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New FDA Powers: The Wrong Remedy for a Phony Crisis

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Senate Majority Leader Harry Reid (D–NV) is reportedly pursuing a vote this week on a massive expansion of food regulation. Proponents—Democrats and Republicans alike—contend that the very security of America's food supply is at stake. But rhetoric aside, the nation's food supply has never been safer, thanks largely to technological advances and market forces. Consequently, granting vast new powers to the Food and Drug Administration (FDA) would raise the cost of food but would not increase consumer protection.

Where Is the Crisis? Spanning some 150 pages, the FDA Food Safety Modernization Act would authorize the FDA to dictate how farmers grow fruits and vegetables, including rules governing soil, water, hygiene, packing, temperatures, and even what animals may roam which fields and when. It would also increase inspections of food "facilities" and tax them to do so. And, fulfilling the dream of a long line of agency officials, the bill grants the FDA unilateral authority to order recalls.

In addition to the inevitable costs to consumers, expanding the agency's regulatory reach would require additional spending of $1.4 billion between 2011 and 2015, according to the Congressional Budget Office.[1] The costs to the private sector have not been calculated but would likely reach into the hundreds of millions of dollars annually.

Incident rates of food-borne illness have actually been declining for more than a decade, in spite of higher consumption of the raw foods that are most often associated with outbreaks of food-borne illness. For example, there were 51.2 cases of confirmed food-borne bacterial contamination per 100,000 people in 1996. The rate fell by a third by 2009—to 34.8 cases per 100,000 people.[2]

Centralized Authority Ineffective. Representative John Dingell (D–MI), who sponsored the companion bill approved by the House in July 2009,[3] hailed the proposed act as "a monumental piece of bipartisan legislation that will grant FDA the authorities and resources needed to effectively oversee an increasingly global food marketplace."[4]

The bill has indeed drawn bipartisan support, and the "marketplace" is increasingly global, but neither the FDA nor any other centralized authority can "effectively oversee" the food market. America's food supply system is a complex and ever-shifting network of more than 2.2 million farms, 28,000 food manufacturing facilities, 149,000 food and beverage stores, and 505,000 restaurants and similar establishments.

The bill would also require the Environmental Protection Agency to "participate" in food safety activities, which would certainly not improve regulatory efficiency. Moreover, contrary to the claims of Dingell, Reid, and their allies, new regulations

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would not fill regulatory gaps in the food safety system. Meat, poultry, and dairy products—the most common sources of food-borne illness—are regulated by the Department of Agriculture and are not addressed in this bill

Regulatory Overreach. The proposed act also calls for stepping up inspections of food facilities[5] and voluminous record-keeping requirements, but even if the FDA somehow managed to increase inspections sevenfold in the next five years,[6] meaningful improvements in food safety would not come from intermittent visits by regulators or their scrutiny of paperwork. In fact, the agency has systematically failed to apply scientific principles to its regulatory policies, which have effectively rendered its actions futile bureaucratic exercises. Only 36 percent of FDA managers believe the agency is keeping pace with scientific advances, according to a recent survey by the Government Accountability Office.[7]

At least the legislation calls for biennial reviews of epidemiological data to identify most significant food-borne contaminants and hazards.

Small farmers and local producers are particularly concerned that the proposed requirements would prove unaffordable. Indeed, all food "facilities"—including those home-based businesses that make jam, bread, and cheese for local markets—would be required to undertake periodic hazard analyses and produce "risk-based preventive controls."

Imports would also come under more stringent inspection, but contrary to conventional wisdom, food imports do not appear to carry a higher risk of contamination—at least according to FDA records. Of the 285 recalls and allergy alerts issued in the first nine months of 2010, only 16 (about 6 percent) involved foreign manufacturers.

Nor does it seem all that necessary to lard the legislation with three grant programs: grants to schools for allergy management ($107 million); food safety training, education, outreach, and technical assistance ($21 million); and food safety participation grants for states and tribes ($83 million).

More Powerful Forces. History has repeatedly shown that science and technology have delivered the greatest advances in food safety. Pasteurization, water disinfection, and retort canning, for example, freed consumers from food transmission of botulism, typhoid fever, tuberculosis, and cholera. And it was the food industry, not regulators, that first standardized quality grading and pathogen elimination processes. More recently, irradiation and bioengineering have also helped to destroy pathogens and extend product shelf-life. Were it not for alarmist opposition to both, consumer acceptance

1. Congressional Budget Office, "Cost Estimate: S. 510: Food Safety Modernization Act," August 12, 2010, at *http://www.cbo.gov/ftpdocs/117xx/doc11794/s510.pdf* (November 17, 2010).
2. Incident rates calculated with data from Food and Drug Administration Foodborne Diseases Active Surveillance Network, "Table 1b. Incidence of laboratory-confirmed bacterial and parasitic infections in 2009," at *http://www.cdc.gov/foodnet/factsandfigures/2009/Table1b_all_incidence_96-09.pdf* (November 17, 2010).
3. The Food Safety Enhancement Act, H.R. 2749, 111th Cong., 1st Sess., at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h2749eh.txt.pdf* (November 17, 2010).
4. J. Taylor Rushing, "Dingell Criticizes 'Slow to Act' Senate on Taking Up Food Safety Bill," *The Hill*, February 21, 2010, at *http://thehill.com/homenews/senate/82531-dingell-criticizes-slow-to-act-senate-on-food-safety-bill* (November 17, 2010).
5. Facilities deemed "high risk" by the FDA would require at least one inspection within five years of enactment of the law and not less than once every three years thereafter. Facilities pegged as "non-high risk" by the agency would require inspection at least once within seven years of enactment and not less than once every five years thereafter.
6. The CBO estimates that the bill would require 50,000 domestic and foreign inspections in 2015, compared to 7,400 in 2009.
7. The FDA's Science Board reported in November 2007 that science at the agency was suffering from serious deficiencies that rendered the agency unable to meet current or emerging regulatory responsibilities. A recent follow-up review by the Government Accountability Office likewise found "gaps in scientific information" within the agency. "We found that FDA was hampered in its ability to carry out some food safety responsibilities…because it lacked certain scientific information." See U.S. Government Accountability Office, *Food Safety: FDA Has Begun to Take Action to Address Weaknesses in Food Safety Research, but Gaps Remain*, GAO-10-182R, April 23, 2010, at *http://www.gao.gov/new.items/d10182r.pdf* (November 17, 2010).

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would likely be greater—bringing with it broader health benefits.

Market forces such as competition, brand-name value, monitoring by financial markets and insurers, and common law are also powerful drivers of food safety. There are bad actors in every pursuit, of course, but considering the sheer size of the market, Americans enjoy a remarkably safe food system.

In the end, however, as much as we might wish it to be otherwise, food-borne illness will always be with us. We are enveloped by microbes, and more than 200 known diseases are transmitted through food. Tragically, some 5,000 deaths are related to food-borne diseases each year, according to the Centers for Disease Control. The most severe cases tend to occur in the very old, the very young, and those with compromised immune system function.

Didn't Get the Memo? The Reid bill clearly contradicts the message sent by voters just two weeks ago: Americans do not want and cannot afford yet more unnecessary regulation and expansion of government. This proposal constitutes a costly and ineffective answer to a manufactured crisis.

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