

# Patco Food Safety Consultants

## April 2006 Edition



Integrated  
Sanitation  
Management  
Systems

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# A Newsletter Focusing on Food Safety Issues Volume 1

To Our Valued Customers

Patco Food Safety Consultants is proud to offer our valued clients a quarterly update relating to food safety issues and concerns.

Patco hopes you enjoy these newsletters and encourages any comments, questions or thoughts to be addressed to Patco at the following Fax # 1-315-652-5671.

The **LATEST DIRT** will focus on sanitation topics, regulatory issues, general housekeeping hints for clean establishments, updates on new laws relating to food safety issues and general discussions regarding the benefits of good sanitation and the impact it has on profits and safety in your establishments.

Our initial newsletter will focus on current concerns relating to Avian Bird Flu and the National Uniformity for Food Act.



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## **AVIAN BIRD FLU: HOW WORRIED SHOULD WE BE?** Submitted 4-17-06

**Avian Bird Flu** – All you have to do is open a newspaper or listen to the news these days to read or hear those words. Does this represent a danger to people here in the U.S.? Is the government doing anything to prevent avian flu from spreading to the U.S.?

### **Definitions:**

The following definitions are provided to help make sure that we are all beginning at the same point.

Flu – an infection of the respiratory tract caused by the influenza virus. Symptoms may include some or all of the following:

- sudden onset of headache,
- chills, and feeling generally miserable,
- respiratory symptoms like nasal congestion,
- cough and sore throat
- extreme fatigue and muscle aches in the back and legs
- fever between 100 and 103°F in adults (sometimes higher in children) <sup>2</sup>

Pandemic – A global disease outbreak. “A flu pandemic occurs when a new influenza virus emerges for which people have little or no immunity and for which there is no vaccine. The disease spreads easily person-to-person, causes serious illness, and can sweep across the country and around the world in a very short time.

Wherever and whenever a pandemic starts, everyone around the world is at risk. Countries might delay arrival of the virus, through measures such as border closures and travel restrictions, but they cannot stop it.” <sup>3</sup>

Avian (Bird) Flu - “Avian (bird) flu is caused by influenza A avian viruses that occur naturally among birds. There are many different subtypes of type A influenza viruses. All known subtypes can be found in birds. The avian flu currently of concern is the H5N1 subtype. Avian H5N1 flu in humans is currently very limited and not a pandemic. Although H5N1 probably poses the greatest current pandemic threat, other avian influenza A subtypes also have infected people in recent years...” <sup>3</sup>

“Wild birds worldwide carry the viruses in their intestines, but usually do not get sick from them. However, bird flu is very contagious among birds and some strains can make domesticated birds, including chickens, ducks, and turkeys, very sick and kill them. More information on human and avian influenza is available from CDC.” <sup>5</sup>

**Prevention:** The U.S. Pandemic response plan identifies more than 300 tasks for federal agencies. Although the U.S. (Homeland Security) Plan for Flu Pandemic is still evolving, President Bush is expected to approve the plan in the near future (April 2006). The plan includes a wide variety of tasks and agreements, for example the Treasury department is able to sign agreements with other nations to make currency if the U.S. mints can not function. Availability of vaccinations and who should get them first is also part of the developing plan. FDA has created a Rapid Response Team specific to Pandemic (avian) flu that is working on making sure that vaccines and other treatments will be available in sufficient supply.

“USDA regulates the importation of live birds and avian-derived products and oversees the safety of imported and domestically produced poultry meat, most poultry products, and pasteurized egg products. Countries with outbreaks of bird flu cannot export fresh, chilled, or frozen poultry or eggs into the U.S.

However, USDA does allow importation from these countries of cooked poultry meat or eggs or poultry processed in a manner that would ensure inactivation of the virus if it were present. ... CDC has banned the importation of all birds from countries in Southeast Asia that may pose a risk of introducing Asian bird flu virus. ...

All imported live birds must be quarantined for 30 days ... .”<sup>5</sup>

**Surveillance:** “USDA and its partners monitor live bird markets, commercial flocks, backyard flocks and migratory birds. ...”<sup>5</sup>

According to Federal Officials, the first case of bird flu could show up in the U.S. in the next few months depending on wild bird migrations.<sup>6</sup>

**Human infection:** At this time, this strain of flu can be spread bird to bird and bird to human, but not human to human. “... although it is a rare occurrence, people have become infected with the Asian bird flu and other bird flu viruses directly from birds. Most human infections have occurred after people had extensive exposure to infected chickens, ducks, turkeys or their environment. Generally infections with bird flu have resulted only in a mild eye inflammation (conjunctivitis). However, many people in Asia who were infected with the current Asian bird flu strain developed typical influenza symptoms of fever, cough, muscle aches, and headache, and the illnesses were fatal in a high proportion of reported Asian bird flu cases. Since 2003, there have been more than 100 cases of human infections in Asia due to infection with the Asian bird flu virus. There has been very limited spread of infection from person to person, but a few cases have occurred among healthcare providers and family members.”<sup>2</sup>

Approximately 36,000 Americans die annually from seasonal flu. About 200 people worldwide have contracted the illness with 50% mortality rate. "Experts project that the next pandemic – depending on severity and countermeasures – could kill 210,000 to 1.9 million Americans." As many as 90 million people in the U.S. may become ill. <sup>6</sup>

**Concerns:** "The risk of consumer exposure to bird flu virus through foods and dietary supplements in the U.S. is low. Nearly all of the poultry and eggs consumed in the U.S. are produced domestically and the combined efforts of USDA and FDA create a number of barriers to prevent the introduction of the Asian bird flu virus into U.S. poultry flocks and into the U.S. food supply from either domestic or foreign sources. ..."

At this time, there have been no reports of Asian bird flu strains circulating in wild or domestic birds in the U.S. ... <sup>2</sup>

**Adaptation of the virus:** "The Asian bird flu virus causes severe disease in domestic chickens, ducks, and turkeys, which results in high levels of viral contamination of the birds and their environment. As the Asian bird flu virus persists and spreads geographically, more people are exposed to it. Each human infection poses a risk that the Asian bird flu virus will adapt into a new strain of flu virus that is highly infectious for humans, and such an event could lead to a severe, worldwide outbreak known as an influenza pandemic. People would not be immune to this new strain of the flu virus, so many exposed people would become ill. The Federal government is taking steps to protect the public health in the event of an influenza pandemic, including fostering the development of vaccines and treatments." <sup>2</sup>

**Consuming eggs and poultry:**

"... There is no evidence that anyone has been infected with the Asian bird flu or other bird flu virus by eating properly cooked eggs or other cooked poultry products derived from infected birds. Cooking food to 165 degrees Fahrenheit (74 degrees Celsius) will kill bird flu virus if it is present. Nearly all of the more than 100 human cases of the Asian bird flu that have been diagnosed recently in Asia have had direct contact with infected chickens, ducks, turkeys, or their environment. This suggests that close contact with infected birds has been the primary route of transmission for the Asian bird flu infections, rather than eating food derived from infected birds. ..."

Although strains of bird flu virus like the Asian bird flu that cause severe disease in poultry can result in the contamination of egg shells and the inside of the egg (the yolk and albumen or the egg white), hens with severe bird flu usually stop laying eggs, so few contaminated eggs are likely to be marketed. Furthermore, the U. S. government has taken steps to prevent infected birds or their products, including their eggs, from entering the U.S. food supply. ..."

FDA regulates whole shell eggs, including those pasteurized in the shell, and other foods and dietary supplements that contain a small amount of poultry products. FDA ensures the safety of these products using methods, such as facility inspections and required adherence to good manufacturing practice regulations, applied to other foods in the U.S. food supply. FDA also is working in conjunction with USDA to monitor imports of products from countries where the Asian bird flu has been identified to ensure that when presented for entry at U.S. ports, these products have been subjected to a cooking procedure or treatment that would inactivate the virus. <sup>2</sup>

### **Prevention:**

Retailers and consumers can play an active role in preventing any infection, including avian flu by using basic food handling procedures.

Buy foods from approved sources.

Wash hands with soap and water

especially after handling raw products including poultry and eggs.

Wash, rinse, and sanitize preparation surfaces, utensils and tools.

Cook foods thoroughly.

Poultry should be cooked to at least 165°F

Egg–milk mixtures should be cooked to an internal temperature of 160°F

Use pasteurized eggs when foods will not be cooked thoroughly. <sup>2</sup>

Remember that refrigeration and freezing do not kill influenza virus.

### **Resources:**

1. CDC <http://www.cdc.gov/flu/avian/gen-info/qa.htm>
2. FDA <http://www.cfsan.fda.gov/~dms/avfluqa.html>
3. FDA <http://www.fda.gov/oc/opacom/hottopics/avianflu/definition.html>
4. Pandemic flu <http://www.pandemicflu.gov>
5. USDA (click on related topics to select sheets and brochure)  
[http://www.usda.gov/wps/portal/!ut/p/\\_s.7\\_0\\_A/7\\_0\\_10B?navid=AI\\_FACTSHEEdTS&parentnav=AVIAN\\_INFLUENZA&navtype=RT](http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_10B?navid=AI_FACTSHEEdTS&parentnav=AVIAN_INFLUENZA&navtype=RT)
6. Washington Post  
<http://www.washingtonpost.com/wp-dyn/content/article/2006/04/15/AR2006041500901.html>  
<http://www.washingtonpost.com/wp-dyn/content/article/2006/04/16/AR2006041600409.html>

## **National Uniformity for Food Act, "H.R. 4167, 109<sup>th</sup> Congress (2005)**

**Official Title:** To amend the Federal Food, Drug, and Cosmetic Act to provide for uniform food safety warning notification requirements, and for other purposes. Submitted 4-17-06

**Status:** Passed House (94% of Republicans supporting, 64% of Democrats opposing.) The bill now goes on to be voted on in the Senate. <sup>4</sup>

**What is it?** Have you heard of HR 4167? This bill was also presented in 2004, but failed to move forward. This is a bill that if passed may affect rules governing convenience stores and other food establishments, by preventing state and local health and agriculture departments from using Codes that differ from the FDA Food Code. This includes local and state deletions, additions, and modifications.

According to the Congressional Research Service (Library of Congress) this bill "Amends the Federal Food, Drug, and Cosmetic Act (FFDCA) to prohibit any state or political subdivision from establishing or continuing in effect for any food in interstate commerce: (1) any requirement that is not identical to specified FFDCA provisions (that would result in materially different requirements), including those related to adulterated foods, unsafe food additives, and new animal drugs; or (2) any notification requirement that provides for a warning concerning the food's safety that is not identical to FFDCA provisions." <sup>4</sup>

The phrase "other purposes" triggers reactions by a number of organizations and agencies. Although the bill's title indicates that the primary purpose is uniform labeling and warning, interpretations state that the bill goes beyond that purpose. <sup>1a</sup>

### **Comment:**

"A coalition of more than 140 groups that include businesses and food industry organizations support the measure, and 39 state attorneys opposed it." <sup>5</sup>

#### **Support for the bill:**

Proponents of the bill emphasize that H.R. 4167 does not impact state sanitation laws, and thus, will not impact state programs. <sup>1a</sup>

"Supporters of the bill say it would create national health and safety standards for food labels and prevent businesses from having to customize products to meet differing state standards. <sup>5</sup>

According to food industry lobbyists, the variations in laws across states adds confusion and costs to interstate commerce as well as to companies that operate in more than one state. <sup>5</sup>

Opposition to the bill includes:

National Association of Attorneys General:

According to the National Association of Attorneys General, this bill will “preempt all existing and future state and local food labeling requirements that expressly or indirectly imply that a particular food or its packaging ‘presents or may present a hazard to health or safety’ unless identical to Food and Drug Administration requirements. ... states would be forbidden from adopting their own policies, even if the federal government had not acted in a particular area or adopted a particular warning.” <sup>1b</sup>

1. States have provided legal support and oversight for food safety for more than 100 years
2. State and local regulatory agencies perform more than 80% of the food safety work <sup>1a and b</sup>
3. No public record documents indicate that federal uniformity provides better consumer protection (food safety) <sup>1b</sup>
4. “...although this bill would radically change the traditional allocation of power between the states and federal government, it has never been the subject of public hearings.” <sup>1b</sup>
5. “The bill would create a new federal bureaucracy dedicated to evaluating, judging and even invalidating proposed state and local laws, a startling change in state-federal relations in the food safety area.” <sup>1b</sup>
6. Although states would be allowed to petition FDA to have state laws applied nationally, the Congressional Budget Office projects that this petition process could cost \$400,000 and take more than 2 years per petition. CBO also estimated the bill would cost FDA \$100 million over five years <sup>5</sup>

AFDO (Association of Food and Drug Officials):

“... passage of this bill would undermine proven consumer protection programs ...(the preemption provisions are broad, vague and sweeping and will likely dismantle the authority of state and local laws that address adulterated foods – which include food laws, dairy laws, animal feed laws, other agricultural commodity laws, anti-tampering laws, anti-terrorism laws, etc. ” <sup>1a</sup>

“The legislation has been reviewed by attorneys for eleven state food safety programs, and unfortunately, all of the reviews are unanimous in their conclusion that the bill will preempt states and local food safety and defense programs from performing their functions to protect citizens.” <sup>1a</sup>

"... one of the states critical complementary functions is to take action when these preventive measures fail. ...If enacted, H.R. 4167 would significantly impede resolution of the unsafe conditions and removal of contaminated foods from the human food supply. Sanitation and adulteration are not identical, but rather complementary, and if public health is to be protected, states must retain their authority to respond to contaminated (adulterated) products – without seeking federal permission." <sup>1a</sup>

"What [the industry] really wants is a regulatory vacuum where state and local governments will be unable to fill the gap left by the FDA." <sup>6a</sup>

"The legislation is aimed at Proposition 65. Unfortunately, rather than fight the battle in California, we are going to adjust the whole national system." <sup>6b</sup>

### **State and Local regulatory agency Code adoptions:**

This bill refers to the FFDC (Federal Food, Drug, and Cosmetic Act) which is the umbrella for many functions, including Pasteurized Milk Ordinance (PMO) and other food programs and documents. Although all of these are important for retail food businesses, the FDA Food Code is probably the document that has the most direct impact on retail food stores.

Very few states adopt the entire FDA Code exactly. If a state or local agency has adopted a modified version of the FDA Food Code or has not adopted the most recent version (2005) then this bill may directly impact the way you take care of your food business. Currently, states have the right to pass laws that cover regional needs and food safety and defense areas not covered by Federal law. In some cases, states can act faster to cover a gap or regional need.

Some states have simplified or decreased requirements for facilities with limited or no food preparation. In some cases, requirements may be less strict for stores with hot dogs as the most hazardous food prepared on site, for example many convenience stores. Other states have Codes that have additional sections not covered in the FDA Food Code or stricter requirements than the Food Code. According to the lawyers (37 Attorneys General) who have reviewed this bill, those state modifications and exceptions may disappear if this bill passes. "This bill would strip state governments of the ability to protect their residents through state laws and regulations relating to the safety of food and food packaging?" <sup>5b</sup>

"Only two of the 56 States and Territories (Mississippi and Puerto Rico) have adopted the current (2005) FDA Food Code, representing 2.3% of the US population. AFDO reports that 48 of 56 States and territories (86%) have adopted codes patterned after the 1993, 1995, 1997, 1999, 2001 or 2005 versions of the Food Code.

(‘Adopted the Food Code’ means that one or more of the retail food program agencies in the state modeled its code after either the 1993, 1995, 1997, 1999, 2001, or 2005 version of the FDA Model Food Code.)”<sup>2</sup>

Currently the FDA Food Code is a “reference”<sup>3</sup> for the states. States are responsible for reviewing the content and adopting the Code that is most effective for their agencies. In most states this means modifying the wording and in many cases adding or deleting content to cover gaps or regional needs.

### **Action Items:**

Contact your Congressional representatives to express your opinion on this bill. Work with trade and professional associations.

Download or buy a copy of the current FDA Food Code.<sup>3</sup> It is an excellent resource. The Annexes are excellent references because they contain a wide variety of technical food safety information directly related to the retail food industry. Instead of just Code requirements, the annexes provide the why for the content of the Code.

Many states have combined workgroups (regulatory, industry, consumer) to work together to create the modified documents that are adopted by states and local regulatory agencies. Agencies also have hearings and training sessions when Codes or requirements change. Introduce your company and become part of the work group to make sure that your needs and concerns are heard.

Regulatory agencies and professional associations frequently provide training that is open to industry as well as regulatory. These meetings are very low cost and provide an opportunity to learn as well as meet the inspectors and their supervisors. Attend the meetings. Learn what the inspectors are learning about food safety and food defense.

Contact state health and/or agricultural agencies as well as local agencies to learn more about meetings and state and local codes. Many of the codes are available on line.

**Resources:**

1. <http://www.afdo.org/afdo/HR4167.cfm>      Click on appropriate link
  - a. AFDO letter and web posting
  - b. NAAG letter (January 2006 posting: Attorneys General letter has 37 signatures)
2. <http://www.cfsan.fda.gov/~ear/fcadopt.html>
3. <http://www.cfsan.fda.gov/~dms/foodcode.html>
4. <http://www.govtrack.us/congress/bill.xpd?bill=h109-4167>
5. <http://www.kaisernetwork.org> (April 2006 posting: reference was made to 39 state attorneys).
6. Wall Street Journal Monday January 9, 2006  
<http://www.afdo.org/afdo/upload/Wall%20Street%20Journal%20Article%20060109.pdf>
  - a. Ben Cohen, senior staff attorney at the Center for Science in the Public interest.
  - b. Steve Steinhoff, food safety administrator Wisconsin Department of Agriculture.