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CRS Report for Congress

Food Safety Provisions of the 2008 Farm Bill

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Summary

Food safety re-emerged as an issue in the 110th Congress following a series of widely publicized incidents — including adulterated Chinese seafood and pet food ingredient imports, findings of bacteria-tainted spinach, meat, and poultry produced domestically, and several large food recalls. In 2008, Congress approved a new omnibus farm law that includes, among other provisions, several changes affecting U.S. food safety programs. Changes in the livestock title (Title XI) include subjecting catfish to U.S. Department of Agriculture (USDA) mandatory inspections similar to those for red meat and poultry; creating an option for state-inspected meat and poultry plants to ship their products across state lines; and requiring meat and poultry establishments to notify USDA about potentially adulterated or misbranded products.

A series of widely publicized food safety incidents has stoked interest in the effectiveness of the U.S. food safety system. In the 110th Congress, various House and Senate committees have held oversight hearings, and numerous bills have been introduced. A number of new food safety provisions were added to the omnibus farm bill (P.L. 110-234; re-enacted as P.L. 110-246).[1]

Farm bills generally originate in the House and Senate Agriculture Committees, which have lead jurisdiction over USDA programs regulating the safety of red meats, poultry, and processed egg products. Therefore, the new farm law generally applies to these USDA programs. Non-USDA food safety legislation is pending before other congressional committees. For example, the chairmen of the House Energy and

[1] The conference agreement on the 2008 farm bill was originally approved by the House and the Senate as H.R. 2419 and vetoed by the President in May 2008. Both chambers overrode the veto, making the bill law (P.L. 110-234). However, the trade title was inadvertently excluded from the enrolled bill. To remedy the situation, both chambers repassed the farm bill conference agreement (including the trade title) as H.R. 6124. The President vetoed the measure in June 2008 and both chambers again overrode the veto, which made H.R. 6124 law as P.L. 110-246, and superseded P.L. 110-234.

Commerce and the Senate Health, Education, Labor, and Pensions Committees have been circulating draft safety bills primarily affecting foods other than meat and poultry. Such food safety bills include items that are within the purview of the Food and Drug Administration (FDA) at the U.S. Department of Health and Human Services (HHS).[2]

State-Inspected Meat and Poultry

U.S. meat and poultry slaughter facilities and processing plants have operated for many decades under one of two parallel inspection systems. The one familiar to most people is the federal meat and poultry inspection system administered by USDA's Food Safety and Inspection Service (FSIS). The other is made up of 27 separate state-administered inspection programs. Although these state programs are to be equal to the FSIS program, state-inspected products cannot enter interstate commerce. Many of these states and the plants they oversee have long sought legislation to end this prohibition.

Section 11015 of the enacted farm bill amends the Federal Meat Inspection Act (FMIA; 21 U.S.C. 601 et seq.) and the Poultry Products Inspection Act (PPIA; 21 U.S.C. 451 et seq.) in order to authorize a new opt-in program for state-inspected plants. This program is to supplement rather than replace the existing federal-state cooperative inspection program. In states that choose to participate, a federally employed coordinator would supervise state employees in plants that want to ship across state lines. Eligible plants would be limited to those with 25 or fewer employees — except that plants with between 25 and 35 employees could apply for coverage within the first three years of enactment. The law sets federal reimbursement for state costs under the new program at 60%; the current federal-state cooperative inspection program provides reimbursement at 50% of costs. Products inspected under the new program would carry the federal mark of inspection. Other provisions prohibit federally inspected establishments from participation, establish a new technical assistance division to assist the states, and require periodic audits by USDA, among other things. (See CRS Report RL34202, *State-Inspected Meat and Poultry: Issues for Congress*.)

Notification and Recall Requirements

FSIS periodically announces recalls of meat and poultry products sold in the United States, frequently involving concerns about pathogen contamination, linkages to outbreaks of foodborne illness, and other safety problems. These recalls — which FSIS can request but not mandate under current law — raise issues of consumer confidence in the meat and poultry supply, and in the adequacy of USDA oversight. At issue is the need, if any, for changes in recall policies, including prompter notification when potentially adulterated products enter the market. Several pending food safety bills include various food recall and notification requirements. (See CRS Report RL34313, *The USDA's Authority to Recall Meat and Poultry Products*.)

In the enacted 2008 farm bill, **Section 11017** ("Food Safety Improvement") amends both the FMIA and PPIA to require any establishment subject to inspection to "promptly notify" USDA if it believes, or has reason to believe, that an adulterated or misbranded

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[2] Such non-farm bill proposals are discussed in other CRS reports; see "Food Safety and Nutrition" under the "Agriculture" entry on the CRS home page, at [http://www.crs.gov/].

meat or poultry product has entered commerce. This notification requirement is in lieu of a somewhat more prescriptive provision in the Senate-passed version that would have created "reportable" meat and poultry registries. The registries would have been similar in concept to the registry in the Food and Drug Administration Amendments Act of 2007 (P.L. 110-85), which now requires the Secretary of HHS to create a registry for reporting FDA-regulated foods with safety problems. (See CRS Report RS22779, *Food Safety: Provisions in the Food and Drug Administration Amendments Act of 2007*.) Section 11017 of the new farm law also requires meat and poultry establishments to prepare and maintain recall plans and any reassessments of their process control plans and to have them available for USDA inspectors to review and copy.

Catfish Inspection and Grading

Under the FMIA, USDA conducts mandatory, continuous inspection of most red meats and of the livestock from which they are derived. The PPIA sets similar requirements for poultry and poultry meats. Under the Federal Food Drug and Cosmetic Act (FFDCA; 21 USC 301 et seq.), the safety of virtually all other foods, including fish and shellfish, is regulated by FDA under an entirely different system.

Section 11016(b) of the enacted 2008 farm bill designates "catfish," as defined by the Secretary of Agriculture, as an "amenable species" — that is, subject to mandatory inspection under the FMIA. The amendment will apply to companies that process catfish for food. It further directs USDA to "take into account the conditions under which the catfish is raised and transported to a processing establishment" and to consult with FDA. Conferees, in report language, noted that additional seafood species were not included but that the Secretary already has authority under the FMIA to bring others in. The inspection provision reportedly was urged by the U.S. catfish industry, which has faced strong competitive pressure from foreign catfish producers, particularly in Asia, where, U.S. interests allege, unacceptable types and levels of veterinary drugs are more frequently used.[3] The conference report states the intent of Congress "that catfish be subject to continuous inspection and that imported catfish inspection programs be found to be equivalent under USDA regulations before foreign catfish may be imported into the United States."

Section 11016(a) amends the Agricultural Marketing Act of 1946 (7 U.S.C. 1622) to require USDA to establish a voluntary grading program for catfish, which producers could opt into and pay for with user fees (as exists in other USDA quality grading programs authorized by the 1946 act). The section also authorizes producers of other farm-raised fish and shellfish species to apply for voluntary grading services.

Country of Origin Labeling

The 2002 farm bill (P.L. 107-171, §10816) required food stores (but not restaurants) to provide, beginning on September 30, 2004, country-of-origin labeling (COOL) for

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[3] According to USDA data, approximately 85% of all U.S. seafood consumption (including but not limited to catfish) is from imports (per capita basis). This compares with an approximately 15% import share for all U.S. food consumption. See CRS Report RL34198, *U.S. Food and Agricultural Imports: Safeguards and Selected Issues*.

fresh produce, red meats, peanuts, and seafood (but not for their processed forms). Some have argued that COOL is a food safety tool for consumers who want to know where their food originates; others counter that mandating such labeling serves no useful purpose. Congress twice postponed implementation for all COOL requirements except for seafood, as it continued to argue over the need for and likely impacts of this new mandate. This debate culminated with the inclusion of several COOL modifications in the enacted 2008 farm bill. (See also CRS Report 97-508, *Country-of-Origin Labeling for Foods*.)

Section 11002 continues to require COOL implementation on September 30, 2008, and it adds the following as newly-covered commodities: goat meat, chicken, macadamia nuts, pecans, and ginseng. Several additional amendments are aimed at easing recordkeeping and verification requirements and at lowering penalties for noncompliance.

First, Section 11002 changes the labeling requirements for fresh meats, by creating four broad categories of labels. "U.S. country of origin" can only be used for meats from an animal exclusively born, raised, and slaughtered in the United States (or present here before July 15, 2008). Three other categories are for products with multiple countries of origin, imported for immediate slaughter, or exclusively of foreign origin. For ground meats from the covered species, the label must list all, or "all reasonably possible," countries of origin. For fresh produce, covered nuts, and ginseng, a U.S. state, region or locality designation is sufficient for denoting U.S. country of origin. Wild and farm-raised fish continue to have their own, separate definitions in the amended COOL.

Second, Section 11002 permits USDA to audit any person who prepares, stores, handles, or distributes a covered commodity to verify compliance (not just retailers). However, these persons cannot be required to maintain records for COOL "other than those maintained in the course of the normal conduct of the business..." Finally, noncompliance penalties are lowered to $1,000, from $10,000, for each violation.

Omitted Food Safety Provisions

The Senate-passed version of the farm bill contained a number of other food safety-related provisions that are not in the final law. These included a Congressional Bipartisan Food Safety Commission to study and make recommendations to modernize food safety programs, which the President would have to use to develop proposed legislative changes; a requirement that USDA and HHS issue sanitary food transportation regulations; and a prohibition on FDA issuing a final risk assessment and on lifting a voluntary moratorium on meat and milk from cloned animals and offspring, until completion of newly mandated National Academy of Sciences and USDA studies on their safety and market impacts, respectively.[4] A House-passed provision, to authorize implementation of quality-related food safety programs under specialty crop marketing orders, also was omitted from the conference bill; conferees indicated that such programs already are authorized under the Agricultural Adjustment Act of 1935. Whether any of these or similar provisions will re-emerge in other pending legislation remains to be seen.

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[4] FDA has already issued the risk assessment; see CRS Report RL33334, *Biotechnology in Animal Agriculture: Status and Current Issues*.