

President Obama Signs Into Law Sweeping Food Safety Bill Expanding FDA Powers

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On Tuesday [January 4th], President Obama signed one of the most expansive food regulation bills in living memory, giving the Food and Drug Administration sweeping regulation powers over food production and distribution.

The billion-dollar Food Safety Modernization Act (FSMA) quickly and quietly passed through the House and Senate in the final days of the lame duck session in response to recent outbreaks of food-borne illnesses throughout the United States. The FSMA is the most sweeping food safety systems since 1938.

Previously, food distributors issued voluntary recalls when it became evident that food-borne illnesses were causing health issues. The centerpiece of the new law will allow the FDA and the Secretary of Health and Human Services to issue mandatory recalls for a variety of food products deemed unsafe.

Apart from containing immediate health threats, however, the FSMA also greatly expands regulation requirements and the FDA's inspection authority over food manufactures. The FSMA will increase the required number of inspections and authorizes the HHS secretary to suspend the registration of food facilities, according to the official summary of the bill.

Expected to cost at least \$1.4 billion in implementation, opponents of the act say it will prove to be regulation overkill and only assist larger, cash-flush food producers and distributors in edging out smaller and specialty operations.

"This is not going to be a one-time switchover and then people are going to find out how much it's going cost food producers to comply with this," said Walter Olsen, a lawyer, author and senior fellow at the Cato Institute. "It's a power grab under which they can develop rules years from now, sector-by-sector, that they can rush through."

Olson said the act will provide a false sense of security to consumers, who won't see the immediate effects right away and to whom a sense of safety is often paramount. While the act will only cover about 3-5 percent of products currently on the market, the act's language FDA to expand its reach into ever-expanding areas.

The result could mean fewer choices, as only those companies with significant cash flow will be able to support the financial burden of testing, procedures and paperwork.

"You won't see the effects right away," said Olson. "You'll see people gradually struggling to import one particular low-volume item. By the time people look around and say 'there's quite a bit that we can't find any more,' or 'we can only find mass-produced version of items' — at that point then we'll be completely entrenched. Then it will be considered a bit ridiculous to go back and fix."

Proponents of the act say more regulation is needed in order to prevent and contain the threat of food-borne illnesses, which kill about 9,000 people annually, according to the Centers for Disease Control (CDC). As for cost, Erik Olson, the director of food initiatives for the Pew Health Group, cited studies to Food Safety News that estimate the health care price tag related to food-borne illness to be about \$152 billion annually.

Despite these health and monetary concerns, opponents of the bill argue that the act is a vast overreach of regulatory powers and the health-risks of food-borne illness have been exaggerated.

In Aug. 2010 after a Salmonella outbreak in eggs, FDA chief Margaret Hamburg said “[the FDA needs] better abilities and authorities to put in place these preventive controls and hold companies accountable,” according to CBS. The CDC, however, reported a decline in food-borne illnesses since 1998 and in an industry that had been self-regulating, deaths from these illnesses have dropped more than 100-fold, according to Reason magazine’s Ronald Bailey.

Apart from registration and regulation fees that could greatly affect smaller operations, producers that skirt the FDA face heavy penal and civil penalties. While some technology companies may be eagerly looking forward to a boom in sales thanks to the need for food tracking systems and databases, the funding for the FSMA isn’t a sure thing yet.

Georgia Republican Rep. Jack Kingston, a member of the Appropriations Committee, told the Washington Post that the low number of deaths and serious illnesses from food-borne illnesses don’t justify the cost of the new regulations.

Opponents of the original Senate bill said the costs incurred in the regulatory requirements would effectively shut down small farms and local artisan operations. As a result, the Democratic Montana Sen. Jon Tester inserted an amendment that would exempt farms that sell their products within a 275 mile radius and make less than \$500,000 annually in sales.

By Jeff Winkler