

Policy Pennings by Daryll E. Ray & Harwood D. Schaffer

# Food safety laws have created a fragmented system

Last week, in examining a 65 page study released in September 2010 by the Union of Concerned Scientists titled, "Driving the Fox from the Henhouse: Improving Oversight of Food Safety at the FDA and USDA," we reported on the various agencies that are responsible for food safety issues. The full paper can be obtained at [http://www.ucsusa.org/assets/documents/scientific\\_integrity/driving-fox-from-henhouse-food-safety-report.pdf](http://www.ucsusa.org/assets/documents/scientific_integrity/driving-fox-from-henhouse-food-safety-report.pdf). This week we are look at their description of the legal and funding aspects of food safety.

As the report says, "A few key laws, along with many amendments, govern the U.S. food safety system." The first one they identify is the Federal Meat Inspection Act [FMIA], which was passed by Congress in 1906, a few months after Upton Sinclair published his book, the *Jungle*, which was a scathing exposé of the US meat packing industry.

The law "requires FSIS [Food Safety and Inspection Service] to examine and inspect live cattle, swine, goats, sheep, and horses, as well as their carcasses and processed products. The FMIA also mandates improved sanitary conditions for slaughter and production.... [and] requires that a federal inspector be present during all hours of operation at slaughter facilities."

The second law passed in 1906 in response to the uproar over *The Jungle* was the Pure Food and Drug Act. While it "prohibited the sale of adulterated or mislabeled foods and drugs in interstate commerce," and it regulated the use of color additives in food, it was "largely superseded by the 1938 enactment of the FDCA" (Federal Food, Drug, and Cosmetic Act)."

The FDCA, adopted in 1938, "greatly expanded the FDA's [Food and Drug Administration] ability to regulate foods, drugs, and (for the first time) cosmetics. Under the FDCA's food provisions, the FDA is responsible for ensuring that all foreign and domestically produced foods (except those regulated by FSIS) are safe, wholesome, and properly labeled. The FDCA also mandates that all drugs and feeds for animals are safe, properly labeled and, when used in food-producing animals, do not endanger human health."

Amendments to the FDCA include ones that set forth "requirements that manufacturers prove the safety of pesticide residues on food (1954), new food additives (1958), and color additives (1960) before they may be marketed." Other amendments have addressed labeling requirements and standards for the

testing of infant formula.

"The Poultry Products Inspection Act (PPIA, 1957) extended the federal meat-inspection system to include poultry animals. In 1906, poultry was not a sufficiently popular food item to be included in the FMIA."

Eggs were added to the food safety regimen in 1970 and "the Egg Products Inspection Act (1970) [requires] continuous FSIS inspection of the processing of liquid, frozen, and dried egg products (i.e., eggs that have been removed from their shells for processing). The FDA remains responsible for the safety of shell eggs under the FDCA."

"The Agricultural Marketing Act (1946) authorized the USDA and other agencies to create quality-inspection systems in order to promote the marketing of a wide variety of food products, including dairy, meat, poultry, eggs, fruits, vegetables, and seafood."

Other legislation bearing on the food safety system include the Public Health Service Act of 1944 which "consolidated many of the government's public health agencies and services, and it also provided some regulatory authority to the FDA;" the Federal Insecticide, Fungicide, and Rodenticide Act (1972); the Food Quality Protection Act; and the Public Health Security and Bioterrorism Preparedness and Response Act (2002).

"Historically there has been a serious imbalance in the resources provided to the two primary food safety regulatory agencies. Prior to the 2009 fiscal year, funding for the FDA's food safety programs amounted to less than half of the total allocation to the USDA's FSIS and the food safety research line item at the ARS [Agricultural Research Service]. This disparity persisted for many years, despite the fact that nationwide some 80 percent of all food purchases and 85 percent of known foodborne illnesses are associated with foods regulated by the FDA."

That imbalance, including the fact that FSIS is responsible for 6,300 slaughter facilities while FDA is responsible for 144,000 food manufacturers and food facilities, has led the "FDA Science Board to 'state unequivocally that the [food safety system] cannot be fixed 'within available resources.'"" FDA funding has increased recently, but is still not on a par with USDA food safety programs.

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The historical development of food safety laws has resulted in a fragmented system that introduces inefficiencies and turf boundaries in the inspection process. An example of that is the recent Salmonella outbreak in eggs. USDA inspectors were at the plant as a part of the Agricultural Marketing Act to guarantee that the sizing of the eggs met USDA standards. Though sanitation was an ancillary part of their duties, the major responsibility for food safety of whole eggs lies with the FDA, which lacks the funding to have a full-time inspector on site.

Without more coordination between agencies and

the clear sharing of responsibilities, such lapses in the food safety system are likely to occur in the future. Turf protection by the various agencies should not be allowed to hamper improvements in the food safety system in the US.

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