Bon Appetit—or Maybe Not

The House and Senate are advancing very different bills to tighten federal regulations on food producers and give the FDA more power.

By Jerry Hagstrom

The rise of Sen. Tom Harkin, D-Iowa, to the chairmanship of the Senate Health, Education, Labor, and Pensions Committee is providing new impetus to complete food safety legislation. Whether that happens this fall or in 2010 depends on how fast health care legislation moves—or whether another public scare pushes food safety to the top of the agenda.

At issue are bills to provide the Food and Drug Administration more regulatory power and resources to oversee the production and distribution of almost all foods that the Agriculture Department does not inspect. The USDA would continue to oversee meat, poultry, and processed egg products are the exceptions. The House passed a bill earlier this year. Senate Majority Whip Richard Durbin, D-Ill., has introduced a bill in the Senate, but no action has been taken.

Harkin, who took an interest in food safety when he chaired the Senate Agriculture, Nutrition, and Forestry Committee, would like to modify Durbin’s bill and pass it this year. In a recent e-mail, he hedged on whether the measure may get bumped into next year.

“Congress has a very full health agenda in the months ahead—first and foremost, passing comprehensive health reform—but we also need to give priority attention to food safety reform,” Harkin wrote. Praising President Obama for establishing a President’s Food Safety Working Group that includes the USDA, the FDA, and other agencies with food safety responsibilities, Harkin added, “I am confident that, working together, we can and will pass comprehensive food safety reform in this Congress.”

An industry lobbyist who favors the Senate bill said he fears that a food safety scare could lead the Senate to pass the House bill too quickly.

After contaminated spinach and jalapeno peppers imported from Mexico caused food poisoning in 2006 and 2008, lawmakers in the House and Senate introduced bills to improve food safety. Although consumer groups have long sought more power and resources for the FDA, the current push for legislation comes as much from fruit and vegetable growers, who hope that a new law will restore consumer confidence and help the FDA do a better job.

The contamination of spinach with E. coli bacteria in 2006 occurred in California, but the FDA urged consumers to avoid eating spinach from other regions as well. The agency initially blamed a 2008 salmonella outbreak on U.S. tomatoes before concluding that imported peppers were the cause. Both FDA announcements led to millions of dollars in losses for American growers.

The House-passed bill is generally considered tougher than the Durbin measure. According to a congressional staff analysis, both bills would expand the FDA’s access to records to determine whether firms are complying with food safety laws; strengthen registration requirements so the agency has accurate, up-to-date information on food facilities; and require facilities to set up preventive control plans to address hazards before they occur. The bills would also increase the frequency of inspections, establish a system to accredit food-testing laboratories, grant the FDA mandatory recall authority, and authorize the FDA to require documents that certify the safety of high-risk imports.

The House bill also contains provisions that the Durbin bill does not—most notably, a $500 per facility registration fee, with an annual cap of $175,000 for individual owners; a nationwide trace-back system; civil monetary penalties for violating food safety laws; and country-of-origin labeling requirements for certain products.

The House bill passed 2-to-1, but some Republican members objected to its cost. Consumer groups and the United Fresh Produce Association strongly backed it, and most other farm and agribusiness groups either supported it or stayed neutral. The National Sustainable Agriculture Coalition and the National Organic Coalition said that the $500 annual fees were too high for small processors.

The Senate bill does not address how to pay for the FDA’s increased level of regulation and inspection. The Obama administration has not taken a position on how Congress should come up with the money for the agency’s enhanced inspection and oversight. Recently, though, FDA Commissioner Margaret Hamburg, a former New York City health commissioner appointed by Obama, said that the FDA needs more money and that she is “very happy the [House-passed food safety bill] has a fee-based revenue stream.”

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