

**Highlights of Testimony by Wenonah Hauter
Food & Water Watch**

November 13, 2007

- Food & Water Watch supports H.R. 3115, “The Carbon Monoxide Treated Meat, Poultry, and Seafood Safe Handling, Labeling, and Consumer Protection Act”
- The Food and Drug Administration and the United States Department of Agriculture may have violated the Federal Food, Drug and Cosmetic Act and the Federal Meat Inspection Act when they permitted industry to use carbon monoxide in the modified atmosphere packaging
- The Food and Drug Administration relied only on industry data to allow this process to be used and did not conduct its own independent research
- Food products that are treated with carbon monoxide may mask spoilage
- Research indicates that consumers believe that the use of carbon monoxide in modified atmosphere packaging is deceptive

**Testimony of
Wenonah Hauter, Executive Director
Food & Water Watch
Before
U.S. House of Representatives
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce**

November 13, 2007

Good morning Chairman Stupak, Ranking Member Whitfield and members of the subcommittee. My name is Wenonah Hauter and I am executive director of Food & Water Watch. We are a non-profit consumer organization that works on food policy and water infrastructure issues. We were founded in November 2005 and we are based here in Washington, D.C.

I welcome this opportunity to testify today on an issue that is very important to my organization – the consumer’s right to know what we are feeding our families. Our organization has been in the forefront of such labeling issues as the implementation of country-of-origin labeling for meat and seafood. We are currently fighting an attempt by the Food and Drug Administration (FDA) to eliminate the labeling requirements for foods that have been treated with irradiation. And, last but not least, we have been working with other consumer organizations, such as the Consumer Federation of America, Safe Tables Our Priority, the Government Accountability Project, and Consumers Union, among others, to shed light on the issue that the subcommittee is examining today – the use of carbon monoxide in modified atmosphere packaging for meat, poultry and seafood. I believe that today will be the first time that a congressional committee has invited all of the stakeholders to testify at one hearing on this issue and I commend your leadership for organizing today’s discussion.

We view the use of carbon monoxide in modified atmosphere packaging as a consumer deception issue, so Food & Water Watch wholeheartedly supports H.R. 3115, the “Carbon Monoxide Treated Meat, Poultry, and Seafood Safe Handling, Labeling, and Consumer Protection Act” introduced by Chairman Stupak, Congressman Edward Markey and Congresswoman Rosa DeLauro, that would require all meat, poultry and seafood products

packaged with carbon monoxide to carry a safety notice informing consumers that the products have been treated as such and that the products' freshness should not be judged by its color.

As a direct result of that proposed legislation and the subcommittee's inquiries of various major supermarket chains and meat and poultry processors about their use of carbon monoxide in the foods they sell, we have seen a marked change in the use of this questionable technology. For example, supermarket chains such as Giant Foods, Stop & Shop, and Safeway have recently announced that they would stop carrying meat products that have been packaged in modified atmosphere containers with carbon monoxide. Most significant was the announcement by Tyson Foods – that largest protein processor in the country – that it would stop using carbon monoxide in its modified atmosphere packaging systems because demand for such products from its customers had dropped.

While these voluntary actions should be commended, we believe that Congress needs to enact legislation to prevent some of these companies from renegeing on their current policies.

As I stated earlier, we view the use of carbon monoxide in food packaging as a consumer deception issue. Why do we say that? I have brought with me a package of ground beef that was purchased on October 27, 2007 from a local supermarket. The label on the package states that the product had a sell-by date of October 31, 2007 and a "use by/freeze by" date of November 15, 2007 – two days from now. The meat looks perfectly fine by looking at it. What you do not know is that we left this meat out at room temperature for 48-hours. We re-refrigerated the meat. But this meat is spoiled. One would not be able to tell that by looking at it because the color of the meat – the primary indicator of spoilage to the average consumer – has not changed from the red color it had the day it was purchased. This package is not giving off any odor at this point. The meat inside this package was treated with carbon monoxide. If I opened this package right now, I am sure that the odor would indicate that the product was spoiled. Ironically, the slogan for the supermarket chain where this meat was purchased is "Where Freshness Matters." This meat – whether it had been intentionally abused or stored under ideal conditions – is not fresh by any stretch of the imagination.

While we intentionally caused this meat to spoil, it may not be uncommon for spoiled meat to reach supermarkets because of improper refrigeration en route between the meat processor and the store. On November 5, 2007, an investigative report by the CBS News affiliate in Chicago revealed several instances in recent months of improperly refrigerated meat and poultry products that made their way to restaurants and grocery stores. Some of the meat products were exposed to 95-degree heat for several hours.¹ Trucks break down, truck refrigeration units malfunction, there are traffic accidents, and the refrigeration units of in-store meat cases may not work properly. Meat that is not treated with carbon monoxide and subject to temperature abuse will begin to oxidize and turn brown. Meat that is treated with carbon monoxide will retain its color and mask spoilage even when improperly stored.

Meat that is processed within store butcher shops and wrapped for display in meat cases normally has a shelf life of about 4 to five days. Case ready meat that is packaged with modified atmosphere packaging without carbon monoxide has a shelf life of 10 to 12 days. But the United States Department of Agriculture (USDA) has approved a use by date of 28-days for ground beef and 35-days for muscle cut beef that is treated with carbon monoxide. Month old meat is not fresh in my opinion and I do not think most consumers perceive it that way.

We believe that both the FDA and USDA have let consumers down in a number of ways on this issue.

First, FDA permitted the use of carbon monoxide in food packaging through the less-than-transparent process called GRAS – Generally Recognized as Safe – by which industry can file notices on processes it intends to use and if there are no objections by FDA, the company can proceed with the new process. FDA usually reviews these notices with the information filed by the company that wants to use the new process. There is no formal notice and comment period. Unless one actively peruses the FDA website on GRAS notices, they generally go unnoticed by the average consumer. And, if one were interested in finding out what the GRAS notification

¹ CBS Channel 2, Chicago. “Filthy Food: Serious Meat Safety Violations,” November 5, 2007, see <http://cbs2chicago.com/investigations/filthy.food.violations.2.489781.html>.

contained, it would require filing a Freedom of Information Act request to obtain the information.

Second, since carbon monoxide imparts a new color to the meat that is treated, we believe that FDA should have considered this technology to be a color additive under the Federal Food Drug and Cosmetic Act {21 U.S.C. 321 (t) (1)}. If FDA had done that, it would have opened the process to formal notice and rulemaking.

Third, the FDA failed to conduct any consumer research to determine whether there would any issue with deception with this technology. There have been some in industry who have argued that there is consumer satisfaction with food products treated with this technology. The problem is that consumers do not know that their meat, poultry or seafood may have been treated with carbon monoxide. If consumers knew that up-front, it could impact their purchasing decisions.

Fourth, USDA inexplicably reversed its position on allowing this process to be used on red meat products. In an April 28, 2004 letter to FDA, Dr. Robert Post, Director of the Labeling and Consumer Protection Staff for the Food Safety and Inspection Service at USDA, expressed serious reservations about using carbon monoxide in modified atmosphere packaging for red meat because it "...could potentially mislead consumers into believing they are purchasing product that is fresher or of greater value than it actually is and may increase the potential for masking spoilage."² Six weeks later, however, Dr. Post changed his mind. Again, neither Dr. Post nor anyone else at USDA offered any consumer research to support the change in position.

Fifth, we believe that the use of carbon monoxide for red meat products is a violation of the Federal Meat Inspection Act because USDA is allowing adulterated products into commerce since there has not been proper approval of this technology as a color additive and it makes the product look better or of a greater value than untreated products.³

² Letter from Dr. Robert Post, Director of Labeling and Consumer Protection, Food Safety and Inspection Service, United States Department of Agriculture to Dr. Lane Highbarger, Office of Food Additive Safety, Food and Drug Administration, April 28, 2004.

³ See 21 U.S.C. 601 (m)(8) and 9 C.F.R. 301 (2) (8), 424.23(A).

Since the agencies charged with protecting our food supply have not conducted the proper research into this issue, I offer the results of some research conducted by consumer organizations that shows that this technology is perceived to be deceptive by consumers and that meat processed with carbon monoxide in modified atmosphere packaging can mask spoilage even if a consumer opens the package within the use by date listed on the package.

In a national poll conducted among 1019 adults in September 2006 for the Consumer Federation of America, the public opinion research firm Opinion Research Corporation found the following:

- Most consumers are concerned about the practice of adding CO to color meat and believe this practice to be deceptive, according to the survey.
- Sixty-three percent (63%) agreed with the statement that “the freshness of meat is directly related to the color of the meat.” By extending the bright red color of meat for several weeks longer than untreated meat, carbon monoxide masks the true color of the meat and consumers are unable to accurately determine if the meat is fresh.
- Three out of four consumers (75%) are very concerned or somewhat concerned about the practice of adding CO to meat to make the meat appear bright red for up to several weeks longer than untreated meat.
- Three out of four consumers (74%) also replied that CO-treated meat such as ground beef should not be allowed to have a 28-day shelf life, as required by the Federal government. The typical shelf life for prepackaged meat that has not been treated with CO is 10 to 12 days.
- Over three-fourths of consumers (78%) said that the practice of treating red meat with CO is deceptive.
- Moreover, 68% of consumers would strongly support a law to make it mandatory that meat treated with CO be labeled.⁴

In the July 2006 issue of *Consumer Reports*, Consumers Union reported findings on red meat that had been treated with carbon monoxide. Consumers Union scientists tested 10 packages of

⁴ Consumer Federation of America. “Most Consumers Are Concerned About Practice of Adding Carbon Monoxide to Meat, New Survey Finds,” September 25, 2006, see http://www.consumerfed.org/pdfs/CO_Meat_Consumer_Press_Release_9.25.06.pdf

ground beef and steaks that had been treated with carbon monoxide and they found that even though the meat appeared to be red, some of the meat samples had “spoiled or had bacterial counts that were close to indicating spoilage. By their use- or freeze-by date, seven samples were fresh, but two packages of ground beef from one company were spoiled, an additional sample was on the brink of spoilage a day before the stamped date.”⁵ I have attached that article for your information.

Chairman Stupak and members of the subcommittee, I strongly urge you to take action on this matter. Consumers are being duped into believing that they are purchasing fresh and safe meat, poultry, and seafood products when in fact they are purchasing products that may be over a month old that may have already started to spoil because the products have been artificially treated to preserve their color.

I thank the subcommittee for its attention, and I would be happy to respond to any questions that you might have.

⁵ “Seeing Red: Spoiled Meat May Look Fresh,” *Consumer Reports*, July 2006.

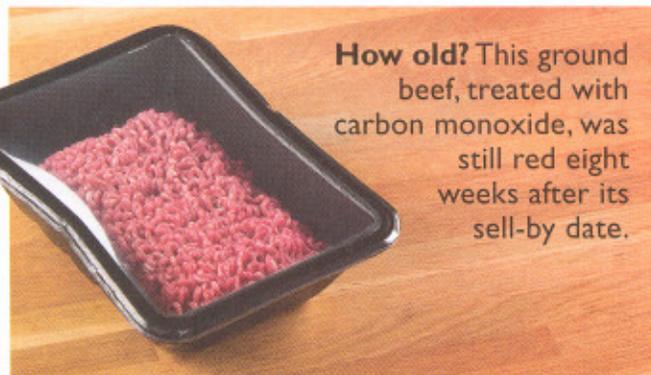
Seeing red Spoiled meat may look fresh

Attention, meat shoppers: Your supermarket may be selling ground beef and steaks packaged with gas that keeps it looking red for a month or longer. Our tests found that meat packaged using that method stayed red even if it was spoiled.

The process, used in factory-wrapped (or case-ready) meat, replaces most of the oxygen in the package with other gases. Those include tiny amounts of carbon monoxide, which react with the pigment in meat, producing a red color. The shelf life for ground beef sealed in that mix of gases can be extended from about 14 days to 28 days, and about 10 days to 35 days for whole cuts.

Some supermarket chains, including Kroger and Publix, refuse to carry meat packaged with carbon-monoxide, citing concerns about appearance and freshness or quality.

Bacterial counts that indicate spoilage in meat may make it taste and smell bad, but food safety experts say that it is generally not a health hazard. Thorough cooking will kill bacteria that cause foodborne illness, though it won't necessarily undo spoilage odors or bad taste.



How old? This ground beef, treated with carbon monoxide, was still red eight weeks after its sell-by date.

The U.S. Food and Drug Administration determined as recently as July 2004 that it had no objections to the use of carbon-monoxide packaging for fresh meat. In November 2005, Kalsec, a company in Kalamazoo, Mich., that uses a different meat packaging process, petitioned the FDA to ban carbon monoxide for that use. The company argued that federal regulations prohibited substances that "make food appear better or of greater value than it is." At press time, the FDA was still reviewing the company's petition.

CONSUMER REPORTS decided to do limited testing to check whether carbon-monoxide-packaged meat can stay red even when spoiled. Since there's no requirement that the process be listed on meat labels, we called manufacturers to verify that the brands

purchased were packed with carbon monoxide. We tested 10 samples of locally purchased ground beef and steaks from three companies. We found that the meat appeared red even if it was spoiled or had bacterial counts that were close to indicating spoilage.

By their use- or freeze-by date, seven samples were fresh but two packages of ground beef from one company were spoiled; an additional sample was on the brink of spoilage a day before the stamped date.

WHAT YOU CAN DO

Ask whether your grocer sells meat packed with carbon monoxide. If so, don't use color as the only guide to freshness. Check the package and buy meat whose stamped date is a couple of weeks away. With all meat, check for signs of spoilage, such as surface slime, and discard meat that smells bad.

names&claims

COCOVIA: CHOCOLATE THAT HELPS THE HEART?

Packages of CocoaVia Original Chocolate Bars claim they contain "natural plant extracts which have been proven to reduce bad cholesterol (LDL) by up to 8 percent," and "high levels of naturally occurring cocoa flavanols to help promote healthy circulation." But does snacking on CocoaVia chocolates really promote a healthy heart, as the package claims? Possibly, but there are less caloric ways to get your flavanols.

When we asked for scientific evidence to support CocoaVia's claims, the manufacturer, Mars, sent us published articles on the cardiovascular benefits of cocoa rich in flavanols and studies suggesting that flavanol-rich cocoa either improved vascular function or inhibited clotting in clinical trials. Support for the cholesterol-lowering claim included an abstract that, at press time, had not yet been published. Most of the studies were done with Mars collaboration or funding.

Nutritional experts we consulted said the studies that Mars sent were not definitive. Adding two 100-calorie CocoaVia bars a day to your diet "for maximum benefit," as the packaging suggests, could result in a weight gain of about 20 pounds in a year unless other foods are reduced or exercise is increased. And at a cost of \$4.99 for a box of five bars, you'd spend nearly \$730 a year. Our expert tasters found that CocoaVia bars had an intense dark-chocolate flavor and a fairly smooth melt.

CR's take: It makes more sense to focus on consuming flavanols from foods such as apples, grapes, and tea.



Did you know?

A painful lower leg can indicate high cholesterol

People with pain in the Achilles tendon, which connects the muscles of the calf to the heel, should consider getting their cholesterol checked. In research involving 200 people, those with a common form of hereditary high cholesterol were nearly seven times more likely than those without to report tendon pain lasting three days or more, researchers report in the March 2006 issue of *Annals of the Rheumatic Diseases*. Cholesterol builds up in the tendons, as well as the arteries, causing pain and swelling.