

To: Our Clients and Friends

November 3, 2009

Food, Dietary Supplement and Cosmetic Regulatory and Policy Bulletin



Top News

Recalled Beef Possibly Linked to Two Deaths

The [Wall Street Journal](#) and [Reuters](#) report that ground beef that had been recalled by Fairbank Farms of Ashville, New York has been linked to 28 cases of E. coli, including two that resulted in death. Last week, South Shore meats also recalled beef patties due to possible E. coli contamination [after 20 school children were suffering from E. coli](#).

Measurable Amounts of BPA Common in Canned Food Products

In a [study by Consumers Union](#), the nonprofit publisher of Consumer Reports, findings showed that almost all of the 19 name-brand canned products, including foods such as tuna, juice, soups, and vegetables, had measurable levels of Bisphenol A (BPA). The study has received wide spread press coverage, including by [Reuters](#) and [Los Angeles Times](#).

PSP Survey Calls for Better Integration and Collection of Outbreak Data

The [Product Safety Project](#) conducted a survey of 39 state health [departments](#) regarding their capacity to track produce-related food-borne illness and found that “the response and investigation of outbreaks varies greatly and can lead to delays in public-health response.”

U.S. Attorneys’ Offices Announces Two Convictions – One in Dietary Supplement Scam and Second in Connection with Unlicensed Cosmetic Treatments

The U.S. Attorney’s Office for the Southern District of Florida announced that they had [convicted a man in connection with a nutritional supplement scheme](#) that defrauded more than 100,000 consumers across the country out of more than \$16 million through fraudulent sales techniques. In an unrelated case, the U.S. Attorney’s Office in the Western District of Washington announced that they had [secured the conviction of a woman for injecting counterfeit Botox and Restylane on customers at her beauty salon](#).

Increase in Alternative, Unproven H1N1 Remedies Sparks Increased FDA Action

The [Wall Street Journal](#) reports an increased prevalence in alternative remedies to H1N1 flu found on the internet and discusses some of the bogus claims and the FDA's response to such products and remedies. The FDA also updated its web page, titled [The Word is Out on Unapproved H1N1 Products](#), to better inform consumers on the issue.

FDA, JIFSAN Travel to Bangladesh to Teach Seafood Safety

The FDA and the Joint Institute for Food Safety and Applied Nutrition (JIFSAN) have [sent a team of seafood specialists to Bangladesh](#) this week to help train local officials on aquaculture safety and quality control techniques. The goal of the trip is to work with Bangladeshi officials to help the country improve the overall quality and safety of its aquaculture products for both domestic and international markets.

New Food Safety Discoveries To Ward Off Bacteria in Food

In this month's Journal of Food Microbiology, scientists published findings that supercritical carbon dioxide (SC-CO₂), a non-thermal food preservation technology, is [effective for inhibiting pathogens](#) such as E. coli, salmonella, and listeria. [The Washington Post](#) also reports that FDA scientists have "stumbled upon what they believe are a powerful, naturally occurring 'good' bacteria that can slaughter 'bad' bacteria that have become a persistent problem in fresh fruits and vegetables because they harm humans."

GM Corn Wins Approval in EU; Monsanto Still Fighting GM Alfalfa Ban

Last week the [European Commission voted to approve three varieties of genetically modified \(GM\) corn](#) after some controversy. In the United States, [Monsanto asked the Supreme Court to review a lower court decision](#) that prohibited the planting of GM alfalfa until an environmental review is complete.

EFSA Health Claims Rulings Incorporated into EU Law

The European Food Safety Commission (EFSA) drew attention last month when it released its [first round of rulings on health claims related to dietary supplements](#). Since then, the [21 approvals for health claims were written into European Union law](#), the EFSA [published guidance on probiotic claims](#), and [nutrient databases are playing a larger role in the use of health claims](#).

Policy Debates Surround Increased Sugar Quotas, Meat Tax, Regulation of Marketing Kids' Cereals, and Soda Tax

In response to sugar prices hitting a 27-year high in August, [food manufacturers urgently calling for increased sugar quotas](#) after the USDA announced that it would set the import quota at the minimum required by the World Trade Organization. A [Princeton bioethics professor is calling for a tax on meat](#) as a tool to reduce consumption and improve health and greenhouse gas emissions contributed by livestock. Yale's Rudd Center for Food Policy and Obesity released a study that found that the [least healthy products can be marketed most aggressively because of industry regulation that determine which cereals can be marketed to children](#), fueling interest group complaints that self-regulation is not enough. The Center for Consumer Freedom attended the Obesity Society's annual meeting to argue [that taxes on sugary soft drinks are not a solution to fighting obesity](#), but that such decisions should be a matter of personal responsibility.

Recent Recalls

[Fairbank Farms fresh ground beef products](#) due to the potential presence of E.coli bacteria (October 31, 2009).

[Morningstar Foods Great Value selected dairy products](#) due to possible undeclared soy protein (October 30, 2009).

[Alexia Olive Oil, Sun-Dried Tomatoes & Pesto Oven Reds frozen potatoes](#) due to undeclared pine nuts allergen (October 30, 2009).

Upcoming Meetings

FSIS Meeting on Cooperative Inspection Programs: Interstate Shipment of Meat and Poultry Products

On November 5, 2009, the Food Safety and Inspection Service (FSIS) will hold the second of two public meetings on recently published proposed regulations to implement a new voluntary cooperative program under which State-inspected establishments with 25 or fewer employees will be eligible to ship meat and poultry products in interstate commerce (74 FR 47648, September 16, 2009). The meetings will be conducted by teleconference. Pre-registration is required. To pre-register, access the FSIS Web site, at http://www.fsis.usda.gov/News/Meetings_&_Events/.

FSIS Web Outreach Seminar on Selecting Good Manufacturing Practices

The final session of the FSIS web outreach seminars to promote uniform understanding of FSIS regulations for plant owners and operators, especially those of small and very small plants, is scheduled for November 5, 2009. The topic is selecting good manufacturing practices and sanitation performance standards necessary to support a small plant's food safety system. To register, go to http://www.fsis.usda.gov/News_&_Events/Regulatory_Web_Seminars/index.asp.

FDA and FSIS Announce Public Meeting on Product Tracing Systems

The FDA and USDA Food Safety and Inspection Service (FSIS) announce a public meeting on December 9 and 10, 2009 from 9 a.m. to 5 p.m. regarding product tracing systems for food intended for humans and animals, specifically, mechanisms to enhance product tracing systems for food. The notice, including more information about the meeting, how to register, and how to make a request for oral presentation during time allotted for public comment, is available at http://www.fsis.usda.gov/OPPDE/rdad/FRPubs/Docket_No_FDA-2009-0523.htm.

More Information

If you have any questions regarding any of these issues, please contact:

Mark Mansour	Partner	mark.mansour@bryancave.com	1 202 508 6019	Washington
Alan K. Parver	Partner	alan.parver@bryancave.com	1 202 508 6332	Washington
Steven Kent Stranne	Partner	steven.stranne@bryancave.com	1 202 508 6349	Washington
Megan A. Gajewski	Associate	megan.gajewski@bryancave.com	1 202 508 6302	Washington
Patrice M. Hayden	Associate	pmhayden@bryancave.com	1 202 508 6147	Washington
Emily K. Strunk	Associate	emily.strunk@bryancave.com	1 202 508 6360	Washington

This bulletin is published for the clients and friends of Bryan Cave LLP. To stop this bulletin, please reply to this email. To stop this bulletin and all future commercial e-mail from Bryan Cave LLP, please reply to: opt-out@bryancave.com and leave the message blank. Information contained herein is not to be considered as legal advice. Under the ethics rules of certain bar associations, this bulletin may be construed as an advertisement or solicitation.