



NATIONAL COUNCIL OF CHAIN RESTAURANTS
of the National Retail Federation

2009 FOOD SYSTEM
SUMMIT
THE NEW NORMAL

**Food Safety
Breakout Session**



The State of Consumer Trust -- Food Safety

2009 CFI/NCCR Food System Summit

John W. Bode

Olsson Frank Weeda Terman Bode Matz PC

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2009 Food Safety Legislation Environment

- Political Environment Strongly Favors Senate Consideration of Food Safety Legislation Immediately After Health Care Reform
- Democrat Control, and “Bi-Partisan” Bill
- Timing Could Be Affected by a Foodborne Disease Outbreak
- Consumer Confidence

H.R. 2749

The House Bill

- The “Food Safety Enhancement Act of 2009” (H.R. 2749)
- Introduced on June 8 by Chairman Waxman (D-CA), Chairman Emeritus Dingell (D-MI), and Other Democrats on the Committee
- Passed July 30, 2009, 283 - 142

H.R. 2749 Background

- Waxman bill is a successor to the “Food and Drug Administration Globalization Act” (H.R. 759), Representative Dingell’s Bill
- Other Bills that have contributed to the Waxman Bill:
 - H.R. 1332 “Safe FEAST Act,” Reps. Costa (D-CA) and Putnam (R-FL)
 - H.R. 875, “Food Safety Modernization Act,” Rep. DeLauro (D-CT)

Additional Inputs to H.R. 2749 Debate

- H.R. 841, “Protect Consumers Act of 2009,” Rep. Sutton (D-OH)
- H.R. 814, “TRACE Act of 2009,” Rep. DeGette (D-CO)
- H.R. 815, “SAFER Meat, Poultry, and Food Act of 2009,” Rep. DeGette (D-CO)

S. 510

The Senate Bill

- S. 510, "FDA Food Safety Modernization Act," Sens. Durbin (D-Ill), Burr (R-NC), Gregg (R-NH)
- Bi-Partisan support, could be apt to move if necessary
- Otherwise, will wait until after Health Insurance Reform

Other Senate Bills

- S. 429, "Ending Agriculture Threats: Safeguarding America's Food for Everyone Act of 2009," Sen. Casey (D-PA)
- S. 92, "Imported Seafood Safety Enhancement Act of 2009," Sen. Vitter (R-LA)
- S. 425, "Food Safety and Tracking Improvement Act," Sen. Brown (D-OH)

House and Senate Vehicle Comparison

- Waxman's H.R. 2749 and Durbin's S. 510 represent the two poles
- Congress likely will enact Food Safety legislation that –
 - Incorporates similarities of these two bills and
 - Resolves their differences.

Durbin/Waxman Bills: Similarities

- Re-register Food Facilities –
 - Require food facilities to re-register with FDA on a regular basis
 - Prohibit unregistered facilities from interstate commerce
- Preventive Controls –
 - Require registered food facilities to develop and implement written preventive control plans

Durbin/Waxman Bills: Similarities Regarding Written “Preventative Controls”

- Hazard analysis
- Preventative controls
- Validation
- Monitoring
- Verification
- Recordkeeping
- Recall procedures
- Corrective Actions
- Traceback Procedures
- Performance Standards

Durbin/Waxman Bills: Similarities Regarding New Fees

- Registration and re-registration
- Export certificates
- Re-inspection costs
- Recall costs
- Voluntary Qualified Importer Program (S. 510)

Durbin/Waxman Bills: Similarities Regarding Third-Party Certification and Testing

- Require FDA to accredit third-party agents to certify food facilities' compliance with the FD&C Act
- Only tests conducted by Federal laboratories or accredited non-Federal laboratories may be used for regulatory purposes
- Require that lab tests be sent directly to FDA

Durbin/Waxman Bills: Similarities Regarding Inspection Frequency

- Require FDA to inspect all food facilities at least once every 4 or 5 years

Durbin/Waxman Bills: Similarities Regarding New Enforcement Authorities

- Suspension of Registration
- Mandatory Recall Authority
- Administrative Detention
- Records Access

Durbin/Waxman Bills: Differences Regarding Tracing

- H.R. 2749 would require that FDA issue regulations creating a “tracing system for food” that would enable FDA to identify each person that grows, produces, manufactures, processes, packs, transports, holds, or sells an article of food ***within two business days***
- No comparable S. 510 provision

Durbin/Waxman Bills: Differences Regarding “Reportable Food”

- Existing Authority for Reportable Food Registry
- H.R. 2749 extends reporting requirements to restaurants, retail food establishment, and farms
- H.R. 2749 requires submission of any test results, including environmental testing.
- No comparable S. 510 provisions

Durbin/Waxman Bills: Differences Regarding Safe Food Transportation

- S. 510 would require FDA to issue regulations governing the sanitary transportation of food no later than one (1) year after the date of enactment

Durbin/Waxman Bills: Differences Regarding Recordkeeping and Access

- H.R. 2749 would increase retention period to 3 years
- Eliminate need for written notice that suspected food “presents a threat of serious adverse health consequence or death”
- Extend recordkeeping to farms and restaurants

Durbin/Waxman Bills: Differences Regarding Detention, Seizure, and Quarantine

- H.R. 2749 would extend the timeframes for detention to 60 days, with informal hearings within 15 days
- Seizure of food accomplished by arrest without prior review by a court
- Geographic quarantine, including vehicles

Durbin/Waxman Bills: Differences Regarding Importer Provisions

- H.R. 2749 would require food importers to annually register, if not registered as facilities
- Registration fee of \$500
- H.R. 2749 would authorize FDA to establish an import facilitation program
- S. 510 would require FDA to establish a Voluntary Qualified Importer Program

Durbin/Waxman Bills: Differences Regarding Civil Monetary Penalties

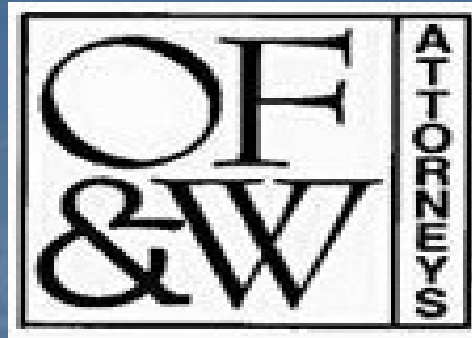
- H.R. 2749 penalties for any prohibited act \$20K (individuals), \$250K (non-individuals)/Cap at \$100K (individuals), \$1M (non-individuals) per proceeding
- Violations committed “Knowingly” enhanced
- S. 510 civil monetary penalties only for violation of recall order

Durbin/Waxman Bills: Differences Regarding Criminal Penalties

- H.R. 2749 would increase potential criminal penalties to 10-year felonies
- S. 510 has no comparable provision

Durbin/Waxman Bills: Differences Regarding Country-of-Origin Labeling

- H.R. 2749 would make COOL a requirement of the FD&C Act
- Require processed food labels identify the country where final processing occurred
- Possible that some products may have to list both country of origin and country of final processing



QUESTIONS

**John W. Bode
Olsson Frank Weeda Terman Bode Matz PC**

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