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ONE HUNDRED TENTH CONGRESS

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

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September 13, 2007

DENNIS B. FITZGIBBONS, CHIEF OF STAFF
GREGG A. ROTHSCHILD, CHIEF COUNSEL

Mr. José Alvarez
Chairman and CEO
Giant Food, Inc.
8301 Professional Place, Suite 115
Landover, MD 20785

Dear Mr. Alvarez:

Under Rules X and XI of the Rules of the United States House of Representatives, the Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations are investigating the adequacy of the efforts of the Food and Drug Administration (FDA) to protect Americans from unsafe food. We have been informed that Giant Food, Inc. stores (Giant) regularly sell its customers fresh meat that is packaged in an atmosphere containing carbon monoxide, which is designed to alter the color of the meat to make it appear fresh and wholesome indefinitely.

Beyond the consumer deception involved, the Committee has concerns about the public health consequences of this packaging. These concerns are set out in the attached letters to Commissioner von Eschenbach and Secretary Leavitt dated February 9, 2006, and March 30, 2006, respectively.

As a large national grocery store chain that has chosen to sell meat packaged in an atmosphere containing carbon monoxide, we have questions regarding Giant's decision to sell prepackaged fresh meats that have apparently been deceptively colored, and the conditions under which these products are sold. Accordingly, in order to assist the Committee in its investigation of the safety of the Nation's food supply, we request that you provide the Committee with the following information:

1. Temperature Control

We are interested in any special precautions that Giant employs to assure that carbon monoxide treated meats are stored between 34-40°F. This is the temperature range that meatpacking companies used to support the extended "use or freeze by" dates indicated on these

treated meat packages in their Generally Recognized As Safe (GRAS) petitions to FDA.

- a. Has Giant commissioned or performed any in-house studies regarding the temperature of its storage and retail displays that house fresh meat and fish, if applicable, that have been treated with carbon monoxide?
- b. Does Giant measure the temperature in its fresh meat display cases? If so, please describe the protocols for measuring the temperature, including where in the display case the temperature is measured, *e.g.*, top, bottom, front, or rear of the case. Please also provide the range of variation in temperature for each measurement period from January 1, 2004, forward for the 10 largest and 10 smallest Giant stores that sell fresh meat (measured by value of meat sales, if available). If Giant does not measure the temperature of its fresh meat display cases, how does Giant ensure that the meat on display is not spoiled?
- c. Has Giant received any citations from regulators for inadequate temperature control in meat since January 1, 2004? If so, please provide all documents relating to such citations.
- d. Please describe the due diligence that Giant performs on the suppliers of such fresh meat products regarding temperature controls in the processing and transport of these products.

2. Consumer Purchasing Behavior

Please provide all information and all documents Giant has generated or examined relating to the following studies or focus groups regarding:

- a. Criteria for consumer selection of fresh meat products;
- b. Consumer acceptance of meat whose color is preserved by carbon monoxide;
- c. Consumer ability to smell or otherwise detect spoiling meat; and
- d. The ability and actual experience of consumers reading “use or freeze by” dates on packages.

3. Labeling/Store Signs

- a. If applicable, please provide any special labeling or store signs that Giant employs to inform consumers that the meat has been treated with carbon monoxide, including any labeling or signs advising consumers that the color of treated meat should not be used to judge freshness.

- b. Please describe how Giant assures that consumers, particularly those with poor eyesight, can read the “use or freeze by” dates on packages of carbon monoxide treated meat, and provide copies of any special labeling Giant used to assure readability of those dates.

4. Shelf Life

- a. Upon receipt by Giant and placement in the retail display case, what is the average shelf life remaining for carbon monoxide treated meat (i.e., how many days before the labeled “use or freeze by” date)?
- b. On average, how long is fresh meat that has not been treated with carbon monoxide held in the retail display case?
- c. Please describe and provide all documents relating to any protocols Giant employs to ensure that meat that is past its labeled “use of freeze by” date is pulled from the display case and is no longer offered for sale, including steps the company takes to ensure that these protocols are followed. Please provide any disciplinary records regarding store managers that have violated these protocols (names of individuals, but not store locations, may be redacted).
- d. What does Giant do with carbon monoxide treated meat that remains unsold past the labeled “use or freeze by” date?
- e. How does Giant determine the shelf life of meat not treated with carbon monoxide?

5. Losses Due to Spoilage

- a. What is the average loss due to spoilage of (1) ground meat and (2) other cuts that have been prepackaged in an atmosphere containing carbon monoxide?
- b. How does this loss compare to meat that is not treated with carbon monoxide?
- c. When such losses occur, does Giant absorb the loss or does the meat packer reimburse the stores for spoiled meat?
- d. Do the same commercial terms apply to carbon monoxide packed meat as meat that has not been so treated?

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6. Consumer Complaints

Does Giant have any system in place that is capable of documenting consumer complaints relating to carbon monoxide treated meat? If so, please describe such systems and provide any documents relating to such consumer complaints.

Finally, to the extent not otherwise requested, please provide all records relating to Giant's decision to sell fresh meat products treated with carbon monoxide. Please note that, for the purpose of responding to the above request, the terms "records" and "relating" should be interpreted in accordance with the attachment to this letter. We request you supply all requested information no later than the close of business three weeks from the date of this letter. If this request is interpreted to require production of documents that would constitute an unreasonable burden on the company, it may be modified upon agreement with Committee staff. If you have any questions relating to this request, please contact us, or have your staff contact David Nelson or Kevin Barstow with the Committee on Energy and Commerce staff at (202) 226-2424.

Sincerely,



John D. Dingell
Chairman



Bart Stupak
Chairman
Subcommittee on Oversight and Investigations

Attachment

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

The Honorable Ed Whitfield, Ranking Member
Subcommittee on Oversight and Investigations

ATTACHMENT

1. The term "records" is to be construed in the broadest sense and shall mean any written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts and both sides thereof, whether printed or recorded electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements, drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intra-office and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.
2. The terms "relating," or "relate" as to any given subject means anything that constitutes, contains, embodies, identifies, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.