

Food Safety Bill Signed—Policy Update

The Food Safety Modernization Act (FSMA) that we have been working on for the past two years was signed by President Obama yesterday.

As our coalition wrote: “this capped a long fight by the National Sustainable Agriculture Coalition and its members and allies for food safety rules that protect consumers without curbing the growing movement toward fresh, local and regional food. The food safety bill passed by the House in July of 2009 would have imposed a one size fits all regulatory system biased toward industrial agriculture with a regressive registration fee, expensive food safety plans, and regular on-farm FDA inspections regardless of the degree of the potential risk for food borne illness. The new regulatory burdens threatened to erect formidable barriers to the developing local and regional markets for many small and moderate sized farms.”

It is hard to call it a complete victory since we have been playing defense the whole time. We decided to try to improve the bill in the Senate because we were convinced it would pass and, as you can see, it passed. I think our coalition did improve it by getting rid of across-the-board fees on producers, requiring harmonization with environmental laws and the National Organic Program, limiting paperwork requirements, and finally providing some possible exemptions for small producers and local food.

What does the law really do? “The FSMA requires manufacturers and farmers to develop strategies to prevent contamination and then continually test to make sure they work. The legislation also gives the FDA the authority to recall food; currently, it must rely on food companies to pull products voluntarily from the shelves. The law also gives the FDA access to internal records at farms and food-production facilities. Under the law, importers would be required for the first time to verify that products and ingredients from overseas meet U.S. safety standards. FDA Commissioner Margaret Hamburg said that there are some steps the agency can take without increased funding, including moving forward with production standards for growing fruits and vegetables. The FDA wants to have the produce regulations in a year.”

What I want to stress to you is that this is just one stop on a long road and there are a lot of regulatory proceedings ahead of us. We will need to continue to participate to make sure that the FDA considers the potential impacts of its actions on all producers. I have been encouraged in this respect by the FDA’s recent shell egg rule. Here is the language from the recent final rule:

"Over 4,000 farm sites have 3,000 or more egg-laying hens, representing 99 percent of all domestic egg-laying hens and accounting for 99 percent of total egg production. There are an additional 65,000 farms with fewer than 3,000 egg-laying hens, accounting for the balance of eggs produced (Ref. 26). Persons who produce shell eggs from a farm operating with 3,000 or more laying hens, unless that farm sells all of its eggs directly to consumers or does not produce shell eggs for the table market, are subject to this final rule (21 CFR 118.1(a))."

The FDA exempted small farms--65,000 out of 69,000 farms--because the benefits did not exceed the costs of applying the rule to them. And even the bigger farms would be exempt if they sold all of their eggs directly to consumers.

So that is why it is so disappointing to read the press releases from United Fresh Produce Association and other industry groups deploring the Tester-Hagan amendment that provides some possible exemptions from federal regulation to small food facilities and local food. The amendment, sponsored by Senators Jon Tester (D-MT) and Kay Hagan (D-NC), will provide a size appropriate and less costly alternative to preventative control plans and produce standards for farmers who:

- Direct market more than 50% of their products directly to consumers, stores or restaurants,
- Have gross sales (direct and non-direct combined) of less than \$500,000,
- Sell to consumers, stores, or restaurants that are in-state or within 275 miles, and
- Provide their customers with their name, address and contact information.

Here is what United Fresh Senior Vice President of Public Policy Robert Guenther said about it:

“...the Food Safety Modernization Act still contains an amendment from Senators Jon Tester of Montana and Kay Hagan of North Carolina that threatens the health and well-being of a nation of consumers by exempting some producers and processors based only on the size of their business, their geographic location, or to whom they sell their products,” continued Guenther. “This inclusion of exemptions based on non-scientific qualifications will limit the ability of the Food and Drug Administration to assure consumers that all foods they purchase, whether at grocery stores, restaurants, farm markets, or elsewhere, have met the same food safety standards. We remain fearful that this profound error will come back to haunt Congress, public health agencies, and even those who thought they would benefit from food safety exemptions, but more importantly, we are fearful of what may slip through the food safety loopholes created by the Tester/Hagan Amendment and adversely affect consumers in the United States.”

Given the complete lack of evidence that small producers are responsible for the hospitalizations and deaths from food safety incidents, this seems like a lot of crocodile tears when their real objective is as the Wall Street Journal described it:

From a *Wall Street Journal* Editorial, December 2, 2010:

“Not surprisingly, this bill’s main critics have been the small farms and local and organic food outfits that don’t have the profit margins to comply with new regulatory burdens like the “risk-based preventative controls” that the FDA will soon enforce. The House version applies even to farmers markets and roadside stands. Naturally, agribusiness and the processed food industry (and their legal departments) couldn’t be happier, and it’s not

the first time big business has leveraged government to weigh down smaller competitors.”

The passage of the Food Safety Modernization Act only authorizes the FDA to do certain things, it doesn't appropriate any funds to do them. That will be a battle in the next Congress.

CAFF will continue to monitor regulatory actions such as the forthcoming produce rules and keep you advised of proceedings that might affect you. For more information, please contact CAFF Policy Director David Runsten at (530) 756-8518 ext. 25 or dave@caff.org and please consider a donation to CAFF to support this work.