



The Federal Food Safety Agency: A Proposal to Move FDA Food Safety Responsibilities to the USDA

A. Bryan Endres

Department of Agricultural and Consumer Economics
University of Illinois

July 5, 2018

farmdoc daily (8): 123

Recommended citation format: Endres, A. B. “[The Federal Food Safety Agency: A Proposal to Move FDA Food Safety Responsibilities to the USDA.](#)” *farmdoc daily* (8): 123, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign, July 5, 2018.

Permalink: <https://farmdocdaily.illinois.edu/2018/07/the-federal-food-safety-agency-a-proposal-to-move-fda-food-safety-responsibilities-to-the-usda.html>

In March of 2017, President Trump issued [Executive Order \(EO\) 13781](#), entitled “Comprehensive Plan for Reorganizing the Executive Branch.” The EO required each federal agency to submit to the Office of Management and Budget (OMB)¹ a proposed reorganization plan to improve efficiency, effectiveness and accountability. Key issues for consideration in each agency’s plan included, among others, redundancies, costs of programs relative to public benefits, and if some or all functions of the agency would be more appropriately handled by state/local governments or the private sector.

For several years, the Government Accountability Office (GAO) has recommended merging food safety responsibilities at the federal level into a single agency.² Currently, the federal government oversees food safety via a complex web of more than 30 laws administered by [15 federal agencies](#), with primary responsibilities assigned to the USDA (safety of meat, poultry, processed egg produces and catfish) and the FDA (responsible for almost all other foods). Various memorandums of understanding among the agencies attempt to coordinate expertise, minimize coverage gaps and reduce redundancies. The Health and Medicine Division of the [National Academics of Sciences, Engineering, and Medicine](#) provided additional non-partisan support for restructuring, recommending enhanced FDA authority over food safety.

Brief History

In 1906, in response to public outcry concerning unsanitary conditions in the food industry, Congress passed two landmark bills: the Meat Inspection Act and the Pure Food and Drug Act (replaced by the

¹ OMB is part of the Executive Office of the President. See <https://www.whitehouse.gov/omb/>.

² GAO, [Food Safety and Security: Fundamental Changes Needed to Ensure Safe Food](#) (Oct. 2001); GAO, [Oversight of Food Safety Activities: Federal Agencies Should Pursue Opportunities to Reduce Overlap and Better Leverage Resources](#) (Mar. 2005); GAO, [Food Safety: Selected Counties’ Systems Can Offer Insights into Ensuring Import Safety and Responding to Foodborne Illness](#) (Jun. 2008); GAO, [Food Safety: A National Strategy Is Needed to Address Fragmentation in Federal Oversight](#) (Jan. 2017); GAO, [High Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others](#) (Feb. 2017).

We request all readers, electronic media and others follow our citation guidelines when re-posting articles from farmdoc daily. Guidelines are available [here](#). The farmdoc daily website falls under University of Illinois copyright and intellectual property rights. For a detailed statement, please see the University of Illinois Copyright Information and Policies [here](#).

1938 Federal Food, Drug, and Cosmetic Act).¹ Regulatory authority under these two statutes were placed in the USDA under the Bureau of Animal Industry² (meat) and the Bureau of Chemistry (food). In 1927, the Bureau of Chemistry was renamed the Food, Drug, and Insecticide Administration, and later shortened to the Food and Drug Administration in 1930. In 1940, the FDA was transferred out of the USDA to the new Federal Security Agency and, after a series of subsequent transfers and name changes, currently resides within the Department of Health and Human Services (HHS).³ As a result of this historical division between meat (and poultry, eggs and catfish) and all other foods, there are different regulatory cultures and approaches to food safety. For example, meat and poultry slaughter facilities are subject to continuous inspection by FSIS during all operating hours. In contrast, FDA inspects food establishments based on risk and for high-risk facilities conducts at least one inspection every three years.

A First Step

Many followers of food safety law and politics applauded enactment of the [Food Safety Modernization Act](#) in 2011 as a positive first step toward enhanced food safety responsibility by the FDA. Potential next steps at the time included updating USDA's meat and poultry food safety requirements for consistency with FDA rules and, finally, merging food safety responsibilities into a single agency.⁴

The Proposal

On June 21st, OMB released its long awaited [recommendations](#) for reorganizing many functions of the federal government. This wide-ranging document identifies some steps that may occur via administrative action, but other, more complicated transfers of program responsibility require legislative approval—not an easy task in the sharply divided Congress. In the context of food safety, OMB proposed merging FSIS and the food safety functions of FDA into a new agency housed within USDA called the Federal Food Safety Agency. The FDA would be renamed the Federal Drug Administration and would continue to regulate drugs, devices, biologics, tobacco, dietary supplements, and cosmetics.

Food regulation is now more complicated than ever. But the issue may not be as simple as multiple agencies and various laws. Rather, issues of food safety in the traditional sense of pathogens or other contaminants have evolved into more complex questions of nutrition, labeling, claims regarding health impacts, and functional foods. In sum, as the broader farm to fork supply chain continues to evolve and develop new products with more direct improvements to health (whether incorporated in the seed through advanced breeding or introduced during subsequent processing), the line between “drug” and “food” in the legal sense will be even more blurred. And thus the return of food safety regulation to the USDA after almost 80 years of lessons learned and expertise in the FDA (which would retain jurisdiction over drugs and supplements), could have unforeseen consequences on future innovation in what we now consider to be food.

In sum, the evolving consensus is a need for a consolidated food safety agency.⁵ The issue is where: FDA, USDA or another entity. Congress will have to sort this out, along with many of the other proposals in the administration's reorganization plan. But as noted by [Professor Lytton](#), there is a long history of similar consolidation proposals that have failed—the most recent in 2015 by President Obama—and this one is likely to suffer a similar fate due to entrenched interests in various aspects of the food industry and

¹ Significant credit for finally prompting congressional action is attributed to the publication and resulting public furor regarding Upton Sinclair's book *The Jungle*. See <http://history.house.gov/Historical-Highlights/1901-1950/Pure-Food-and-Drug-Act/>.

² The functions of the former Bureau of Animal Industry are now carried out by the Food Safety and Inspection Service (FSIS).

³ See U.S. Food & Drug Administration, *FDA's Origin*, <https://www.fda.gov/AboutFDA/History/FOrgsHistory/EvolvingPowers/ucm124403.htm>

⁴ Marion Nestle, [Food Politics](#), Jun 25, 2018.

⁵ Michael R. Taylor, *Lead or React?: A Game Plan for Modernizing the Food Safety System in the United States*, 59 FOOD & DRUG LAW JOURNAL 339 (2004); Timothy M. Hammonds, *It is Time to Designate a Single Food Safety Agency*, 59 FOOD & DRUG LAW JOURNAL 427 (2004); A. Bryan Endres & Michaela N. Tarr, *United States Food Law Update: Initial Food Safety Restructuring Efforts, Poultry Production Contract Reforms and Genetically Engineered Rice Litigation*, 6 JOURNAL OF FOOD LAW & POLICY 103 (2010); A. Bryan Endres & Nicholas R. Johnson, *United States Food Law Update: the FDA Food Safety Modernization Act, Obesity and Deceptive Labeling Enforcement*, 7 JOURNAL OF FOOD LAW & POLICY 135 (2011); Luis A. Ribera & Ronald D. Knutson, *The FDA's Food Safety Modernization Act and Its Economic Implications*, 26 CHOICES (2011).

congressional committees. Nonetheless, this proposal has once again opened up a worthwhile debate on the federal government's approach to food safety and the need to increase its efficiency and effectiveness.

References

Executive office of the President of the United States. "Delivering Government Solutions in the 21st Century." <https://www.whitehouse.gov/wp-content/uploads/2018/06/Government-Reform-and-Reorg-Plan.pdf>

Federal Register, Presidential Documents. Vol. 82, No. 50, March 16, 2017. <https://www.gpo.gov/fdsys/pkg/FR-2017-03-16/pdf/2017-05399.pdf>

HMD, National Academies of Sciences. "Enhancing Food Safety: The Role of the Food and Drug Administration." Released June 8, 2010 and accessed July 5, 2018. <http://nationalacademies.org/hmd/reports/2010/enhancing-food-safety-the-role-of-the-food-and-drug-administration.aspx>

Lytton, Timothy D. "Trump's New Plan to Consolidate Federal Food Safety Efforts Won't Work. Here's Why." <https://theconversation.com/trumps-new-plan-to-consolidate-federal-food-safety-efforts-wont-work-heres-why-98794>

U.S. Food and Drug Administration. *Fact Sheets & Presentations*. Updated January 26, 2018, accessed July 5, 2018. <https://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm247546.htm>

U.S. Government Accountability Office. "Food Safety - High Risk Issue." https://www.gao.gov/key_issues/food_safety/issue_summary