



# Cottingham & Butler

## Food Safety Quarterly Review: Q1 2022

In Partnership with 

Cottingham & Butler, in partnership with the leading food safety consultancy, The Acheson Group (TAG), provides companies with leading risk, safety and insurance advisory and brokerage services.

With 2022 bringing with it a somewhat reduced focus on COVID protections, it also has brought the return of regulatory agency activities, particularly those that had been halted or postponed during the last two years. So what do food facilities need to know?

During the pandemic, FDA had temporarily halted in-person inspections, then, in late January, extended the pause on domestic surveillance inspections through Feb. 4 “with the goal of restarting these activities as soon as safely possible.” **FDA is now well back on the road** and planning new focus areas for 2022. Additionally, from FDA announcements on 2022 intended guidance, we are able to project six areas on which we would **expect key focus** as we continue through the year: allergens, food additives, food safety, FSMA, labeling, nutrition.

With FDA having held two virtual public meetings on the December 2021 **proposed revision to the pre-harvest agricultural water requirements** of the FSMA Produce Safety Rule, we also see this as a primary area of focus for the agency. While the proposed rule does not change requirements for harvest and post-harvest uses of agricultural water, the revisions are intended to address stakeholder concerns about their complexity and practical implementation, while protecting public health and providing for future adaptability.

On the plus side, with supply chain issues having been one of the greatest challenges during the COVID-19 pandemic, regulators have made attempts to **ease some of the regulatory burden** for supply-chain compliance. In early February, FDA reissued a list of temporary guidance that remains in effect to provide regulatory flexibility to help minimize the impact of supply chain disruptions on product availability. The action was taken to also help offset the pandemic-related issues such as labor shortages, transportation challenges, packaging shortages, and international import delays, and severe weather events that are further impacting supply chains and, ultimately, consumers. Even with this, however, **world events are continuing to increase food industry challenges**.

In March, FDA took it a step further, issuing new guidance on its intent **not to enforce certain provisions** of five rules of FSMA. It is critical to note, however that FDA is not stating that it's not enforcing FSMA (as we've heard coming from some parts of the industry), rather FDA intends to not enforce specific provisions of certain rules while it considers options and addresses stakeholder concerns. Although the guidance didn't say much new, it does provide some relief from some provisions of five rules (**as further detailed here**).

**FDA isn't the only agency enacting regulation.** In follow-up to a final rule published August 30, 2021, by the EPA which revoked all tolerances for chlorpyrifos residues in food as of February 28, 2022, the FDA has published guidance to help food producers and processors comply. If the food you produce, or any of its ingredients, may have been treated with the pesticide chemical chlorpyrifos, that food will be considered adulterated if any detectable residues remain, with some exception based on the date and legality of the pesticide treatment and amount of residue.

With all this, what should industry focus on in 2022? With much of the regulatory action seeming to be playing catch-up from pandemic – and using some of the lessons learned during that time, we would advise industry to the same. We cannot ignore the labor and supply-chain issues that arose during the pandemic – but were not all caused by the pandemic. Thus, companies should be taking an in-depth look at global conditions beyond COVID that have affected their business and the industry as a whole, and **assessing their programs to help future-proof against recurrence** – from whatever cause. Some of these we see as most critical for review are: just-in-time deliveries, sole suppliers, supplier assessment, and labor (**as further detailed here**).

Cottingham & Butler



TAG and the dedicated Food & Agribusiness team at Cottingham & Butler work closely together to provide practical and cost-effective solutions and develop insurance programs based on customized needs and goals of food and agribusiness clients throughout the world. We work together to strategically develop risk transfer (contractual and insurance) programs built to retain and/or backstop risk per the tolerance of each company. Risk mitigation is a core competency of both organizations and drives resiliency in the individual businesses and broader portfolio.

*The aforementioned article was an adaptation of an article published by TAG.*