

BY DOUG FARQUHAR

This year was filled with large-scale food recalls: *E. coli* in spinach, salmonella in peanut butter, melamine in pet-food, anti-freeze in toothpaste. In today's global economy, how does a consumer know what is safe? Would Popeye still rely on spinach, not knowing where it was grown or who, if anyone, inspected it?

For years Americans have taken the nation's food inspection system for granted, confident that federal oversight of food production ensured safety. But outbreaks of food-borne illnesses in the past year led many to question the competence of the federal food-safety system, and galvanized a number of states to take matters into their own hands. What they may not have expected is resistance from the producers. State legislators are finding that their constituents are more concerned about food safety than ever, yet even the simplest food regulatory bills stumble into the quicksand of federalism, protectionism and the food industry lobby.

FEDERAL FAILURE?

The spotlight has been on the agencies responsible for food safety, the U.S. Department of Agriculture (USDA) and the Food and Drug Administration (FDA), which oversees the majority of food safety. Congressional hearings revealed that because of budget cuts since the mid-1980s, the FDA has reduced staff and limited inspections. FDA is responsible for 80 percent of the food supply, yet it receives only 24 percent of the federal budget allocated to food safety. This means that the FDA can examine only 1 percent of all imported food.

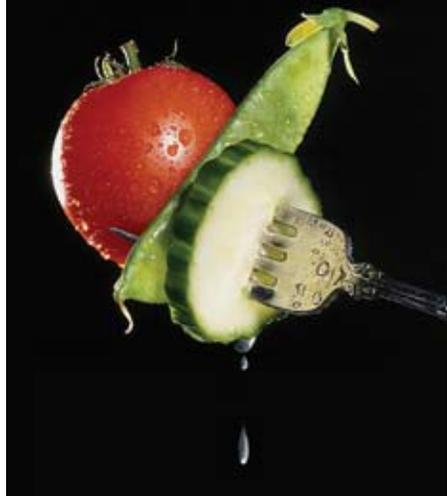
USDA's Food Safety and Inspection Service (FSIS), the other major agency involved with food safety, is responsible for the safety of meat, poultry and processed egg products. None of these products can be marketed without the "USDA Inspected" seal. But if a food-borne outbreak occurs, neither the FDA nor USDA can force a recall—Congress has denied these agencies that authority. (The exception is FDA's authority to require a recall for infant formula.) All the spinach recalls in California were voluntary, though companies can face civil and criminal penalties for not removing unsafe foods.

What emerged from the congressional

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FOOD FIGHT

Making sure our food is safe is harder than it seems.



investigation was a mixed picture of federal food safety; a tangled web of regulations and agencies, few with teeth, fewer with money; and a \$68 billion loss in U.S. agricultural exports in 2006 due to unsafe food.

Part of the problem is that federal food safety oversight is splintered. According to the GAO, in addition to USDA and FDA, 13 other government agencies administer 30 different food safety laws. The Department of Agriculture requires meat and poultry to be shipped through one of 10 ports, but the Food and Drug Administration must inspect food products that arrive through 300 different ports across the country. The FDA inspects cheese pizzas and packaged ham and cheese sandwiches if they are made with two slices of bread. If they are open-face (one slice of bread), then USDA is responsible, as it is for

frozen pizzas with pepperoni.

Even with all the bad press, the federal government has initiated little improvement. Congress repeatedly delays USDA's implementation of country-of-origin labeling for everything but seafood. (Though the 2007 Farm Bill has a provision for country-of-origin-labeling.)

In late July, President George W. Bush issued an executive order to create a working group of executive branch officials to address the safety of food imports. Critics derided the effort, noting that it focuses only on imported food and, that while seven federal departmental secretaries will be involved in the working group, the FDA will not be represented.

Even the food industry is calling for more federal action. In September, the Grocery Manufacturers Association unveiled a proposal to strengthen federal oversight of imported foods and ingredients. Representing businesses ranging from Kraft Foods to family-owned companies, the association hopes a uniform government standard will simplify the process. Currently, buyers from Wal-Mart to Walt Disney are requiring different safety standards and independent inspections.

STATE ROLE

States are desperate to wade into the regulatory process but have made little headway. In June of last year, New York Assemblyman Darrel Aubertine watched with enthusiasm as his bill, requiring that produce and meat be marked with a country-of-origin label, passed the Assembly. But it stalled soon afterwards over questions of federal preemption. "There is a misconception that labeling is protectionist agriculture," Aubertine says. His district in northern New York is an apple producing region.

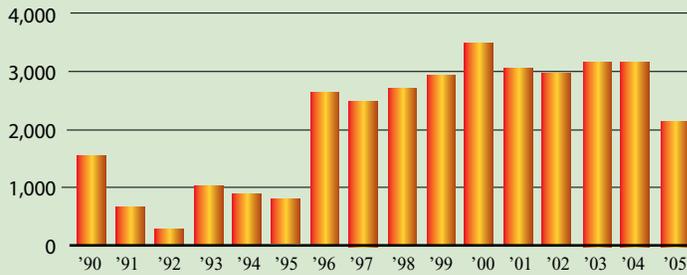
"Speaking not only as an assemblyman, but as a farmer, this is not the case. Consumer protection creates a level playing field in free trade," Aubertine says. "People



ASSEMBLYMAN
DARREL AUBERTINE
NEW YORK

FOOD-BORNE ILLNESSES FROM PRODUCE

In 2005, cases decreased 32 percent from the previous year.



Source: Center for Disease Control and Prevention, Center for Science in the Public Interest, the Associated Press.

are not aware that 90 percent of apple juice comes from China. It does affect New York, but the real sin is that producers here are competing with one arm tied behind their back. China doesn't have the labor laws, the pesticide regulation, and restrictive environmental standards across the board that we have."

In mid-May, Oregon Representative Patti Smith watched as her food safety bill passed the Oregon House unanimously. She owed its initial success to recent food scares.

"The pet-food recall never seemed to end," she says. "We think our food is inspected, but are we doing enough?" Her bill would have created a food safety task force limited to six members to promote the group's efficiency, and run entirely through Oregon's Department of Agriculture's budget.

"I wanted to keep it simple," Smith says. "What are the feds covering? What can we look at?"

But the bill stalled in a Senate committee even after its massive show of bipartisan support in the House.

Central valley California Senator Dean Florez introduced three bills seeking to prevent an *E. coli* outbreak similar to the one the California spinach industry experienced last fall. One bill would have established a leafy green inspection service in the State Department of Public Health, one would have regulated more closely the quality of irrigation water,

and one would have created a numbering system to more readily trace produce from farm to table. All three bills failed.

"It has been said eating is an act of faith. So the question before us is, whom do you trust? Should we trust an industry that in many cases has financial interests to develop its own regulations?" Florez asks. "And after 22 *E. coli* outbreaks associated with leafy greens, after being warned by the FDA twice, after being asked to come up with our own lettuce produce action plan to no avail, I can tell you that our inaction at the state level has been pronounced."

Food Safety:

If you are what you eat, are you Californian or Chinese?

The stories of Florez, Aubertine and Smith are common across the country as state food safety bills of every variety have failed. Nowhere is the battle more intense than over country-of-origin labeling.

COOL IS FROZEN FOR NOW

In 2002, Congress adopted federal country-of-origin labeling, or COOL, for beef,

pork, poultry and seafood, but you wouldn't know it by looking at packages at the local grocery store. With the exception of seafood, Congress has consistently delayed the implementation of the act. The USDA is currently accepting comments on the law before it begins the process of developing rules and regulations. It is due to be implemented in September 2008. However, the 2007 bill would push implementation up as early as this fall, an indication Congress is reacting to voter concern.

Recently, the Consumers Union found that 92 percent of consumers want to know where their food comes from. States are still skeptical and are drafting their own food labeling legislation themselves, but two roadblocks consistently appear: the food lobby and federal preemption.

Senator Frank Kloucek sponsored COOL legislation in South Dakota last session that would have required country-of-origin labeling on beef, poultry and lamb products. But as the bill moved forward, it encountered serious resistance from food industry lobbyists. "They had an intimidating campaign," Kloucek says. "They had heavy-handed tactics, telling farmers every animal would have an ID and scaring them by saying they would be liable. But if the American consumer knew where the meat came from, they'd be very concerned. Our federal inspections are the best in the world, but not every country can have that."

The resistance was great enough to table the bill in the Agriculture and Natural Resources Committee. "It's in limbo now," Kloucek says. He plans on reintroducing it and remains optimistic, thanks to a very carefully designed bill in a neighboring state, Montana.

One of the key obstacles that Montana Representative Bob Bergren knew he must overcome as he pushed for COOL legislation in 2005 was federal preemption. Because of the Supremacy Clause of the U.S. Constitution, federal laws trump state laws whenever federal law expressly preempts state law, or



**REPRESENTATIVE
PATTI SMITH
OREGON**



**SENATOR
DEAN FLOREZ
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