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SETTING THE TABLE

Current Issues in Food Transport, Storage and Security from Benesch's Transportation & Logistics Practice Group

A Single Food-Safety Agency: Is Now Really The Time?



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In the wake of the passage and continuing implementation of the Food Safety Modernization Act ("FSMA"), the most sweeping reform of our food safety laws in more than 70 years, a

couple of U.S. Senators and President Obama each now seek to endorse different visions of an oft-repeated concept—the consolidation of regulatory agencies governing food safety in America.

Recently, Senator Richard Durbin and Representative Rosa DeLauro introduced the Safe Food Act of 2015 (the "Act"), a proposed bill seeking to merge all food-safety related programs across various agencies into a new, centralized agency (the "Food Safety Administration"). Under Section 211 of the Act, a Food Safety Technology Program, would be implemented to foster innovation in food technologies with the potential to improve food safety across the supply chain, including specifically the transport and storage of food. Additionally, the Act seeks to implement a national surveillance system and establish regular examination of all facilities handling food to ensure safety and compliance with all regulations.

In contrast, President Obama, within the President's fiscal year 2016 budget proposal, endorsed his own concept for the creation of a single food-safety agency. The President's budget proposes consolidation of the Food Safety and Inspection Service ("FSIS"), an agency of the USDA, and FDA's food safety components into a new agency within the Department of Health and Human Services in order to combine "the two largest food-safety related agencies into a single agency responsible for inspections, enforcement, and outbreak prevention." According to the budget, the new agency would be charged with implementing a "modern, science-based food safety regulatory regime drawing on best practices of both agencies."

Regardless of how the "new agency" would be created or implemented, if such an agency were formed by the government, transportation and logistics providers serving the food industry (including companies shipping, storing, or warehousing food products) would likely see a noticeable impact. A centralized food agency would make it easier for transportation and logistics companies to comply with various laws and regulations addressing food safety and would allow these companies to communicate with a single agency in order to receive guidance and address any issues and concerns with existing laws and regulations. However, as

with any new, proposed legislation, there will be the risk of new requirements and regulations being implemented which may negatively impact the industry. Indeed, only time will tell whether the creation of a single food agency will become a reality and whether the new regulatory framework will mirror the FSMA, or instead, seek to expand dramatically upon the current regulations imposed by the FSMA.

Nevertheless, the "single agency concept" failed to garner any traction when it was previously raised as part of the passage of the FSMA, so it is entirely premature to think that such a proposal will gain the necessary support to become a reality this time around. However, whether successful or not, the recent endorsement of the single agency concept in its various forms reinforces what we all already know to be true—that the federal government is taking active, continuing efforts to improve the quality of America's food supply through ongoing, broad-sweeping regulation. All logistic providers should stay abreast of these notable legislative and regulatory activities in order to be well-positioned for the new legislative and regulatory landscape on the road ahead.

For more information

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In the area of transportation and logistics, Steve has experience assisting transportation and logistics-related businesses in cargo disputes and breaches of transportation agreements. Additionally, Steve regularly assists clients within the food and beverage industry. Specifically, Steve provides counseling regarding regulations governing the food and beverage industry, and he assists manufacturers and distributors of alcoholic beverages with various contractual, regulatory, and litigation needs.

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