

Food & Beverage

LITIGATION UPDATE

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Legislation, Regulations and Standards

Food and Drug Administration (FDA)

[1] Bayer Decides Not to Appeal FDA Ban on Poultry Antibiotic to Federal Court

The Bayer Corp. last week decided not to appeal the FDA's decision to prohibit the use of the fluoroquinolone antibiotic enrofloxacin (Baytril) to treat bacterial infections in poultry because of the purported risk that the drug promotes antibiotic-resistant infections in humans. The FDA ban took effect September 12, 2005. "We disagree with the FDA's conclusion about our drug, but we understand they made a scientific decision, and courts tend to defer back to the agency," Bayer representative Robert Walker was quoted as saying. "It seemed like the chances we would be successful in court were small," he said.

Four poultry trade associations, the Animal Health Institute (a group that represents animal drug companies) and Bayer asked FDA to delay implementation of the ban, but FDA Commissioner Lester Crawford reportedly denied their request last Friday. According to *The Washington Post*, resolution of the case against Baytril "opens the door" to similar actions against other animal antibiotics manufacturers, and activist organizations such as Keep Antibiotics Working

(KAW) are optimistic about that possibility. "We certainly hope that Crawford's rock-solid analysis of this issue is an indication he will take the bull by the horns in dealing with the much bigger quantities of medical antibiotics that are used as feed additives," KAW Chair Karen Florini said. "These [drugs] are too valuable to be used to just make animals on big industrial farms grow faster." See *The Washington Post*, September 2, 7 and 9, 2005.

U.S. Department of Agriculture (USDA)

[2] USDA Invites Interested Stakeholders to Convene for Discussions of Food Safety Institute of the Americas

USDA's Food Safety and Inspection Service has announced a [public meeting](#) on September 29-30, 2005, in Miami to discuss strategies for the recently established Food Safety Institute of the Americas (FSIA). Goals of the FSIA include determining better ways of sharing food safety information and developing international food safety standards throughout North, South and Central America and the Caribbean. See *Federal Register*, September 9, 2005.



European Union (EU)

[3] EU Approves Member States' Avian Flu Plans

The European Union today reportedly approved member states' avian influenza surveillance plans and promised some \$1.6 million to help fund the efforts through the end of 2005. The plans include increased testing of wild and domestic birds for the H5N1 virus as well as requiring bird watching and hunting groups to report "any abnormalities or apparent disease outbreaks." The EU has banned poultry imports from Asia and Russia, but has not yet joined The Netherlands in calling on producers to keep poultry indoors, even though many scientists blame migratory wild birds for the spread of the H5N1 virus from Asia to Russia.

Meanwhile, virologists from the U.S. Geological Survey's National Wildlife Health Center and the U.S. Fish and Wildlife Service have reportedly stepped up H5N1 testing of migratory birds in Alaska. "We think that Alaska is likely to be the front line," a USGS virologist was quoted as saying. "There are birds that fly directly across the Pacific from Southeast Asia to our western states like California, Oregon and Washington." *See Reuters*, August 30, 2005; *The Wall Street Journal*, September 14, 2005.

Other Developments

[4] Las Vegas Couple Pleads Guilty to All Charges in Wendy's Chili Contamination Incident

The Las Vegas couple accused of planting a human finger in a bowl of chili at a San Jose, California, Wendy's restaurant in March 2005

reportedly pleaded guilty to charges of felony conspiracy and attempted grand larceny last week in Santa Clara County Superior Court. Anna Ayala, 39, who claimed to have bitten into the fingertip, faces a maximum sentence of nearly 10 years in state prison, while Jaime Placencia, 43, who apparently bought the fingertip from a co-worker injured in a workplace accident, faces a maximum sentence of 13 years for his role in the attempted fraud. According to a news source, Ayala also pleaded guilty to unrelated charges connected to swindling a woman out of a motor home, and Placencia also pleaded guilty to failure to pay child support and using his son's Social Security card.

Negative publicity surrounding the incident reportedly cost Wendy's millions in lost business nationwide. The company's response to the event included reviewing food-handling procedures with the local health department, giving employees lie-detector tests, reviewing the safety records of suppliers, and offering a \$100,000 reward to anyone who could identify the source of the contamination. *See The San Francisco Chronicle*, September 9, 2005.

[5] Public Citizen Targets Industry Opposition to COOL in New Report

A Public Citizen report issued yesterday purportedly "illustrates how Big Agribusiness used millions of dollars in lobbying expenditures and campaign contributions, and a network of Washington insiders with close connections to the Bush administration and Congress, to undercut country-of-origin labeling [COOL] in the regulatory process, get lawmakers to significantly delay implementation of the requirement and come perilously close to effectively killing it by turning the program into a voluntary one for industry."



COOL regulations were mandated in the 2002 Farm Bill and are currently scheduled for implementation by September 2006. Proposed legislation sponsored by House Agriculture Committee Chair Bob Goodlatte (R-Va.) this past May would replace mandatory COOL for beef, lamb and pork with a voluntary labeling program. The Public Citizen report is available [here](#).

[6] **Agricultural Law Developments to Be Highlighted at Kansas City Conference**

Topics at the American Agricultural Law Association's upcoming 26th Annual Symposium will include the future of checkoff advertising programs, tax issues, agricultural emissions, fraudulent financing practices, biotechnology, land use, and consumer accessibility to raw milk. The event is slated for October 7-8, 2005, in Kansas City, Missouri. More information about the program is available [here](#).

Scientific/Technical Items

Pesticide Exposure

[7] **Organic Diets Might Reduce Pesticide-Related Health Risks to Children**

Urinary biomonitoring for two organophosphorus pesticides in a group of elementary school-age children in Washington has reportedly revealed "dramatic and immediate" reductions in metabolite concentrations of malathion and chlorpyrifos after the kids' conventional diets were replaced with organic offerings that included fruit, vegetables and wheat-based products. C. Lu, et al., "Organic Diets Significantly Lower Children's Dietary Exposure to Organophosphorus Pesticides," *Environmental Health Perspectives* (on-line publication: September 1, 2005). Organophosphates have allegedly been linked to neurological effects in humans and animals. The researchers claim their study's results reinforce a 1993 National Research Council report that concluded dietary intake likely represents the major source of pesticide exposure in infants and young children.



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