128 would provide a national approach for establishing food safety tolerances and warning label requirements that are consistent in all fifty States. This objective is also consistent with activities the U.S. Government has been engaged in for international

food standards. As I mentioned in my opening statements, while at USDA one of my responsibilities was to represent the U.S. as a member nation of the Codex Alimentarius Commission. In establishing this international organization, the Food and Agriculture Organization, the World Health Organization, and the member countries felt that

“ . . .if all countries harmonized their food laws and adopted internationally agreed standards, such issues would be dealt with naturally. Through harmonization, they envisaged fewer barriers to trade and fewer barriers to trade and freer movement of food products among countries, which would be to the benefit of farmers and their families and would also help to reduce hunger and poverty. [*Understanding the Codex Alimentarius*, Rome, 2005 edition, p.29]

The Codex, through the agreement of the participating countries, sets standards with the dual purpose to assure consumer safety and to facilitate international trade in food. These standards cover, among

other topics, specific foods, food ingredients and additives, food hygiene procedures, and food labeling.

Allow me to quote from a Codex document on the harmonization of food standards internationally to emphasize the value of national uniformity here in the US:

With respect to the ever-increasing global market, in particular, the advantages of having universally uniform food standards for the protection of consumers are self-evident. It is not surprising, therefore, that the agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT Agreement) both encourage the international harmonization of food Standards. [*Understanding the Codex Alimentarius*, Rome, 2005 edition, Preface]

Codex has also commented on the potentially significant problems that may occur if countries went their separate ways in setting

standards and tolerances:

A principal concern of national governments is that food imported from other countries should be safe and not jeopardize the health of consumers or pose a threat to the health and safety of their animal and plant populations. Consequently, governments of importing countries have introduced mandatory laws and regulations to eliminate or minimize such threats. In the area of food, animal and plant control, these measures could be conducive to the creation of barriers to intercountry food trade.

[*Understanding the Codex Alimentarius*, Rome, 2005 edition, p. 29]

It would be ironic for us to be supporting harmonization internationally and then here at home allowing, or even encouraging, individual states to impose their own labeling requirements.

In closing, it is incumbent upon those who are charged with protecting public health to avail themselves of the best data, obtained with the

best scientific methodology, and analyzed using sound scientific principles, in order to provide consumers with the most accurate information that can effectively reduce, if not eliminate, risks. Federal agencies like FDA are charged with such a mandate, and are best equipped to implement it on a nationwide basis, in order to protect the health of Americans in every one of our fifty states. In a world in which confusion and misinformation can provide either a false sense of security, or create unwarranted fears in consumers, uniform tolerances and labeling requirements, as provided by the proposed bill, simply make sense.