FOOD INDUSTRY

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Congressional Hearing on FDA's Ability to Safeguard the Nation's Food Supply

On April 24, 2007, the House Energy and Commerce on Oversight and Investigations held a hearing entitled "Diminished Capacity: Can the FDA Assure the Safety and Security of the Nation's Food Supply?" As outlined below, several issues were raised during the hearing that suggest the U.S. Congress (Congress) is likely to push through legislation that will have a significant effect on the food industry.

Witness Panels

The hearing had three panels. The first panel were people who had been affected in some way as a result of the ConAgra peanut butter contamination or the Ecoli spinach/lettuce contamination. These witnesses all told compelling stories about how the foodborne illnesses had affected them and their families.

The second panel was comprised of a veterinarian and a staff person from the U.S. Government Accountability Office (GAO). Dr. DeCarlo, the veterinarian, testified about the effect of the pet food contamination and recall on the U.S. pet population and Ms. Shames of the GAO testified about her office's views of the way food safety is regulated in the United States. In particular, she cited the fact that 15 federal agencies currently administer 30 food safety laws as being a principal area for concern. Moreover, she noted that U.S. Food and Drug Administration (FDA), which is responsible for ensuring the safety of 80 percent of all food, receives only 20 percent of the food inspection resources while United States Department of Agriculture, which is charged with overseeing the safety of 20 percent of the U.S. food supply, receives the remainder of the food resources. Ms. Shames also spent a significant amount of time focusing on the fact that FDA does not have mandatory recall authority while other federal agencies such as the Consumer Product Safety Commission (CPSC) and National Highway Traffic Safety Administration (NHTSA) do have mandatory recall authority.

The third panel was comprised of senior officers from four food processors involved in recent food contaminations and recalls, most notably Paul Henderson, chief executive officer of Menu Foods and David Colo, senior vice president for Manufacturing at ConAgra. The witnesses on the third panel were questioned extensively about the testing procedures at each of their respective companies, how they respond to FDA inspections and requests for information, and how they facilitated their recall of contaminated product.

Issues Raised During Hearing

Members of the subcommittee touched on several issues of potential concern for the industry. First, a couple of the members were somehow able to obtain a copy of ConAgra's internal recall procedures that also address how to respond to FDA inspections and requests for information. It is unclear whether the procedures will be entered into the hearing record (if they are, they would prove very informative). However, from the description provided by Representative Schakowsky, it sounds

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as though the procedures are fairly typical of a major food processor, e.g., they set out what FDA is and is not entitled to request under the Federal Food, Drug and Cosmetic Act, and indicate that information beyond what FDA is entitled to under the Act is not to be released without proper authorization. Moreover, the procedures state that requests for any confidential or proprietary information must be submitted to the company in writing. Again, all of these things are standard components of facility inspection procedure. Of concern however were the assertions made by Representative Schakowsky and others that ConAgra had implemented a plan to purposefully withhold crucial information from FDA.

Second, it is pretty clear from the comments and questions of the members that legislation will soon be passed in the House to give FDA mandatory recall authority. In fact, all of the industry witnesses, when asked, agreed that FDA should be given mandatory recall authority.

Representative Inslee indicated he will be working on legislation to prevent food contaminations from occurring in the first place. In particular, he plans to introduce legislation that will 1) enact enforceable standards; 2) require all of the food industry to adopt and implement Hazard Analysis and Critical Control Point (HACCP) plans; 3) imposition of criminal and civil penalties to prevent the adulteration of food; and 4) provide FDA with mandatory recall authority.

Additionally, Representative DeGette indicated that, in addition to mandatory recall authority, FDA needs to be given the authority to investigate food contamination situations more thoroughly. She suggested that FDA's existing authority to obtain information from food processors should be greatly expanded.

The safety of imported food also was of great concern to the Committee. Aside from the fact that the wheat gluten involved in the pet food contamination was imported from China (and potentially purposefully adulterated to derive an economic benefit), there was a story that came out in *The Washington Post* on April 16, 2007, about how only one percent of imported food is inspected, which just adds additional focus to the issue.

Finally, Chairman Stupak requested that all four industry witnesses provide the Committee with their FDA and USDA inspection records from 2000 through April 2007. Mr. Stupak indicated that the Committee will be holding a hearing with FDA officials in the coming weeks and he is concerned that FDA is not doing its job with regard to testing and sampling of products when they conduct inspections.

Implications for Industry

It appears likely that the United States House of Representatives will pass legislation during this congressional session to give FDA mandatory recall authority. In the wake of the recent food contamination outbreaks, it is hard to make the argument that FDA should not have such an authority and the industry seems to agree. Second, we can expect to see legislation that would give FDA much broader powers to obtain certain types of information from food processors, particularly when a food contamination outbreak has occurred. However, it is unclear exactly what this expanded authority would look like because FDA already has broad authority under the Bioterrorism Act to request records when there is a threat to human or animal health. Finally, it also is very likely that food safety funding will be reallocated from USDA to FDA and additionally, FDA is likely to receive additional funding to carry out food safety inspections.

Access more information at. House Energy and Commerce Subcommittee.

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