



Written by [Thomas R. Eddlem](#) on November 18, 2010

Food Safety Bill to Empower FDA Wins Senate Cloture

Senator Richard Durbin's "FDA Food Safety Modernization Act" (S. 510) passed a cloture vote hurdle Nov. 17 by a 75-25 margin, and appears headed for final Senate passage in the next few days. The bill would increase funding to the Food and Drug Administration and give it greater regulatory power over foods and medicines. It would require all food producers to register with the FDA and pay new taxes (which the bill calls "fees") that recoup all the inspection costs for the new army of regulators the bill would create.

The impact of S. 510 upon small producers and farms is unclear at best. Though at present it nominally exempts farms and restaurants from the bureaucratic registration and record-keeping requirements of the FDA for all food producers, at the same time it [calls](#) for the FDA to draw up new regulations within two years on raw agricultural commodities for which the Secretary has determined that such standards minimize the risk of serious adverse health consequences or death. [Section 204 of the bill requires](#) FDA regulators to analyze those new rules and detail the impact of such regulations on farms and small businesses.

If FDA regulators [determine](#) a reasonable probability exists that the food will cause serious adverse health consequences or death to humans or animals, then S. 510 also gives the FDA authority to shut down the business or farm.

Sen. Jon Tester (D-Mont.) has offered an [amendment](#) to clarify that the bill would not allow the FDA to regulate family farms or small restaurants, and a vote on the Tester amendment may yet take place before the likely passage of the bill in the Senate. Sen. Tom Harkin (D-Iowa) has [told the press](#) he has the votes to pass the bill without adding the Tester amendment.

The bill does explicitly ban FDA regulation of dairy farms, however, the FDA already has vigorously pursued dairy farmers who do not conform to FDA rules. Regulation of dairy farms is a direct reaction to the raw milk movement, a group of milk consumers who insist upon being able to drink unpasteurized milk based on the belief that it is better tasting and/or a healthier alternative to pasteurized milk. Government regulators counter that unpasteurized milk may contain salmonella and other bacteria that could cause sickness. The FDA has already militantly [cracked down on raw milk producers across the country](#), and such crackdowns would only increase with the passage of the Food Safety bill.

Despite the overwhelming vote in the Senate, a number of libertarian and constitutionalist organizations have rallied to stop passage of S. 510. The John Birch Society issued the following [alert](#) on November 17:

Senate Bill 510 has already passed committee and is on the Senate calendar. It calls for enhanced expansion of FDA authority over small farms, ranches, and other food producers, establishes



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burdensome administrative requirements for large and small operations, and arbitrary legal authority to recall unsafe medications, the definition of which is not clearly established; if in line with the global standard set by Codex Alimentarius, unsafe medications could extend to dietary supplements and herbal products. There is language that currently exempts from heavy regulation dietary supplement manufacturers and packagers. However, the FDA and its agents are notorious for interpreting regulations their own way.

The JBS [concluded](#) with a request that members and friends write to their Congressman and Senators arguing: My right to produce, distribute, and consume the foods of my choice is part of my right to life and liberty under the Constitution.

Debate over the bill may also include a vote on an [amendment by Sen. Dianne Feinstein \(D-Calif.\)](#) that would impose a partial ban on bisphenol-A. The *Los Angeles Times* [reported](#) November 17 that BPA is a plastic hardener and an ingredient in epoxy resin, which is used in can linings. In the human body, it mimics estrogen. Some studies have linked the chemical to reproductive abnormalities and higher risks of cancer and diabetes. Government scientists at the FDA and the [World Health Organization](#) have stated that science has yet to demonstrate any health risks posed by bisphenol-A, though they have called for more study of the issue. The FDA has [concluded](#) that “the present consensus among regulatory agencies in the United States, Canada, Europe, and Japan is that current levels of exposure to BPA through food packaging do not pose an immediate health risk to the general population, including infants and babies.”

The Food Safety bill also includes a new foreign aid program to help foreign food importers competing with U.S. farmers. According to the [Congressional Research Service](#), S. 510 Directs the Secretary to develop a comprehensive plan to expand the technical, scientific, and regulatory capacity of foreign governments and food industries from which foods are exported to the United States.



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