

## Summary of Two Recently Passed Bills

The lame duck session of the 111<sup>th</sup> Congress completed work and produced two pieces of legislation that will affect the food industry: the FDA Food Safety Modernization Act and the Healthy, Hunger-free Kids Act.

### **FDA Food Safety Modernization Act**

On December 22, the House of Representatives passed for the third time the FDA Food Safety Modernization Act, after the Senate had passed it twice. Now it goes to President Obama's desk for signing into law, and he has agreed to sign it when he returns from holiday.

This bill shifts the Food and Drug Administration's approach to food safety from reacting and withdrawing food from shelves which requires substantial government and private resources to minimizing the chances that domestic and foreign companies will introduce unsafe food into the market place and targeting resources to the products with highest potential for food borne diseases and safety risks. A number of small food-oriented businesses are not included in the regulations -- small farms making less than \$500,000 gross annually, farmers markets, roadside stands, backyard gardens, and other small direct-to-consumer operations. The bill also sets up whistleblower's protections for employees of entities involved in the manufacturing, processing, packing, transporting, distribution, reception, holding, or importation of food who provide information relating to any FFDCA violation.

Specifically, the FDA Food Safety Modernization Act grants new authorities regarding domestically produced food to the Secretary of Health and Human Services (HHS) who will be able to:

1. Inspect records related to food, except for in certain establishments that sell food directly to consumers, such as roadside stands, farmers markets or participants in a community supported agriculture program.
2. Require each owner, operator, or agent in charge of a food facility, except for certain facilities, to identify and implement preventive controls to significantly minimize or prevent hazards that could affect food manufactured, processed, packed, or held by such facility.
3. Issue guidance documents to reduce the risk from the most significant foodborne contaminants and establish minimum standards for the safe production and harvesting of fruits and vegetables based on known safety risks.
4. Assess and collect fees related to: (1) food facility re-inspection; (2) food recalls; (3) the voluntary qualified importer program; and (4) importer re-inspection.
5. Develop voluntary food allergy and anaphylaxis management guidelines for schools and early childhood education programs.

6. Allocate resources to inspect facilities and imported food according to the known safety risks of the facilities or food; and (2) establish a product tracing system to track and trace food that is in the United States or offered for import into the United States
7. Enhance foodborne illness surveillance systems to improve the collection, analysis, reporting, and usefulness of data on foodborne illnesses
8. Order a recall of an article of food which is not now possible.

To reduce the food safety risks related to Imported Food, the law grants the Secretary of HHS the authority to govern foreign firms:

1. Require U.S. importers to perform risk-based foreign supplier verification activities to verify that imported food is produced in compliance with applicable requirements related to hazard analysis and standards for produce safety and is not adulterated or misbranded.
2. Establish a program to expedite review and importation of food offered for importation by U.S. importers who have voluntarily agreed to participate in such program.
3. Require a certification that an article of food imported or offered for import complies with applicable requirements of this Act;
4. Enter into arrangements and agreements with foreign governments to facilitate the inspection of registered foreign facilities.
5. Requires food to be refused admission into the United States if permission to inspect the food facility is denied by the facility owner, operator, or agent or the foreign country.
6. Recognize bodies that accredit third-party auditors and audit agents to certify that foreign entities meet applicable FFDCa requirements for importation of food into the United States.

The remaining challenge will be providing adequate resources to the Department of Health and Human Services to carry out these new responsibilities. Although the bill authorizes appropriations for FY2011-FY2015 for FDA, the continuing resolution that Congress passed in the lame duck session keeps funding at the FY 2010 level, inadequate to fulfill the new required activities.

### **Healthy, Hunger-free Kids Act**

On December 2, the House approved by a vote of 264 - 157 the Senate version of the Healthy, Hunger-Free Kids Act of 2010 which was signed by the President on December 14 and became Public Law No: 111-296. This bill will improve the nutritional quality of school meals, support farmers through Farm to School programs, address skyrocketing obesity rates and feed more hungry children. For the first time in 30 years, it increases by six cents per meal the Federal reimbursement for school lunches that meet the Dietary Guidelines and it sets nutritional standards for all meals and food served on school campuses throughout the day, that will no doubt shift school purchases to more fruit and vegetable options. The bill keeps a focus on obesity with a call for USDA to consult with Health and Human Services to begin a research, demonstration, and technical assistance program to promote healthy eating and reduce obesity especially among children, by applying the principles of behavioral economics research in schools, child care programs, and other settings.

In general the new law expands the programs to more eligible children through Afterschool Meal Programs and the Summer Food Programs which, in turn, increases the use of fruit and fruit products, especially with the upcoming new rules that will require that meals meet the dietary guidelines that call for more consumption of fruits and vegetables. Of interest to APA will also be the provision that directs the U.S. Department of Agriculture (USDA) to develop model product specifications for USDA commodity foods used in school meals. There will also be \$5 million annually in mandatory funding for farm-to-school programs starting October 1, 2012.

Other provisions may or may not have an impact on APA sales, but the bill permits the USDA Secretary to provide guidance for pricing of school meals (possibly increasing the “paid” lunch charge) and accounting for allowable charges to ensure that USDA reimbursements are used for healthy meals served to kids to the greatest extent possible. There has been a problem that schools under price the a la carte items and use federal reimbursements to make up the difference.

**A new provision will promote good nutrition, health and wellness in child care sites by requiring that meals, snacks and beverages served through Child and Adult Care Food Program to make them consistent with the most recent U.S. Dietary Guidelines.** This provision may result in less juice being offered in child care sites as recommended by the Institute of Medicine report, but it will expand the use of whole fruit products such as applesauce. Training and technical assistance will be available to child care providers, helping them to serve healthier food.

Lastly, for the WIC program the nutritional standards on which the food packages are based will be reviewed every 10 years, which calls out the need to conduct research that shows the benefit of including juice and processed fruit products in children’s diets. The bill also would require that all stores accept WIC electronic benefit transfer (EBT) implementation nationwide by October 1, 2020.