



[EXTRACT]

New Food Recall Law May Catch Companies Napping, Food Safety Experts Warn

A.M. Best Company, Inc – 19 May 2011

Experts who follow food safety urged every business involved in putting meals on America's tables -- from growers to retailers -- to study the new Food Safety Modernization Act and then get the insurance they'll need to face a radically altered regulatory landscape.

The FSMA, signed by President Barack Obama, gives the federal Food and Drug Administration sweeping new authority to inspect, regulate and if needed, shut down any company along the food chain that is involved in product recalls and incidents of food-borne illness. It grants the FDA power to act if it suspects a "reasonable probability" of an outbreak occurring, and virtually unlimited authority in case of an actual outbreak.

Under a "phased approach" similar to the way the United Kingdom implemented its food-inspection regime in 1990, the FSMA's first two rules will take hold this summer, Steven Thompson, senior adviser at London-based red24 security consultancy, said during A.M. Best Co.'s webinar, Food Safety: What Agents and Brokers Need to Know About New FDA Recall Authority. It was sponsored by Liberty Underwriters International and hosted by Best's Review magazine.

The first rule allows the FDA to detain food it believes has been produced under unsanitary or unsafe conditions for 30 days while regulators determine whether further action is required. The second rule requires anyone importing food into the United States to inform the FDA if any country has refused entry to the same product, including animal feed.

Asked how many companies are currently prepared to satisfy requirements of the new law, panelist Louis Lubrano, senior vice president at LIU, said, "The short answer is, not very many, if at all." The act pertains only to the FDA and the 80% of the nation's food supply it regulates. The USDA retains its authority to regulate meat, poultry and pork.

Thompson noted that part of the FDA's more muscular approach will be to "keep everyone aware of the changes via their website. I think that tells everyone, 'Look, you've been warned.'" Many food-processing concerns are in for a rude awakening if they think their present insurance will guard against liability from contamination outbreaks.

For example, companies with more than \$500,000 in annual revenue -- the law's threshold for meeting the new requirements -- have "very little" coverage for product recall liability, according to Liberty Underwriting Vice President Jane McCarthy.

"It's very surprising to find out how many clients think they've got cover under public liability policies. That's a specific exclusion. Any kind of recall expenses...are absolutely excluded under that type of policy," she said.

Special coverage, known as contaminated products insurance, can provide sufficient liability protection under the new regulatory regime, she noted. And she said many agents and brokers are fielding questions from clients about the new law and their own potential exposures.

Panel member Philip C. Rorty, an LIU vice president noted the coverage pays for rehabilitation of the product and the facility, recall expenses, business interruption costs, advisers' expenses and third-party liability.

Joseph Bermudez, partner at Nelson, Levine, de Luca & Horst's Denver office, said the FSMA changed the FDA's food inspection approach "from retroactive to proactive, so that now they can attack these issues from the very beginning."

He said Congress passed the act last year "in response to the federal recalls (of food) which we've seen over the past several years. We've seen more and more multistate outbreaks."

Lubrano characterized the "recipe" that led to the law's passage as "spinach, pet food, peanuts and eggs." All four commodities were the target of large outbreaks of food contamination sickness over the past five years, and "that's what drove this legislation."

Thompson said he thinks the new regulatory regime will need three to five years to be fully implemented at both company and FDA levels. "Larger companies in the U.S. that I've dealt with won't find it to be a real problem from a compliance point-of-view, but I think some of your midsize producing and importing companies are going to find it a lot more challenging," Thompson said.

Watch the entire webinar at <http://www.bestreview.com/webinars/food11>

(Dennis Gorski, Best's Review managing editor)

[END]

Source: Insurance News website (19 May 2011)

<http://insurancenewsnet.com/article.aspx?id=261795&type=newswires>