

To: Our Clients and Friends

January 21, 2010

## Food, Dietary Supplement and Cosmetic Regulatory and Policy Bulletin



### Top News

#### Consumer Advocates, Congress Call Upon President Obama to Fill Food Czar Post at USDA

In the wake of the [most recent meat recall due to E. coli contamination](#), in which Huntington Meat Packing Inc. recalled 390 tons of ground beef, consumers and politicians are putting increased pressure on President Obama to name an [undersecretary of food safety at the USDA Food Safety and Inspection Service](#). Representative Rosa DeLauro (D-CT), a long-time food safety advocate, has been especially vocal. [Rep. DeLauro also recently called for the creation of an independent science board that would be responsible for evaluating the USDA's public health protection efforts.](#)

#### VMG Global Pleads Guilty to Selling Dietary Supplements Spiked with Steroids

In a plea agreement filed in U.S. District Court on January 20, 2010, VMG Global, a California-based sports nutrition company which also does business as American Cellular Labs, [plead guilty to introducing unapproved drugs into interstate commerce with the intent to defraud and mislead](#). Between 2005 and 2009, the company sold two products, Tren Xtreme and Mass Xtreme, that contained steroids and generated \$5.6 million in revenue for the company. As part of the plea agreement, VMG Global will destroy the remainder of their inventory of the illegal products and pay penalties of up to \$500,000.

#### FDA's Long-Awaited BPA Update Draws Large, International Response

On Friday, January 15, 2010, FDA issued an [update on its position surrounding the safety of Bisphenol A \(BPA\)](#). The long-awaited update, which came more than six weeks after FDA had promised it would reassess and report on the safety of BPA, has drawn an international response. Major news outlets that reported the story include [The New York Times](#) (including an [Editorial](#)), [The Washington Post](#), [The Boston Globe](#), [Los Angeles Times](#) (including on its [Greenspace blog](#)), [Chicago Tribune](#), [ABC News](#), and [NPR](#). The decision also drew response from the EU's top food authority, which is also in the midst of considering the safety of BPA. [The European Food Safety Authority \(EFSA\) said that it would be liaising with FDA on this issue](#) and would be taking FDA's position and findings into account in EFSA's own determinations of BPA safety.

## **Kraft Wins Bid to Purchase British Confectioner Cadbury for \$19 billion**

After months of resistance, on January 19, 2010, [Cadbury accepted an improved offer of \\$19 billion from Kraft to buy the British Confectioner](#). Hoping to expand its global reach and increase its market share, [Kraft had first offered \\$16.73 Billion in September 2009 in a surprise takeover offer](#), which Cadbury immediately rejected. Although Cadbury executives have accepted Kraft's bid, other companies may bid through January 23, 2010 and Cadbury shareholders must vote whether to accept the offer on February 2, 2010. The deal has caused much controversy in the U.K., with protesters urging Cadbury to hold out and remain a British company instead of selling to a multinational corporation such as Kraft. [The Economist](#) published an article that discussed the purchase in the larger context of British manufacturing issues.

## **PricewaterhouseCoopers Report Concludes that Packaging Industry Needs to Do More to Champion Value and Importance of Packaging**

On January 20, 2010, [PricewaterhouseCoopers published a report titled \*Sustainable Packaging: Threat or Opportunity?\*](#) The report concludes that while companies generally favor the idea of sustainable packaging, there is lack of industry consensus on what defines "sustainable packaging." Moreover, companies are, in general, unwilling to pay extra for sustainable packaging unless their brands already send an environmental message.

## **Mississippi and New York Consider Soda Tax**

Mississippi and New York are both considering implementing a state soda tax. [In Mississippi, a state representative has introduced a bill that would create a soda tax on wholesalers](#), which would most likely be passed along to consumers. The Mississippi bill models the tax after the Arkansas soda tax (in effect since 1992). [In New York, Governor David Patterson's most recent proposed budget includes a soda tax](#), the proceeds from which would be funneled into health expense fund pool. Proponents say that a soda tax would help fight obesity by discouraging consumption of sugary drinks while helping fund state medical costs. The beverage industry remains adamantly opposed to the tax, noting that such a tax would be regressive and is a poor strategy to fight obesity. [New Yorkers Against Unfair Taxes](#), a coalition that opposes food and beverage taxes and includes many New York retail grocers, also opposes the proposed New York tax.

## **Senators Challenge Rationale Behind Russian Poultry Ban**

Senators Blanche Lincoln (D-AR) and Saxby Chambliss (R-GA), the chair and ranking member of the Senate Agricultural Committee, challenged as "baseless" the reasoning behind Russia's ban on imports of U.S. meat and poultry. Beginning January 1, 2010, Russia banned the import of any U.S. meat or poultry that had been treated with chlorine. [The senators are urging President Obama to "fully engage all resources to address these agricultural trade issues."](#)

## **Vilsack Names 2009 - 2010 USDA Fruit and Vegetable Industry Advisory Committee**

[USDA Secretary Tom Vilsack named the members of the 2009 - 2010 Fruit and Vegetable Advisory Committee](#). The 25 members were selected from individuals nominated by their peers. Committee members represent fresh fruit and vegetable growers/shippers, fresh fruit and vegetable wholesalers, retailers, industry trade associations, importers, fruit and vegetable processors, foodservice suppliers, fresh-cut processors, brokers and state departments of agriculture. Each member is appointed to a two-year term. The advisory committee advises the Secretary of Agriculture on issues affecting the fruit and vegetable industry.

## California Becomes First State to Implement Trans fat Ban

On January 1, 2010, a new California law that bans the use of cooking oils that contain trans fats went into effect. According to the law, all frying oils, margarines, and shortenings must contain less than .5 percent of trans fat per serving. The law provides additional time for certain products to comply, however, penalties for violating the law include fines of up to \$1,000. New York City and Philadelphia have also implemented trans fat bans, but California is the first state to do so.

## French Government will Merge Food Safety Agency with French Agency for Environmental and Occupational Health Safety

The French government recently announced that it would merge its food safety agency (known as AFSSA) with the French agency for environmental and occupational health safety (known as AFSSET). The new agency, which France has yet to name, will pursue the original directives of both of its predecessors and will introduce special policymaking committees in food safety, nutrition, plant and animal health, and environmental health.

## U.K. FSA Synthesizes COOL Research; Concludes that COOL is Confusing

The U.K. Food Safety Authority (FSA) synthesized five studies surrounding Country of Origin Labeling (COOL), which is currently being debated in the context of food labeling in the EU. FSA concluded that consumers largely do not understand COOL labeling, but perhaps more importantly, their purchasing decisions are not affected by COOL.

## A Good Day In Court for Monsanto: Supreme Court Accepts Alfalfa Appeal and Federal Court Overturns Lower Court's Roundup Ready Ruling

This week, the Supreme Court agreed to hear Monsanto's appeal of a Federal District Court order that prohibits the planting of Monsanto's Roundup Ready Alfalfa seed pending the results of a court-ordered environmental impact study. However, because the study is slated to be completed in February, the case may be moot by the time the Supreme Court issues a ruling on the case, which is expected by mid-year. Monsanto continues to fight the alfalfa injunction because the outcome may have much larger implications in the context of Roundup Ready sugar beet seeds, which are used to plant 95 percent of North American sugar beet crops (Roundup Ready alfalfa seeds are used in only 1 percent of North American alfalfa crops). Roundup Ready seeds are genetically engineered to make crops resistant to the popular weed killer after which it is named.

In another case involving Roundup ready products, A Federal Court in St. Louis ruled that DuPont violated its licensing agreement with Monsanto when it inserted its Optimum GAT gene into corn and soybean products grown using Monsanto's seeds. The judge, however, limited the opinion to the terms of the licensing agreement and refused to opine on the larger issue of whether the agreement itself violates antitrust laws.

## EFSA, FDA, Health Canada Will Discuss Health Claims at Conference in Brussels

Cantox Health Sciences International is sponsoring *Progress of health Claims in Europe: A New Perspective*, a conference at which representatives from the regulatory authorities in Europe, the U.S., and Canada will discuss how health claims are regulated as well as the scientific requirements for their approval. The conference will be held on February 24, 2010. Additional information is available in the conference brochure.

## Briefly Noted

Michelle Obama launches initiative to fight child obesity, including encouraging healthier food choices.

European Food Safety Authority opines that ferric sodium EDTA is safe when added to foods as a source of iron.

Salon owner sentenced to 13 months in prison in connection with unlicensed cosmetic treatments.

## Briefly Noted (continued)

[Elanco Food Solutions, a U.S. company, will launch business to develop new food safety technologies for meat packing and processing plants.](#)

[Appeal of kosher foods extends to non-Jews in era of heightened concern around food safety and allergies.](#)

[U.K. parliamentary committee calls for food processors and manufacturers to annually report food waste figures.](#)

[National Institutes of Health: New Study Finds Molecule that Acts as Switch to Turn on Allergic Response in People.](#)

[Study finds that consumers are willing to pay more for environmentally sustainable products.](#)

## Recent Recalls

[Park 100 Foods frozen chicken pot pies](#) due to presence of foreign materials (January 20, 2010).

[Huntington Meat Company beef products](#) due to possible E. coli contamination (January 18, 2010).

[Muscle Master.com dietary supplement products](#) due to presence of steroids (January 15, 2010).

[Jerry Hayes Meats Beef Carcass](#) due to presence of specified risk material (SRM) (January 15, 2010).

[Parker Farms extends recall to all products](#) due to possible Listeria contamination (January 15, 2010).

[Hines Nut Company Harris Teeter Pine Nuts](#) due to possible Salmonella contamination (January 15, 2010).

[PEO Chapter FO Roasted Hazelnuts](#) due to possible Salmonella contamination (January 14, 2010).

[Wisconsin Cheeseman Cheese Logs and Cheese Balls](#) due to possible Listeria contamination (January 10, 2010).

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## Regulatory Notices

### FSIS Export Requirement Updates and Policy Updates

USDA's Food Safety and Inspection Service (FSIS) updated its library of export requirements to reflect changes in export requirements for Mexico, Singapore, and Thailand. Complete information is available at [http://www.fsis.usda.gov/Regulations\\_&Policies/Export\\_Information/index.asp](http://www.fsis.usda.gov/Regulations_&Policies/Export_Information/index.asp).

FSIS also recently issued the following policy updates concerning notices and directives to protect public health:

- Directive 5620.1, *Using AskFSIS*.
- Directive 9300.2, *Reinspection of Imported Shell Egg Packed in Containers Destined for Consumers*.
- Notice 03-10, *How to Proceed in Establishments that have Multiple FSIS Laboratory Confirmed Residue Violations from the Same Source Supplier*.
- Notice 04-10, *Reiteration of Policy Regarding the Removal of Lingual and Palatine Tonsils from Beef Tongues and Beef Market Heads*.
- Notice 05-10, *Sample Collection from Cattle Under the Bovine Spongiform Encephalopathy (BSE) Ongoing Surveillance Program*.
- Notice 06-10, *Humane Handling at All Entrances and the Twenty Eight Hour Law*.
- Notice 07-10, *Instructions for Sampling Ammoniated Beef Products*.

All notices and directives are available at [http://www.fsis.usda.gov/Regulations\\_&Policies/index.asp](http://www.fsis.usda.gov/Regulations_&Policies/index.asp).

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## Upcoming Meetings

### U.K. Food Standards Agency to hold 10<sup>th</sup> Anniversary Conference

The U.K. Food Standards Agency (FSA) recently published its [strategy for 2010 - 2015](#). On February 24, 2010, FSA presents [FSA10: Ensuring safe food and healthy eating for all](#) in London. FSA invites consumers and stakeholders from the U.K. to participate and help shape the agency's work in the context of its strategic plan for the next five years. The conference will also be broadcast live from the FSA web site. Additional information is available at <http://www.glasgows.co.uk/fsa10/>.

### 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 famers and the poultry, dairy, livestock industries. The final workshop will focus on price margins.

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## More Information

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

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