



S510 Talking Points

by Pete Kennedy, Esq. – September 28, 2010

Here are some talking points for your Senators, taken from “S510 Revised: FDA Coming to a Farm Near You” and observations by Senator Coburn about weaknesses in the bill [see “Detailed Concerns with S.510, The FDA Food Safety Modernization Act of 2010”].

FDA has powers under existing law to effectively deal with outbreaks like Wright County Egg. FDA has power to inspect, power to detain product and can readily obtain court orders to seize adulterated or misbranded food products or enjoin them from being sold. The problem isn't that FDA needs more power; it's that FDA does not effectively use the power it currently has.

S510 will give FDA power to regulate food in intrastate commerce; state and local governments are more than capable of handling any problems related to food in intrastate commerce. All the major outbreaks of foodborne illness involve either imported food or food in interstate commerce.

S510 will hurt our ability as a nation to be self-sufficient in food production; it has more lenient inspection requirements for foreign than domestic producers creating an unfair advantage for food imports. Giving an advantage to foreign producers will only increase the amount of food imported into this country that does not meet our domestic standards. As a member of the World Trade Organization (WTO), the U.S. must accept imported food that meets WTO standards, even if those standards are not up to our own. The bill does not address food security; the ability of a country to produce enough food to meet its own needs.

S510 will provide a competitive advantage to industrial food producers--the sector of the food system causing most of the food safety problems; they will benefit from this legislation because it will burden small farmers and local producers, the solution to food safety problems in this country. The bill will impose a one-size-fits-all regulatory scheme that will punish local food producers, many of which won't have the economies of scale to comply with S510's requirements.

The Department of Homeland Security (DHS) should not be involved in domestic food regulation. The best way to protect our food supply is to decentralize and localize food production. There are already enough problems coordinating on food regulations just between FDA and USDA without bringing DHS into the mix. DHS is a huge disjointed bureaucracy whose employees have little experience in food regulation.

S510 gives FDA the power to dictate growers' practices by establishing national standards for produce; the same standards applying to big firms—where the food safety problems have occurred—will apply as well to small growers who have had no food safety issues. Small growers will be forced to change practices that have produced safe, quality food.

Food safety plans can be used to drive small producers out of business for reasons that have nothing to do with food safety; this has been shown by the experience of the meat industry. In that industry, USDA overwhelmed small plants with paperwork requirements, most of which had no connection to safe food; small plants were targeted for a higher number of enforcement actions while there was lax regulation of big plants. There's nothing in the bill preventing the same thing from happening to small producers subject to the S510 food safety plan requirement.



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Watch the video clip, [“Dr. Coburn Addressing Underlying Problems with S510”](#) from September 23, 2010. Below are good talking points from Senator Tom Coburn:

- **Performance standards.** The bill gives the Secretary [of Health and Human Services] the authority to “issue contaminant-specific and science-based guidance documents, action levels, or regulations.” The way the bill is written the authority is extremely broad and could be used by FDA to issue very specific and onerous regulations on food facilities, without even the normal rule-making and guidance process FDA food regulations normally go through.
- **Traceability.** FDA is required to establish a “product tracing system within the FDA” based and develop additional recordkeeping requirements for foods determined to be “high risk.” The House legislation includes “full pedigree” traceback which puts FDA in charge of tracing the entire supply chain. The final bill requires the FDA to do this for high-risk foods, and while there are some limitations on FDA, anything further than the “one-up-one-back” requirement in the bioterrorism law will be very onerous on industry.
- **Administrative Detention of Food.** The bill lowers the threshold for detaining articles of food to “adulterated or misbranded.” The threshold is currently higher for a reason—administrative detention is an authority that should only be used when there is clear, imminent danger.
- **Suspension of Registration.** Facility registration may be suspended if there is a reasonable probability that food from the responsible facility will cause serious adverse health consequences or death to humans or animals. “Reasonable probability” isn’t a difficult enough burden for FDA to prove when the consequence is closing down a private business.
- **Fees.** Allows FDA to assess fees for compliance failures (recalls and re-inspections). These fees give FDA incentive to find reasons to re-inspect a facility or order a mandatory recall—the only ways they can collect money for their efforts. Furthermore, assessing industry to pay for a new regulatory structure will increase food costs for consumers during a recession.
- **Mandatory Recall Authority.** Provides FDA with the authority to force a recall (and collect fees to pay for it). It is unclear why this authority is necessary – even in the worst food safety outbreaks, there do not appear to be any instances in which tainted products were on the shelves or with distributors that the company at fault did not work with FDA to conduct a voluntary recall. Allowing FDA to collect fees for forcing a mandatory recall could also push FDA to pull the trigger early on a mandatory recall – putting them at odds with the company responsible.

=== Hyperlinks ===

S510 Revised: FDA Coming to a Farm Near You =

<http://www.farmtoconsumer.org/s510-revised-fda-coming-kennedy.htm>

Detailed Concerns with S.510, The FDA Food Safety Modernization Act of 2010 =

<http://coburn.senate.gov/public/index.cfm/2010/9/detailed-concerns-with-s-510-the-fda-food-safety-modernization-act-of-2010>

Addressing Underlying Problems with S510 =

<http://www.farmtoconsumer.org/news/news-coburn-video-092510.htm>