

To: Our Clients and Friends

February 25, 2010

Food, Dietary Supplement and Cosmetic Regulatory and Policy Bulletin



Top News

USDA and FDA Issue Joint Statement to Update Public on Coordinated Efforts to Ensure Safety of Produce; FDA Invites Public Comments to Inform Rulemaking

[USDA and FDA recently issued a joint statement](#) emphasizing that the two agencies continue to work together to improve the safety and quality of fresh produce. USDA's Agricultural Marketing Service (AMS) is evaluating a proposed marketing agreement for the leafy green industry and FDA is developing proposed produce safety regulations. FDA and USDA stated that they would like to take into account the diverse nature of farming operations and that any marketing agreement would conform to any regulations that may be promulgated by FDA. AMS will continue to review the comments that have been submitted to USDA on the proposed marketing agreement, while [FDA has established a docket](#) to receive information about current practices and conditions for the production and packing of fresh produce and practical approaches to improving produce safety. FDA will work with AMS to have the testimony from the AMS hearings placed in the FDA docket for consideration by FDA. FDA encourages all interested persons to submit information they believe will inform the development of safety standards for fresh produce at the farm and packing house, as well as strategies and cooperative efforts to ensure compliance with those standards.

Foodborne Illness on the Rise in the United States

A [Wall Street Journal](#) article reports that foodborne illness is on the rise in the United States and discusses the contributing factors, such as better food safety surveillance, increased demand for unprocessed foods (like raw milk), and food imported from countries with less strict safety standards.

Taxes on Soda, Candy, and Other Foods Fail in Some States, Pass in Others

In light of state budget troubles and healthy eating initiatives, many states are considering taxes on soda and candy to encourage healthy eating choices while balancing the state's budget. [New Mexico recently passed a food tax that applies to about 40% of the foods sold in the state.](#) [Colorado's Governor also just signed a law that will allow for taxes on soda and candy.](#) In Massachusetts, the [Boston Globe is encouraging the state legislature to end the sales tax exemption for soda and candy.](#) In Mississippi, a [bill that would tax soda is likely to die in legislature](#), while [New Yorkers have changed their mind in favor of a soda tax that would balance the state's budget.](#) Although legislation has been introduced in the U.S. House of Representatives that would create [a nationwide soda tax](#), it appears that the measure will not make it out of committee after protests from the beverage industry and consumers.

Michelle Obama Launches Anti-Obesity Campaign

In February, [First Lady Michelle Obama unveiled “Let’s Move” campaign to combat child obesity](#). Let’s Move is a comprehensive, collaborative, and community-oriented campaign that includes strategies to address the factors that lead to childhood obesity while taking into account how life is really lived in communities across the country - encouraging, supporting and pursuing solutions that are tailored to children and families facing a wide range of challenges and life circumstances. The program’s web site can be found at www.letsmove.com. [The White House press release can be found here](#). President Barack Obama kicked off the launch by signing a Presidential Memorandum creating the first ever Task Force on Childhood Obesity. Within 90 days, the Task Force will conduct a review of every single program and policy relating to child nutrition and physical activity and develop a national action plan that maximizes federal resources and sets concrete benchmarks toward the First Lady’s national goal.

Obama Administration Details Healthy Food Financing Initiative

On February 19, 2010, the Obama Administration released [details of its \\$400 million Healthy Food Financing Initiative](#), which will bring grocery stores and other healthy food retailers to underserved urban and rural communities across America. The initiative is a partnership between the Departments of Treasury, Agriculture, and Health and Human Services and will promote a range of interventions that expand access to nutritious foods, including developing and equipping grocery stores and other small businesses and retailers selling healthy food in communities that currently lack these options, sometimes called “food deserts”. One goal of the initiative is to eliminate food deserts across the country within seven years. With the first year of funding, the Administration’s initiative will leverage enough investments to begin expanding healthy foods options into as many as one-fifth of the nation’s food deserts and create thousands of jobs in urban and rural communities across the nation.

President Obama Amends Budget to Include \$8 million for Food Safety Training

In FY2010, Congress approved \$1 million for training initiatives at the International Food Protection Training Institute (IFPTI) in Beaver Creek, Michigan. Consistent with the president’s emphasis on food safety, [President Obama recently amended his FY2011 budget proposal to allocate \\$8 million to IFPTI](#), which would allow the training institute to train as many as 3,000 food safety officials in 2011. The [Beaver Creek Enquirer](#) reports that the training institute is “just one element in the overall plan for development of a food safety and research industry” in the area.

Nutrition Experts Advocate Complete Elimination of Front-of-Package Claims

Last October, [FDA announced that it would issue guidance in early 2010 that would clarify the standards that apply to front-of-packaging \(FOP\) labeling](#). [A recent commentary in the Journal of the American Medical Association calls upon FDA to ban FOP claims altogether](#). Authors and nutrition experts Marion Nestle and David Ludwig justified their position by saying that “such standards are inevitably arbitrary and subject to manipulation” and that consumers would be better off by strengthening the Nutrition Facts Panel.

Meat Industry Defends Antibiotic Use to Lawmakers

On February 23, 2010, two weeks after the [CBS Evening News criticized widespread antibiotic use on healthy animals](#), [meat industry stakeholders held briefings on Capitol Hill](#) to persuade legislators that proper antibiotic use is critical to food production.

Alliance for Natural Health Leads Charge to Block McCain’s Dietary Supplements Bill

The Alliance for Natural Health, working with a variety of other organizations in the dietary supplements industry, [is calling upon its constituents to protest the Dietary Supplement Safety Act \(DSSA\)](#), saying that the bill would “eliminate the supplement protections contained in DSHEA and allow the Food and Drug Administration (FDA) arbitrary authority to draw up a list of what supplements can be sold and at what potency levels.” DSSA was introduced on February 3, 2010 by Senators John McCain (R-AZ) and Byron Dorgan (D-ND).

China Recalls and Destroys 170 Tons of Tainted Milk Powder; Relaunches Food

In its continuing efforts to remove from the market all of the melamine-contaminated milk, the [Chinese government recalled 170 tons of melamine-tainted milk powder leftover from the 2008 scandal](#). The recall stems from more tainted product being discovered in Shanghai and six provinces. Although companies should have destroyed all of the tainted product, at least five are suspected of just repackaging it so that they can continue to sell it. [China has since reported that it has destroyed most of the melamine-contaminated milk that had been repackaged and reintroduced into the market](#). In the wake of this most recent wave of melamine milk recalls, [China created a food safety Commission to help build credibility](#) in addition to [launching a food safety campaign](#).

French Food Safety Agency Calls for Increased Research on BPA Safety

Earlier in February, the French Food Safety Agency (AFSSA) has [questioned the credibility of studies reporting the potential dangers of Bisphenol A \(BPA\)](#), the agency also acknowledge that the studies should not be ignored entirely. Instead, the AFSSA thinks the studies raise red flags and has called for additional research into the safety of BPA. However, [Antidote Europe, a food safety watchdog, criticized AFSSA for being unclear](#).

Biotech News: Genetically Modified Crops Increasing in Brazil, Suspended in India, Poised for Success in China, and Finding Their Place Sub-Saharan Africa

German chemicals company [BASF won approval from Brazil to cultivate genetically modified soy](#), which marks BASF's entry into the GM seed market. Meanwhile, [India's Environmental Minister declared GM eggplant, India's first GM Crop, unsafe for immediate public consumption](#) and placed an indefinite moratorium on further cultivation of GM vegetable crops in India.

A [survey by the International Service for the Acquisition of Agri-Biotech Applications](#) said that trends in worldwide biotech plantings place Brazil and China as potential leaders in crop plantings. Overall, biotech plantings in 2009 increased by 7 percent over 2008.

[DuPont's Agricultural unit has formed an alliance in Sub-Saharan Africa](#) that will work together in order to develop a GM corn crop that will have a higher yield while requiring less fertilizer.

Video Surveillance Part of New Food Safety Efforts at Meat Packing Plants

Food Safety News recently highlighted two firms whose food safety efforts included video surveillance. Video cameras are placed in areas where employees wash hands or prepare food were. [Dakota Provisions](#) has been using the technology for some time to monitor hand washing and production areas at its meat processing plants. [Cargill](#) recently implemented video surveillance to monitor food safety practices in its plants in Fresno, California and Milwaukee, Wisconsin. Cargill decided to implement the program after a similar program to monitor animal welfare was successful. Both companies contract with an outside company who audit the videos.

Cargill Admits Liability in E. Coli Contamination Case Featured in New York Times

In October, [The New York Times](#) ran a front-page story about a dance instructor who was left paralyzed after eating hamburger meat contaminated with E. coli. The meat was traced back to [Cargill, who recently admitted liability in the case](#).

Beef Products Inc. to Publish Test Results for E. coli and Salmonella Online

Earlier this month, at the National Meat Association's annual conference, [Beef Products Inc. \(BPI\) announced that it intends "to put in place a system that will allow everyone to have access to BPI test data for E.coli O157:H7 and Salmonella at virtually the same time that data comes to BPI](#) from the third party, fully accredited laboratories that conduct testing of BPI's products." The company's founder and chairman said that they "envision a reporting system that will allow the data to come directly from the labs and be viewable on BPI's Website [and] ... be independently verified and audited."

USDA's Open Gov Page Now Available

The [Open Gov Initiative](#) is a new [charge](#) to transform how government interacts with the public to be more open, transparent & collaborative. USDA recently announced that their Open Gov page is now available at usda.gov/open. The page invites interested individuals to share new and discuss existing ideas.

Codex Committee Discards Processed Cheese, Finalizes Fermented Milk Standards

The [Codex Committee on Milk and Milk Products \(CCMMP\)](#) revoked processed cheese standards, which was supported by U.S. representatives to the committee. CCMMP also finalized fermented milk standards, which affect products such as smoothies, yogurts, and kefir. The standards for fermented milk require that products contain at least 40 percent milk and list the amount of fermented milk and added water on the label. All changes will be finalized in July 2010.

Briefly Noted

[Food Safety News reports on Global Food Safety Conference.](#)

[Health Canada seeks stricter regulations on how color additives are listed on labels.](#)

[UK Introduces voluntary Country of Origin Labeling code for pork products.](#)

[Massachusetts prepares to implement new regulations that require restaurants to acknowledge, address food allergies.](#)

[Louisville, Kentucky decides against transfat ban in favor of public education, improved labeling, and voluntary phase-out.](#)

[Georgia State Representative introduces bill to legalize sale and consumption of raw, unpasteurized milk.](#)

[Recent Grocery Manufacturers Association report recommends increased collaboration to combat food fraud.](#)

[EU unveils new leaf-shaped organic logo.](#)

[China could be world's largest grocery market by 2014.](#)

[Pet food company institutes "test and hold" policy in light of recent recall due to potential salmonella contamination.](#)

[FDA publishes another update on Salmonella Montevideo outbreak on February 17, 2010.](#)

[UK researchers are seeking government approval to start field trials for blight-proof biotech potato.](#)

[SK Foods former owner indicted for RICO violations in connection various schemes to defraud SK Foods' corporate clients through food misbranding and adulteration, among other means.](#)

[Maryland veal calf dealer agrees to close in response to FDA-initiated action.](#)

[Food safety group petitions FSIS to declare six additional strains of E. coli bacteria as adulterants in beef.](#)

[Government extends catfish food safety inspection rules review; changes could spark "trade war" with Vietnam.](#)

[US Attorney secures guilty pleas in conspiracy to fraudulently market dietary supplements over the Internet with illegal claims that these supplements could prevent, treat or cure a number of diseases.](#)

[USDA's National Institute of Food and Agriculture announces \\$18 million in grants to help the next generation of farmers.](#)

USDA announces appointments to [Soybean Board](#), [Watermelon Promotion Board](#), and [Mushroom Council](#).

Recent Recalls

[Health Valley Organic Peanut Crunch, Dutch Apple and Wildberry Chewy Granola Bars](#) due to possible Salmonella contamination (February 19, 2010).

[Queseria Bendita Queso Fresco, Panela, and Requeson](#) due to possible Listeria contamination (February 19, 2010).

[fresh&easy Chewy Chocolate Chip Granola Bars](#) due to possible Salmonella contamination (February 18, 2010).

[Flying Horse Black and White Sesame Chewy Candy](#) due to undeclared peanuts (February 17, 2010).

[Estrella Family Creamery expands recall to Brewleggio, Domino, and Wynoochee River Blue cheeses](#) due to possible Listeria contamination (February 17, 2010).

[Daniele International expands recall to salami products](#) due to Salmonella contamination (February 16, 2010).

[Huntington Meat Packing expands recall to additional beef and veal products](#) that are deemed adulterated due to production under insanitary conditions (February 12, 2010).

[Daniel's Western Meat Packers frozen turkey patty products](#) due to mislabeling/undeclared allergen (February 12, 2010).

[Nature's Variety Chicken Formula Raw Frozen Diet](#) (pet food) due to Salmonella contamination (February 11, 2010).

[Estrella Family Creamery Red Darla Cheese](#) due to possible Listeria contamination (February 11, 2010).

[Giant Food](#) and [Stop & Shop](#) 24 oz. Party Platter Cookies due to undeclared allergens (February 10, 2010).

[Trader Joe's Chocolate Chip Chewy Coated Granola Bars](#) due to possible Salmonella contamination (February 10, 2010).

[Shchmalz European Provisions RTE Sausage Products](#) due to presence of foreign materials (February 10, 2010).

[Champ Meatball Frozen Cured Pork Patty Mix](#) due to undeclared wheat (February 10, 2010).

Recent Warning Letters

FDA issued a warning letter to [Sun Hang Bean Sprout, Inc.](#) stating that FDA investigators documented significant observations of insanitary conditions and found Listeria monocytogenes at the company's bean sprout processing facility.

FDA issued warning letters to [Garden-Fresh Foods](#) and [Austin Fish Company](#) stating that FDA investigators documented serious violations of the seafood Hazard Analysis and Critical Control Point (HACCP) regulation.

FDA issued a warning letter to [Kellogg USA](#) stating that FDA investigators found significant deviations from the Current Good Manufacturing Practice (CGMP) regulations for food manufacturers and Listeria monocytogenes at the company's frozen food manufacturing facility.

FDA issued a warning letter to [P & D Dairy](#) stating that the company offered for sale animals for slaughter as food that were adulterated because the animals had residues of animal drugs that were in excess of the amounts permitted by FDA, and the animals were held under conditions so inadequate that medicated animals bearing potentially harmful drug residues are likely to enter the food supply, among other reasons.

Regulatory Notices

FSIS Updates

FSIS issues notices and directives to protect public health. The following policy update was issued recently:

- Notice 10-10, *Exception for Certain Products from the FSIS Ready-to-Eat (RTE) Sampling Programs*.

All notices and directives are available at http://www.fsis.usda.gov/Regulations_&Policies/index.asp.

FSIS also recently published the following revised export requirements and plant lists:

- [Canada](#) (Feb 25, 2010)
- [Mexico Plant List](#) (Feb 23, 2010)
- [Jordan](#) (Feb 23, 2010)
- [Uzbekistan](#) (Feb 22, 2010)
- [Korea, Republic of](#) (Feb 22, 2010)
- [St. Lucia](#) (Feb 19, 2010)
- [Australia](#) (Feb 19, 2010)

FSIS Extends Comment Period on Nutrition Labeling

On Dec. 18, 2009, FSIS published a supplemental proposed rule: [Nutrition Labeling of Single-Ingredient Products and Ground or Chopped Meat and Poultry Products](#). The comment period on the rule was scheduled to end on Feb. 16, 2010, however, in response to multiple requests, [FSIS is extending the comment period for 30 days, until March 18, 2010](#).

USDA Issues Final Rule with Request for Comments on Organic Access to Pasture

On February 17, 2010, [USDA issued a final rule with a request for comment that amends the National Organic Program \(NOP\) regulations to clarify the use of pasture in raising organic ruminants](#). The final rule becomes effective 120 days after publication, on June 17, 2010. Operations which are already certified organic will have one year to implement the provisions. Operations which obtain organic certification after the effective date will be expected to demonstrate full compliance. Although this is a final rule, comments on the exceptions for finish feeding of ruminant slaughter stock may be submitted before April 19, 2010. This 60-day comment period pertains to the finish feeding provisions only. A [USDA press release](#) contains additional information.

FDA Opens Docket to Inform Future Fresh Produce Standards

FDA is announcing the [opening of a docket to obtain information about current practices and conditions for the production and packing of fresh produce](#). FDA is establishing this docket in order to provide an opportunity for interested parties to provide information and share views that will inform the development of safety standards for fresh produce at the farm and packing house and strategies and cooperative efforts to ensure compliance. Electronic or written comments should be submitted by May 24, 2010.

FDA Announces Reorganization of the Office of Commissioner

FDA is announcing the reorganization of the Office of the Commissioner (OC). This reorganization includes the organizations and their substructure components as listed in the 23-page [Federal Register Notice](#). The notice was previously published in August 2009, but it contained several errors, and thus, FDA is republishing the reorganization again in its entirety for clarity.

FDA Solicits Comments on Information Collection Provisions of FDA Consultation Procedures for Foods Derived from New Plant Varieties

FDA published a notice that [solicits comments on the information collection provisions of FDA's consultation procedures for foods derived from new plant varieties](#), including the information collection provisions in the guidance entitled "Consultation Procedures: Foods Derived From New Plant Varieties," and in Form FDA 3665 entitled "Final Consultation For Food Derived From a New Plant Variety (Biotechnology Final Consultation)," which developers may use to prepare the final consultation in a standard format. Written or electronic comments on the collection of information should be submitted by April 19, 2010.

Upcoming Meetings

FSIS to Hold Public Meeting on Product Tracing

FSIS will hold a second public meeting on product tracing to discuss and receive public input on procedures for suppliers of source material used to produce raw ground beef product that tests positive for *E. coli* O157:H7. The Product Tracing public meeting will be held on **March 10, 2010** from 9 a.m. to 1 p.m. in Washington, DC. For additional information and to pre-register, visit http://www.fsis.usda.gov/news & events/Reg_Traceability_031010/index.asp.

USDA and DOJ Host Joint Workshops to Explore Competition and Regulatory Issues

The Department of Justice and the U.S. Department of Agriculture (USDA) will host a [series of joint workshops to explore competition and regulatory issues in the agriculture industry](#) beginning on **March 12, 2010**, at the Des Moines Area Community College's FFA Enrichment Center in Ankeny, Iowa. The general public and media interested in attending the initial workshop should register at <https://go.dmacc.edu/ffa/agworkshop>.

USDA to Host Web Outreach Seminar on Sanitary Dressing Procedures

FSIS will host a Web outreach seminar on sanitary dressing procedures on **March 23, 2010** from 11:30 a.m. to 1 p.m. ET. Participants will gain insight on FSIS sanitary dressing procedures and how they are critical to reducing *E. coli* O157:H7 to undetectable levels. The discussion will also provide a better understanding of validated HACCP plans and interventions. To learn more, go to http://www.fsis.usda.gov/News_&_Events/Regulatory_Web_Seminars/index.asp.

USDA to Host 2010 Food Safety Education Conference

USDA and [NSF International](#) are hosting the 2010 Food Safety Education Conference, *Advancements in Food Safety: Trends, Tools and Technologies*, **March 23-26, 2010**, at the Hyatt Regency in Atlanta. Food safety educators and other professionals worldwide will have the opportunity to discover the latest advancements in food safety education. To register and get more information, visit <http://www.fsis.usda.gov/Atlanta2010>.

USDA Workshops to Explore Competition and Regulatory Issues

Between March 12 and December 8, 2010, the Department of Justice and USDA will hold [five joint public workshops that will explore competition and regulatory issues in the agriculture industry](#). The workshops target issues of concern to farmers and the poultry, dairy, livestock industries. The final workshop will focus on price margins.

More Information

Archived issues of the Bryan Cave Food, Dietary Supplement, and Cosmetic Regulatory and Policy Bulletin are available at www.bryancave.com on the [FDA Practice Bulletins web page](#).

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

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