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Workable food safety regulation

by Luther C. McKinney

The regulatory framework for food is complex. Thirty-five federal laws govern food safety and quality. Twelve federal agencies have varying food regulation responsibilities. Manufacturers across the nation are justifiably disturbed about environmental, social, economic, and paperwork requirements that impose a $542 billion cost annually on society (Banks).

Government's proper role

In the food sector, government legitimately regulates in three critical areas: protecting human health, ensuring truthful commercial communication, and promoting marketplace consistency.

Although few people debate that the government should set and enforce minimum health and safety standards for food, many debate how strict these standards should be. Preventing meat contaminated with harmful bacteria from entering the marketplace clearly protects public health and enhances consumer confidence. But should large sums of money be spent to reduce a theoretical cancer risk from 1 in 900,000 to zero?

Most interested parties also believe that the government should help ensure that consumers receive truthful and nondeceptive commercial information. Although ensuring truthfulness sounds simple, unfortunately it is not. Critics frequently say that the federal government moves too slowly to stop certain labeling and advertising practices that some consider false or misleading. However, the government must follow tough standards when restricting commercial speech protected by the First Amendment.

The new Nutrition Labeling and Education Act (NLEA) is a recent example of needed consumer communication regulation. This new law will help ensure the truthfulness of information set forth on food labels. For a company which prides itself on providing healthy foods to consumers, the standards set in the NLEA help its attempts to reach consumers with accurate information.

The government should also help ensure marketplace consistency. The meat grading standards used by the U.S. Department of Agriculture ensure that consumers get generally similar products whether purchased in Kansas City or Chicago. Under the new NLEA, food product labels will read the same regardless of where the product is produced or sold, and regardless of product regulation by the USDA or the Food and Drug Administration.

Regulatory problems

While human health protection, truthful commercial communication, and marketplace consistency are important areas of government regulatory activity, regulators confront other challenges as well. They must resist the tendency to overregulate and micromanage the industry and must marshal the necessary resources and political will to change outdated regulations.

Overregulation

Even when a government performs an entirely appropriate regulatory function, it often lapses into overly restrictive regulations. Health claims advertising is a case in point.

Deterring food industry competition that is based on truthful communication of the health attributes of certain food products slows the introduction of new and healthier foods. According to the Federal Trade Commission's own Bureau of

Economics, preventing health claims on fiber cereals appears "to have limited the public's knowledge of the fiber/cancer issue and restricted the information's spread to certain groups within the population". Knowledge helps the consumer, in essence, regulate the marketplace.

After more than twenty-five years of research investigating oat fiber, Quaker believed that it had strong scientific consensus to support health claims for its products. The Center for Science in the Public Interest challenged Quaker's claim before the FTC. After a year-long investigation by the FTC's Bureau of Consumer Protection concluded that no action was warranted against Quaker, Texas State Attorney General Jim Mattox decided to ignore the evidence and file suit against the company. The efforts of Mattox, then a gubernatorial candidate, were eventually dropped, but only after substantial costs had been incurred by Quaker and, ultimately, the company's consumers.

The new nutrition labeling law helps resolve the health claims issue. This law prevents states from banning health claims specifically allowed by federal law. But while a number of claims describing important nutrient-disease relationships will now be allowed on labels under the NLEA, claims for a number of other important health attributes will still be prohibited on food labels.

Outdated programs

A variety of outdated government regulations create unnecessary costs, inhibit innovation, and divert scarce government resources from necessary programs. For example, although the USDA's meat inspection program includes microbiological testing, it remains focused on visual inspection. And, despite clear changes in nutrition guidelines, the USDA continues to operate a meat grading system that promotes high fat meats by assigning premier grades, which command higher prices, to these meats.

The Delaney Clause of the Federal Food, Drug and Cosmetic Act (FFDCA) provides the clearest example of a well-intentioned law left in place too long. Enacted in 1958, the law bans the use of any detectable cancer-causing chemical in processed foods. In 1958, fifty parts per million of a substance was considered the practical equivalent of zero. Today, analytical instruments measure in the parts per trillion and soon will progress to parts per quadrillion, yet the restriction remains unchanged in law. Even Environmental Protection Agency administrator Carol Browner acknowledges that this outdated law forces her agency to suspend key pesticides that pose negligible health risks.

This regulatory nightmare produces painful results: misallocated government resources, stifled innovation, and costly marketplace distortions.

NEWSLINE

E. Coli Scare Deals Blow To Seattle Burger Sales

JACK IN THE BOX AND ITS COMPETITORS ALL AFFECTED

SINCE THE OUTBREAK OF A FATAL foodborne illness was traced to Jack In The Box units in Seattle, fast-food operators would rather be anywhere but in that once-alluring

other places where infections were traced to fast-food hamburgers

Chains say stores in those areas felt some impact during the recent outbreak, but nothing like the downturn in Seattle. Far more people there

Regulating by consumer demand

Consumers have done a much better job than government in eliminating products from the marketplace that no longer meet their needs. Marketing can only go so far in convincing a consumer to buy something that he or she neither needs nor wants. Consumers more effectively lead manufacturers to develop and distribute products they desire. A 1992 Grant-Thornton survey of American manufacturers found customer demand to be the key source of new product ideas (according to 56 percent of manufacturing executives). By contrast, 20 percent of the survey executives believed government regulation to be the single largest impediment to new products, and not one executive mentioned government as a source of new product ideas.

Cutting costs

In the past few years, consumer concern has focused on cost. Never in my experience in the food processing industry has the industry been forced to hold the line on prices as it must today. Grocers, long the industry's most important customers, feel the same price pressure and have lost substantial market share in the past decade to low cost, high volume retailer-wholesalers, and club stores. To stem the loss of consumers from their outlets, grocers have told suppliers that they must cut the costs of products delivered to them. Through improved supply chain management, Quaker Oats is reducing the costs it charges customers so that it can offer lower-priced products. Cost-conscious consumers and new challengers in the marketplace have forced both grocers and manufacturers to take a hard look at how they do business and to hold the line on prices.

The free market is doing its job to force every-

one to provide consumers with value. Government should also be cost-conscious.

Healthier food

Consumers demand specific types of foods that meet their health concerns. In the past several years, consumers demanded low-calorie, low-in-cholesterol, sodium-free, and, more recently, fat-free products.

In too many instances, particularly in the environmental area, regulations not only fail to meet their stated objectives, but also impose high costs on society.

Today, fat-free foods are consumers' items of choice. Manufacturers provide fat-free cereals, fat-free cheeses, and—probably the most unlikely of all products—fat-free hot fudge ice cream topping. Although the new labeling regulations will certainly draw added consumer attention to fat, particularly saturated fat, public education about the role of fat in the diet most inspired consumers to demand lower-fat products.

Meeting only consumer health concerns does not suffice in the marketplace. Food products must also taste good. Although consumer concern with fat drew attention to rice cake products, their increased sales occur because of the investment to develop better-tasting fat-free rice cake products, such as caramel and apple-cinnamon flavors.

Industry research and development efforts have also been driven by consumer demand. Since 1984, the percentage of Americans concerned about fat content increased from 8 percent of the population to 50 percent, according to a 1992 Food Marketing Institute study. Industry observers expect the low-fat and fat-free categories of foods to continue their double-digit growth for several years. Although it is difficult to predict what the next area of health focus will be—perhaps fortifying products with antioxidants or folic acid—manufacturers will continue to respond to consumer demands.

Organic foods

Consumer preference for organic, or pesticide-free, foods remains uncertain. Organically grown foods account for only about $1 billion of the $3 billion natural foods market, which is a small part of the more than $600 billion spent annually in this country on food. The Food Marketing Institute's consumer survey shows just 1 percent of consumers said they ate more organic foods in 1992 than they did in previous years, down from 2 percent of consumers who said they ate more organic foods in 1989, 1990, and 1991.

Improving regulations—what needs to be done

The regulatory process could be improved in several ways. Most important, the regulatory framework governing the food sector should allow producers and processors maximum flexibility to respond to consumers. But there are other ways, too.

Set priorities

The government should use sound science to determine which problems to tackle and in what order. Risk assessment science uses lifetime animal bioassays, human epidemiological studies, and other data to identify and characterize human health hazards and determine the probability that illness will occur. The skill of researchers in making these determinations is improving. Targeting federal resources to make more improvements would be a worthwhile investment.

The federal government should use one scientific standard. The zero-risk Delaney Clause of FFDCA governs food safety law for processed foods, but a different section of the act governs food safety of raw commodities. Residues on raw commodities must be limited to a level that protects public health. These inconsistencies make compliance difficult and call into question the regulation's legitimacy.

Each regulation should be evaluated not only for its potential benefits, but also for the costs it imposes. Both sides of this equation are equally important. In too many instances, particularly in the environmental area, regulations not only fail to meet their stated objectives, but also impose high costs on society.

California's Proposition 65 provides a clear example of the need to consider the costs and benefits of a regulation. This law requires warning labels on products that contain chemicals determined by the state to cause cancer or birth defects. One example involves Vitamin A. With its tremendous

health benefits, Vitamin A is a key ingredient in the federal government's push for improved nutrition. But Vitamin A is also a reproductive toxicant according to the State of California. Thus, milk, without a special exemption, would need a health hazard warning under Proposition 65. An environmental hazard warning would certainly reduce milk consumption and therefore the overall health of children. The costs of hazard labels on milk clearly outweighs the benefits.

Improve government's performance

In the area of food safety, the government can take several steps to improve its efficiency. Some steps are fairly simple; others require a fundamental redesign of the food regulatory system.

An important step would eliminate duplication, confusion, and delay by placing all authority and responsibility for the safety of the nation's food supply in one agency. A GAO report prepared in June 1992 noted several problems caused by the current system.

"Although officials of all the agencies [responsible for food regulation] recognize the need for prompt referrals of food safety problems to the responsible agency for action, such referrals are frequently not made.... Agencies have also acted to protect their own jurisdictions, thus reducing their flexibility to respond to changing consumption patterns and emerging food safety issues, such as the control of food poisioning outbreaks associated with salmonella."

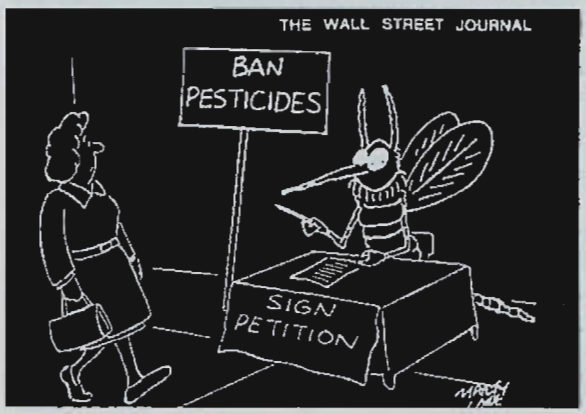
Although a single food agency would help eliminate many of today's food safety problems, this step would not be enough unless Congress also eliminates the conflict that exists in the thirty-five laws regulating food safety. By consolidating these laws and making one agency responsible for their implementation, the government would undoubtedly enhance its oversight and enforcement, and at a lower cost.

Government officials and agencies must also be held accountable through performance standards. Each day, Quaker's performance is measured by the stock market and quarterly by its public earnings statements. If the company does not perform adequately, consequences follow: lower earnings, lower pay, demotions, and job loss. Few government agencies have implemented performance standards—Texas is a notable exception with its attempt to implement performance measures for its investment of taxes. In this era of constrained budgets, all states and the federal government must institute performance standards.

Government agencies must also have sufficient resources to do their jobs. For years, inadequate funds prevented the Food and Drug Administration from effectively addressing its numerous regulatory responsibilities. FDA receives only one-tenth of 1 percent of the federal budget for regulation of the food industry, an industry that produces more than 15 percent of the nation's gross national product.

Prescription drug manufacturers became so disenchanted with the FDA's slow process for approving new drugs that they agreed in 1992 to pay user fees for additional staff to review drug-approval applications. Speedier FDA review means that profitable new products reach the marketplace faster. In the food industry, enhanced government safety measures directly benefit consumers, and thus additional funds for FDA should appropriately come from general revenue sources.

But significant new revenue sources may not be needed to enhance the performance of food regulating agencies. FDA could receive increased funding if the government eliminated inefficient, obsolete, and unnecessary programs and reallocated its resources to essential efforts based on sound science.



Provide uniform regulations

Government officials at all levels must recognize that the U.S. is part of a global economy where ill-conceived domestic regulations inhibit U.S. competitiveness abroad.

For decades, expensive U.S. worker safety, labor, and environmental regulations pushed U.S. multinational companies to move marginal manufacturing facilities to the Far East and now to Mexico. Such shifts, ironically, worsen the net global environment, reduce the net safety of workers, and reduce the net rate of pay for manufacturing employees. While many environmental groups remain skeptical of trade-liberalizing agreements such as the North American Free Trade Agreement, some have recognized that significant environmental protection can be gained through regional or global negotiations.

Although a difficult process, international codification of minimum health and safety standards is essential for international marketplace efficiency.

Establish market-oriented regulations

In addition to setting priorities, improving its performance, and providing uniform regulations, the government should also focus on developing flexible market-oriented regulations. Recent regulations have tended to be very specific and detailed, running into hundreds, and in some cases, thousands of pages. These "command and control" regulations require companies to take specific actions by specific dates so that the government agency in question can monitor compliance with each aspect of the regulations.

A much preferred method establishes broad goals, providing the affected industry with the flexibility to meet these goals in the most cost-efficient manner possible.

The Clean Air Act provides valuable lessons on the importance of flexible industry requirements to achieve its goals cost-effectively. The act sets a specific goal of removing 10 million tons of sulfur dioxide from the nation's atmosphere, but allows utilities with excess sulfur dioxide emissions to purchase permits for exceeding the emissions standard from others able to reduce pollution below standards at lower cost. The government goal is reached, but in a manner that is cost-efficient for industry and ultimately for consumers.

Although tradable permit systems represent a dramatic step forward from command and control regulations, a number of economists argue that fees and taxes provide the purest market method to achieve behavioral control. It is clearly more effective to tax an activity the government wants to discourage than to tax activities it trys to stimulate.

Environmental taxes attack environmental concerns more efficiently than command and control regulations, but I am cautious in advocating them. Given the revenue needs of the federal government, they could be imposed simply to raise revenue and not to change behavior, with traditional command and control regulations continuing unabated. As a replacement for command and control regulations and current taxes on investment, research and development, and other activities with long-term economic benefits, however, carefully crafted environmental taxes might make sense. An effective behavior-based tax must meet several important criteria. First, the tax must be imposed at the appropriate level of responsibility. If the goal is to influence the composition of packaging materials, for example, it would be far more effective to target the packaging material manufacturer rather than the end-user. Second, the tax must be applied in a manner that allows the target to escape the tax by changing its behavior. Finally and most importantly, the tax must be imposed on an activity that truly affects human health and for which the costs and benefits are clearly understood.

Future regulatory activity

Government officials recognize that federal food safety efforts need substantial improvement—from establishing an entirely new inspection system for fish to revamping the current meat inspection program. Agency response time also must be improved. Yet funding for these improvements is scarce. Some will want to shift the cost to industry. But industry should resist such a shift and instead press for increased efficiencies at the federal level, including eliminating costly, unnecessary, and outdated programs.

The Clinton administration has taken some very preliminary steps to improve the food safety regulatory framework through its Reinventing Government initiative and USDA reorganization proposals. I support improving government efforts to ensure the safety of the nation's food supply. This is an important objective by itself, but it is equally important because it would bolster consumers' confidence in government's ability to ensure food safety. This confidence is critical for widespread consumer acceptance of new food technologies, such as irradiation and biotechnology. Without widespread consumer acceptance, industry will not continue to develop the innovative new technologies essential to maintaining the cheapest, most abundant, and safest food supply in the world.

I would, however, caution that more regulations do not mean better regulations. It will require hard work from the food industry to ensure that the regulatory framework becomes more science-based, prioritized by cost-benefit analysis, and implemented in an efficient, uniform, market-oriented manner. ◘

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■ For More Information

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