CSPI Urges NO Vote on Four Dangerous Food Safety Amendments

Statement of Senior Food Safety Attorney David Plunkett

The Senate may consider four amendments to the Farm Bill that affect consumer safety and should be defeated. These amendments would block or modify provisions of the Food Safety Modernization Act (FSMA), bipartisan legislation that passed Congress in 2010. The Center for Science in the Public Interest (CSPI) asks that you oppose the following amendments should they come up for a vote during Senate consideration of S. 954, the Agriculture Reform, Food, and Jobs Act of 2013.

The Crapo amendment (SA 1039) would defund, effectively repealing, the produce safety standards section of FSMA. CSPI's study of foodborne disease outbreaks found contaminated produce caused more illnesses than any other food group over the last decade. (See finding No. 5 in Outbreak Alert!, http://cspinet.org/new/pdf/outbreak_alert_2013_final.pdf). It will probably be argued as a "small farm" protection. But the real impact of this rule is that consumers will continue to be exposed to unsafe produce and suffer preventable foodborne diseases.

The King amendment (SA 1033) would prevent FDA from enforcing "any" regulations until the agency submits a scientific and economic analysis to Congress. It has several unintended consequences that will hurt consumers. Because it prohibits enforcement of any regulations promulgated under FSMA, it would bar FDA from enforcing rules on import safety, laboratory testing standards, and better traceability for high-risk foods. It prevents FDA from enforcing the preventive controls requirements against large corporations even though its purpose is to study FSMA's impact on small and very small facilities. Most seriously, it back-pedals over rules already in place such as administrative detention, records access and improved prior notice of imports. These rules are protecting consumers now from filthy and contaminated food such as --

- Aug. 18, 2011. FDA detained spices, tamarinds and chili products at Bonaterra Products, CA, storage warehouse, after an inspection found evidence of rodent and insect infestation. www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm253983.htm
- Dec. 2011. FDA investigators ordered the detention of smoked salmon at Mill Stream Corp of Hancock, ME, because of concern over possible Listeria monocytogenes contamination. The firm destroyed salmon after investigators found Listeria was present. www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm289087.htm
Enhanced prior notice has been giving FDA greater ability to detect potentially contaminated food imports since July 2011.

The King amendment (SA 1042) would expand the number and type of facilities and farms that can claim Tester status. By limiting the issue of income to only those products covered by the section where the provision appears, it opens the door to a large business owning a qualifying facility or operating a small farm but claiming special status. That violates the idea that subsidiaries and affiliates count toward the total income of a Tester qualified facility or farm. The idea of including the value of food produced by subsidiaries and affiliates in income is to keep a large business that could easily comply with FSMA from benefiting by simply restructuring its business into multiple small facilities. While we understand this amendment is well intended, it simply does not prevent unintended consequences which could expose consumers to unsafe food.

The Boozman amendment (SA 1098) appears to be targeted at assuring access to affordable food when it requires Congress to approve regulations that may have a "negative effect on access... to affordable food". This seemingly beneficial purpose is a ruse that is meant to apply any time someone could argue that regulatory costs are passed through to consumers. That ignores the benefit side of cost-benefit. It could block rules issued under FSMA even though the benefits that flow to consumers far outweigh any potential cost pass-through. Furthermore, the scheme the amendment proposes would allow a minority in the Senate to filibuster regulations designed to protect consumers from preventable foodborne illnesses.

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