THE FEDERAL FOOD, DRUG AND COSMETIC ACT AND ITS EFFECT UPON THE RETAIL FOOD INDUSTRY

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I am honored to have been selected to speak for the food retailer at this conference. I am also somewhat surprised at my importation from Northern California since Los Angeles has for years been recognized in our industry as the home of the largest and best operated retail food stores in the world. I know from personal experience how “tough” the owners of these stores can be as competitors.

As the title indicates, I have been asked to discuss the Pure Food and Drug Laws from the view point of the food retailer. Some of you may wonder why a grocer should be interested in laws whose general application is at the manufacturer or packer level. Food retailers, and I am sure the same is true with respect to retail druggists, however, know that these laws have a definite and a very beneficial effect upon their business and the livelihood it brings them.

NEED FOR PURE FOOD LAW

In the advanced society of “Shangra-La” as depicted a few years ago in “Lost Horizon”, selfishness was practically unknown, enlightened self-interest was compatible with the common good and there was no need for governmental regulation of business.

The society of this century, however, has not achieved Shangra-La status. Our elected representatives have been forced to enact laws to protect us from our own selfishness and in order to make these laws effective, have established agencies to regulate and police our business activities. As an oversimplification, I think of the Federal Food, Drug and Cosmetic Act of 1938 and its predecessor of 1906 as social legislation of that type—an inducement, or prod, to do that which is in our own best interest.

The year 1936 will mark a half century of federal food regulation in the United States. Progress during that period has been impressive. Its historical record is well presented in the Administrative Reports, 1907-1949, published in the Food Law Institute Series, and in the publication of proceedings at the commemorative meeting in 1948 held under the auspices of the New York State Bar Association.

The favorable results and the minimum of conflict in this development and expansion of federal regulations are a tribute to those who sponsored the legislation and to those who have since administered it. Its success is also due in no small part to the generally cooperative attitude of the food and drug industries toward the objectives of these laws.

As a basis for evaluating benefits to the retail food industry from the Federal Food and Cosmetic Act, I suggest that we first define the industry’s long-range objective. I offer the following as a simple statement of this objective: To gain and hold the confident patronage of consumers.

If, for the purpose of discussion, we accept that as our objective, we can see that it obligates us to supply our customers with quality products and satisfying service at reasonable prices. The retailer who does this will progress while the one who does not will soon fade from the picture. It is in earning and holding the confidence of his customers in the products sold by him that the food retailer realizes his greatest benefit from the pure food laws.

The subject assigned to me does not comprehend a discussion of provisions, such as factory inspection, which directly affect food processors and manufacturers. I shall only mention that there are such provisions and that they serve as added “inducements” to our suppliers to guard the quality of the goods they ship us—and go on to factors more specifically related to the retailer.

Most manufacturers and processors of food products aspire to a long period of continued success. It is elemental that repeat orders from satisfied distributors of their products are essential to that success. The economics of the industry, therefore, constitute a compelling influence for supplying quality merchandise. The Federal Food, Drug and Cosmetic Act serves as an additional “inducement” in those cases where economies alone are insufficient to protect the retailer and his customer.

LABELING

The standardizing of foods—subject as it may be to differences of opinion—provides specifications which have substantial value in dealings between retailers and their suppliers. As a simple illustration, an order for canned peaches in which optional ingredients are specified as “peeled quarters” and “heavy syrup”, uses terms which are well understood by both contracting parties. I know of at least one retail organization which consistently uses the standards as specifications in purchasing merchandise packed under both supplier’s and its own brands. The last few years have seen a growing acceptance of this practice and I understand that it is now quite general for the industry. I will have to admit that at times we feel unhappy with the “inducement” bands of standardized quality. However, this feeling is more often due to the knowledge that without standardization we would suffer at the hands of unscrupulous suppliers and competitors.

Labels which meet the requirements of the Act and regulations carry basic information to which consumers are entitled. You, of course, are well acquainted with these requirements which are in the nature of a common denominator for all food labels. However, I will list them to support what I believe is a reasonable conclusion, namely, that giving them readability on our labels benefits all interested parties:

(a) the common name of the product. — The need for this is obvious.

(b) a list of all ingredients or of optional ingredients and a declaration of artificial color, artificial flavor, or chemical preservative, as the situation may require. — If as sellers we remember our other status as consumers, it will be easy...
to recognize the need for these disclosures.

(c) a net quantity statement. This is a contract essential as well as a fundamental protection for both the consumer and the retailer.

(d) the name and address of the producer, packer or distributor. Here is an opportunity for the supplier or distributor to indicate pride in his product. It also serves to relieve the retailer of responsibility for poor merchandise or improper packaging when he is not the processor or packer.

(e) a dietary statement, when relevant claims are made. I'm somewhat hesitant to get into a discussion of this feature so I'll just make the passing comment that the required information is educational — although we may not understand it. However, in this era of "additives", the statement does have real importance.

I have been told that the requirements above listed are the "stones" of a "wailing wall" for people who earn their living designing labels. These artists have a preference for art work and would like to relegate the mandatory label information to the back panels or the bottoms of containers.

The requirement that the container must not be misleading protects the retailer in his contract dealings with the processor and in his relations with the consumer. We must remember that the consumer is buying not the container, but the contents of the package and that she will be disgruntled, to say the least, if she finds that her purchase could have been packed in a corner of the container used.

I am convinced that making essential product information readily available on the label, and insisting that all containers be fully filled, are real factors in earning the confidence and continued patronage of our retail customers. I can't agree with those members of the food industry who contend that the readership appeal of mandatory label information is so far less than 100% that it is of little value. If education of the consumer is required, it may be that the industry should do more work along the line of the brochure "Read the Label" which was published in 1951 by the Federal Security Agency to stimulate and educate consumer use of label information.

**Quality Standards**

The food processing industry is extremely competitive. Survival may depend on the outcome of a battle of costs and all processors are conscious of the need for economies in their operations. However, when the pressure for economies leads into such temptations as substitution of ingredients, or relaxation of quality controls, or questioning the need for sanitation measures, the Federal Food, Drug and Cosmetic Act serves as an influence for caution and as a protection to the retailer and his customer. When this need for caution goes unheeded the erring proprietor gains instruction (at substantial expense) in such legal procedures as the application of admiralty rules to seizures on land.

The commodity guaranty provisions of the Act deserve and should have greater retailer attention and understanding than is now given them. These sections relieve the retailer from responsibility for failures and violations over which he has no control and if understood, would be demanded by the retailer from all suppliers on all purchases. Too often, it is the unethical manufacturer who fails to include the guaranty in his sale agreement. The guaranty, by the terms of Section 303, simply gives the retailer an exemption from penalties under specified circumstances. However, in the course of business relations between the retailer and his supplier the guaranty can have a much broader significance and much more importance. Our experience is that suppliers have no hesitancy in responding to a request for a continuing guaranty that their products will not be misbranded or adulterated. They often use the request as an opportunity to explain the quality of their products, and in many instances back up their assurances with an indemnity agreement, or a certificate of product liability insurance or both.

Lest this recital be misinterpreted as indicating that the benefits derived by the Retail Food Industry are at the expense of suppliers, I want to assert that the benefits are not one sided and that they accrue to suppliers as well as to retailers. The Act, it is true, is basically a health measure and its primary justification is the increased likelihood that food will be in a good wholesome condition when consumed. However, the factors which help retailers sell food to consumers, stimulate the movement of goods from suppliers to their outlets. Also, the need to meet the requirements of the Federal Food, Drug and Cosmetic Act in order to compete in commerce, gives ethical business substantial protection against chiseling by unethical or shortsighted competitors.

The importance of the Federal Food, Drug and Cosmetic Act to the retail food industry is becoming more and more apparent as time goes on. When the law was enacted in 1906, food processing was of little importance to our industry and the retail food business was still in its "cracker barrel" stage. Food products were processed locally and sold from barrels, tubs and bins by dingy corner stores. Little thought was given to sanitation by either the store proprietor or his customer and purchases were carried home in containers supplied by the customer or in a used box or an old piece of wrapping paper furnished by the grocer. Lack of refrigeration limited perishable products handled to those in dried or smoked form and overall sales of the store were held down by poor transportation which made it impossible to draw customers from any distance. Improved transportation, the development of large central processing plants with up to date processing and packaging machinery, the evolution of the retail food store from the "cracker barrel" stage, growing concern as to sanitation and health, the housewife's aversion to home canning and preserving and her desire to use the retail food store as the sole source of supply for her family's food needs have all helped to increase the value of the Federal Food, Drug and Cosmetic Act.

The demand for greater variety, better tasting and more nutritious foods has resulted in many improvements in the processing plants, in methods of transportation and in the retail food stores. Those of us who are in the retail food business who think that the greatest development took place in our industry. A comparison of the
dinger, unsanitary “cracker barrel” store common to the early years of the century with the modern supermarket concept, equipped and stocked at a cost in many cases of more than a million dollars proves that we have good reason for this belief. The substantial investment in the retail store and the great distance from which trade must be drawn makes customer confidence in the products sold of prime importance to the present day grocer. I do not believe he could maintain the consistency in quality required for this customer confidence without the help of the pure food laws and the enforcement activities of the FDA.

It has been necessary for the FDA to grow with the food business and to develop and revise its enforcement procedures to meet change in that industry. Its history of progress from the supervision of localized packaging and processing during the early years of the century through the regulation of large central processing plants and on to the recent development of freezing techniques for food preservation, gives one complete confidence in the Administration’s ability to meet any challenge that may arise in the future.

**Enforcement Contradictions**

I think it only proper at this time to list a few places where we believe the Act and its enforcement could be changed to the benefit of the public. A recent incident which might be called “The Case of the Mixed Mackerel”, illustrates how improved coordination in the administration of the Act could result in a saving to the food industry, without prejudicing or injuring the customer.

The invitation to speak at this meeting came at a time when my Company was negotiating a settlement with a supplier for loss due to federal seizure of a shipment of canned fish. It seems that some *Trachurus symmetricus* had become entangled in a catch of *Pneumatophorus diego* and were canned without benefit of segregation. Now, quite correctly, *trachurus symmetricus* should not be allowed to masquerade as *Pneumatophorus diego*, so there was no question but that the Food and Drug Administration properly initiated seizure. However, the case became so complicated by a difference of opinion as to a common product name that could be used for the pack that the supplier found it impossible to relabel the goods and suffered a total loss on the merchandise. It so happened that several districts of the Food and Drug Administration held different views on the matter. The opinion of the district in which the fish was packed—and incidentally also of the state authorities — was that the designation “jack mackerel” was sufficiently general to cover both types and that it would constitute a down grading of any Pacific mackerel in the can. Under that point of view a consumer buying “jack mackerel” would receive at least what she paid for and would benefit from any of the higher grade product that happened to be in the container. The situation seemed comparable to the general acceptance of the designation “jack salmon” as a down grading of the more highly regarded types of salmon. However, the district in which the fish was seized would not accept that view and concluded that the product could not be satisfactorily relabeled.

Another recent experience illustrates how a difference in views between separate departments of the government — the Food and Drug Administration on one hand, the U.S. Department of Agriculture on the other—can result in a substantial loss to the food industry. From the point of view of the USDA—and the authorities of the state in which the goods were processed—this instance might be termed “The Case of Grade B vs. Grade A Frozen Eggs”. To the Food and Drug Administration it was simply a case of decomposition. The F.D.A. prevailed, even though the vote was two to one against its ruling. Strangely, a portion of the same lot, which was not shipped in commerce, was sold after clearance by the state and found to be entirely satisfactory.

**Deplores Service to Special Interests**

Since I have already diverged from the strict limitations of the subject assigned to me, I will make the further comment that it disturbs me to have the Food, Drug and Cosmetic Act distorted for the benefit of special interests and the enforcement efforts of the federal government directed toward problems that are properly within local jurisdiction, all without resulting advantage to the consumer. I refer to subdivision (c) of Section 407, as amended by the Oleomargarine Act of 1950. This section does not affect food retailers, so my opinion cannot be said to be influenced by any selfish interest. Instead, it regulates the manner of serving margarine in local eating places, and imposes on federal officers the burden of enforcement of the regulation. Consider this provision in relation to its use of the powers of the federal government:

“Sec. 407 . . . ( c). No person shall possess in a form ready for serving colored oleomargarine or colored margarine at a public eating place unless a notice that oleomargarine or margarine is served is displayed prominently and conspicuously in such place and in such manner as to render it likely to be read and understood by the ordinary individual being served in such eating place or is printed or is otherwise set forth on the menu in type or lettering not smaller than that normally used to designate the serving of other food items. No person shall serve colored oleomargarine or colored margarine at a public eating place, whether or not any charge is made therefor, unless ( 1 ) each separate serving bears or is accompanied by labeling identifying it as oleomargarine or margarine, or ( 2 ) each separate serving thereof is triangular in shape”.

My criticism is not directed to any product or industry. Instead, I cite the provision simply to illustrate what I consider to be unrealistic regulation and an improper use of federal enforcement authorities.

In contrast with the situation just mentioned, was a recent administrative revision of the policy covering the shipment in commerce of frozen desserts containing vegetable fats. It is my understanding that the modification will permit the interstate movement of such products if correctly labeled. To me this represents an enlightened administrative move toward the diminution of artificial restrictions that are
quality of milk. This included a
discussion of the influence of
antibiotics and bactericides in milk.
Methods for testing their presence
was reviewed by a representative
of Purdue University.

At the fourth and final meeting,
during the morning session, the
subject was in-place cleaning of
pipelines at dairy farms.
Outlined were some of the prob-
lems and some of the features of
this new method of milk handling
which requires close scrutiny by
milk sanitarians. The trend of milk
producers to put in milking parlors
which accomodate two to four
cows was noted. This trend
toward further mechanization of
farm milk production raises a num-
ber of points for consideration by
milk control personnel.

Specific standards for this type
of installation are rather generally
lacking because each installation
is of a particular design to fit the
needs of the producer installing it.
All of those present were asked
to submit bacterial count results on
milk and inspection data on any
farm pipeline installation in their
milk sheds so that the State Dairy
Products Division might study
results and evaluate them.

The afternoon of the final session
was devoted to a discussion of
methods to promote the Grade A
Milk Program. Stressed were such
points as personal conduct of the
sanitarian, educational and instruc-
tional methods to convince the milk
producer that the production of
Grade A milk is a definite mark of
good dairy practice, and means
whereby better and closer coopera-
tion with health agencies and the
County Agricultural Agents' pro-
gram could be developed.

ATTENDANCE AND INTEREST
The attendance at all of
the meetings was very gratifying. We
had not anticipated the good
response obtained. It was felt that
because meetings were held in
July, a vacation month, this would
interfere with attendance. This did
not prove to be the case, however,
and at all the meetings the attend-
ance was excellent and numbered
in general between 35 and 50.
The attendance throughout did not
decrease, but on the other hand, the
number attending increased. It
is interesting to note that at meetings
held in the southern part of the
state, several of the Louisville,
Kentucky, health department milk
sanitation staff attended. At the
first meeting four men from Louis-
ville were present and this increas-
ed in number until at the third
meeting there were eight repre-
sentatives present, five from the
health department and three from
Louisville milk companies.

GENERAL RESULTS OF THESE
MEETINGS
It appears to the writers that
these meetings realized two definite
values. First, they gave persons
involved in milk control work the
best and latest thinking on new
developments in the field of milk
production, distribution, and handl-
ing. While cut and dried answers
could not be given in all instances
because standards still have to be
revised and studied, the general
discussions brought out many
points which milk sanitarians and
industry representatives should
watch with alert interest. Audience
participation was very good, and
the question and discussion periods
were always lively and interesting.

The second value, it is felt, is
the fact that these meetings cemented
more firmly the relationship be-
tween the State Board of Health
and local milk sanitarians. The
sessions demonstrated the fact that
the State Board of Health had made
a special effort to organize and
sponsor a series of meetings where
both official and industry sanita-
tarians could discuss mutual prob-
lems and obtain views on newer
developments in milk production
and control.

SOME CONCLUSIONS
1. Meeting of milk sanitarians
from official agencies and plant
sanitarians aid in promoting good
relationships. Both are in frequent
contact with producers, and unifor-
mity of interpretation in regard
to milk production requirements
is essential. Joint meetings encour-
age this objective.

2. Holding a series of meetings
one day per week, rather than on
two or more consecutive days in the
same week, appears to encourage
attendance and is generally favored
by participants.

3. This series of in-service train-
ing seminars has stimulated local
sanitarians and industry quality
control men to organize and to
hold meetings among themselves
for purpose of discussing mutual
problems.

4. As a result of meetings with
local milk control officials, the staff
of the State Dairy Products Divi-
sion became better informed on
local problems and local activities.

5. Production, handling, and
distribution of milk from the farm
and from the plant is presently
changing due to new developments.
These must be carefully watched
and appraised. These meetings
offered an opportunity for full dis-
cussion of these newer procedures
and an opportunity to formulate
uniform plans for dealing with
them effectively.

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COSMETIC ACT
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not in the public interest. As a mem-
ber of the retail food industry, I am
impartial as to products. The point
I want to make is that the Act, or
regulations under it, should not be
used to protect an industry against
competition, to discourage
the development of new and cheap-
er foods or to deprive consumers of
wholesome, properly labeled food
products.

I have no sympathy with the
demands for bigger and better
governmental control of business so
often heard during the last decade.
However, regulation such as that
under the Food, Drug and Cos-
metic Act, is in the public interest
and has a place in our present day
business world. We can only hope
that experience under the Act may
in time influence industry to volun-
tarily operate in a way that will
accomplish its objectives, thereby
making the Act unnecessary.

Food and Drug Law Conference
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RESOLUTIONS COMMITTEE
ANNOUNCEMENT
The Resolutions Committee is
herewith requesting the members-


ship to present to it matters of
assignment for its consideration
before the next annual meeting at
Atlantic City. The members of the
Committee are: Owen Owens,
Rochester Dairy Cooperative,
Rochester, Minnesota; Harold
Barnum, Department of Health
and Hospitals, West Sixth Avenue
and Cherokee Street, Denver, Colorado;
and K. G. Weckel, Department of
Dairy and Food Industries, Uni-
versity of Wisconsin, Madison.
Subjects for consideration may be
presented to any one of the com-
mittee members."