

Product Safety & Liability Reporter™

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Food

Vaccines: Shot in the Arm for Food Safety?

BNA Snapshot

- Hepatitis A outbreaks renew calls for food worker vaccinations
- Recent infections also raise questions about imported fruits, seafood
- Outbreaks burden food purveyors, often result in costly litigation



By Steven M. Sellers

Oct. 17 — Recent, simultaneous hepatitis A outbreaks, thousands of miles apart, raise questions about the safety of some imported foods and whether food workers should be vaccinated to quell future illnesses.

Hepatitis A (HAV), which is both very contagious and dangerous, is easily prevented by a vaccine, and infections have steadily decreased in the nation over the last two decades, according to the Centers for Disease Control and Prevention.

But when outbreaks do occur, communities face a public health crisis and restaurants may be on the hook for enormous litigation costs, food safety lawyers tell Bloomberg BNA.

Should food workers be vaccinated to better stem the tide of infections and resulting litigation?

The answer depends on who you ask.

William Marler, of Marler Clark in Seattle, told Bloomberg BNA food worker vaccinations would enhance public health and also might help the food industry's bottom line.

"A hepatitis A outbreak linked to ill workers, on an annual basis, costs companies millions of dollars," said Marler, a noted food safety lawyer.

Marler represents plaintiffs in both of the recent outbreaks. One stems from frozen Egyptian strawberries served at mid-Atlantic locations of Tropical Smoothie Cafes, and the other involves raw scallops from the Philippines served at Genki Sushi restaurants in Hawaii.

Defense attorney Christopher Lee, of Dickie, McCamey & Chilcote in Pittsburgh, told Bloomberg BNA that "in an ideal world, every restaurant worker would be vaccinated with the hepatitis A vaccine."

But a broad HAV vaccination program for the restaurant industry would be "costly and extraordinarily difficult" to implement for practical and legal reasons, said Lee, who chairs the firm's Food and Beverage Industry Group.

Whether more vaccinations should be mandated and other food safety questions raised by the recent outbreaks aren't likely to go away any time soon.

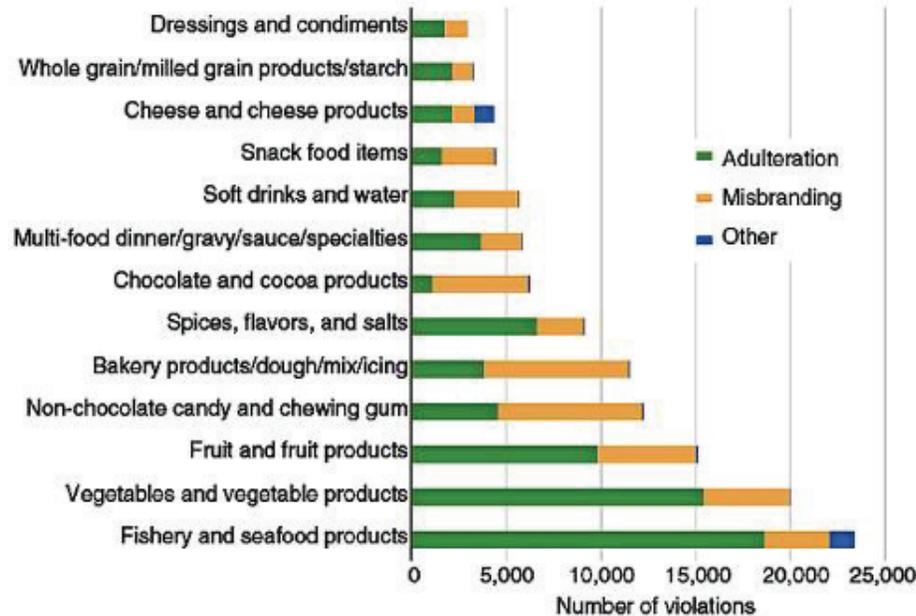
The Food and Drug Administration estimates that 15 percent of the U.S. food supply is imported, including 50 percent of fresh fruits, 20 percent of fresh vegetables and 80 percent of seafood.

Imported food that originates in areas with a high incidence of HAV is likely to add up to more future outbreaks and litigation, some of the lawyers say.

One Virus, Two Outbreaks

HAV is a highly contagious liver disease transmitted by ingestion of fecal matter, even in microscopic amounts; by contact with an infected person or contaminated objects; or by consuming tainted food or drinks, according to the CDC.

Adulteration violations made up three-quarters of FDA refusals of imported fishery/seafood products, vegetable/vegetable products, and spices, flavors, and salts in 2005-13



Source: USDA, Economic Research Service using data from Operational and Administrative System for Import Support database, U.S. Food and Drug Administration (FDA).

This summer's outbreaks involved frozen strawberries from Egypt served by Atlanta-based Tropical Smoothie Cafes in its Maryland, North Carolina, Virginia and West Virginia stores. The fruit was linked to 131 illnesses in eight states and 52 hospitalizations, according to the CDC (44 PSLR 958, 9/12/16).

At the same time, state health officials in Hawaii confronted an even larger outbreak linked to raw scallops served by Genki Sushi outlets in Oahu. The seafood from the Philippines sickened at least 289 people, 71 of whom required hospitalization, according to the Hawaii Department of Health (44 PSLR 1064, 10/10/16).

The outbreak in Hawaii illustrates the rapidity with which HAV outbreaks may unfold. Patrons allegedly ate the scallops at Genki outlets and then potentially exposed more people at restaurants where they were employed. The list grew, within weeks, to at least 51 Hawaii food outlets, including 37 Hawaiian Airlines flights where two infected flight attendants worked, according to a recent complaint.

Both outbreaks triggered suits against the restaurants, as well as distributors and importers of the foods. The cases include class actions to reimburse and otherwise compensate potentially exposed people, many of whom were food servers, who received costly, precautionary vaccinations.

Vaccine Views Vary

Vaccination of infants, recommended in 1995 by the CDC's Advisory Committee on Immunization Practices, has already put a big dent in childhood HAV infections in the U.S., according to a CDC report issued in February.

But researchers also reported the virus continues to pose risks to susceptible older adults.

CDC currently recommends vaccinations for certain high-risk groups, such as international travelers, users of illicit drugs and people with occupational risks of infection. Food handlers aren't on the list.

"Foodborne hepatitis A outbreaks are relatively uncommon in the United States," but when do they occur "intensive public health efforts are required for their control," according to the CDC. The agency does recommend vaccinations for community-wide outbreaks "where state and local health authorities or private employers determine that such vaccination is cost-effective."

The American Liver Foundation, a New York City-based non-profit group created by the American Association for the Study of Liver Disease, says more should be required.

"Hepatitis A ranks within the top 10 causes of foodborne illnesses in the United States," ALF chairman and chief executive officer Thomas Nealon told Bloomberg BNA.

"The American Liver Foundation believes that those who are at high-risk of transmitting the disease, such as food handlers, should receive a vaccination to prevent foodborne hepatitis A transmission," Nealon said in an e-mail.

Proper vaccinations also have an economic benefit, Nealon said, "freeing up valuable health department resources and allowing restaurants, and other establishments that serve food, to greatly reduce the risk of an outbreak."

"Food handlers absolutely should get vaccinated," plaintiffs' lawyer Ryan Osterholm, of Pritzker Hageman in Minneapolis, told Bloomberg BNA. "I've been vaccinated and I tell everyone I know to get the vaccination."

Osterholm, who represents plaintiffs involved in the recent outbreaks, said the vaccination, given in two shots six months apart, would decrease the need for litigation.

But Lee, the defense attorney, said the per-worker cost for the two injections (about \$180) would create a substantial industry expense, especially given the transient nature of restaurant workers.

"On a yearly basis, the quick serve restaurant industry employs 4.7 million workers," meaning the \$846 million cost would be borne by the industry and, in turn, passed on to its customers," Lee said.

"The high turnover rates and the costs are only two issues the industry would face in implementing a program," said Lee.

He added that collective bargaining agreements and religious objections could further complicate mandatory vaccinations.

Marler said that another public health argument used by industry against broader use of vaccines is that food handlers aren't "high-risk" because of the infrequency of HAV infections generally.

But that argument, Marler said, begs the question.

"I don't necessarily disagree with that, but the business loss and the hassle to all of these business who have an ill worker, who then have to come clean and go through this process, and then potentially get sued in a class action, just doesn't seem like it's worth it."

The National Restaurant Association, based in Washington, D.C., wouldn't comment specifically on the food worker vaccine question, but said responsible food safety practices go a long way to prevent or minimize HAV outbreaks.

"While the number of individuals who get sick has decreased, Hepatitis A remains a serious concern," Vito Palazzolo, the association's program compliance manager, told Bloomberg BNA in an e-mail. "We encourage all restaurants to implement proper hand washing techniques, cleaning and sanitizing protocols and avoid any bare hand contact when handling food."

The St. Louis Experience

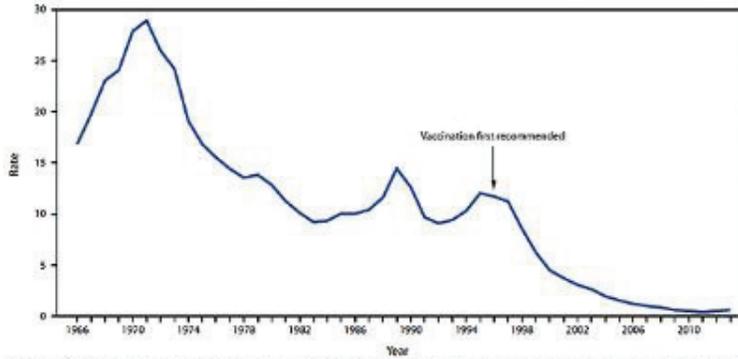
Confronted with three HAV outbreaks in the early 1990s, officials in St. Louis County, Mo., enacted an ordinance mandating HAV vaccinations for all food service workers.

"There were so many food handlers involved in the outbreak they decided to make the mandatory vaccination policy for all food handlers to stop those future outbreaks from occurring," Terri Rebmann, Director of the Institute for Biosecurity at St. Louis University, in St. Louis, Mo., told Bloomberg BNA.

Rebmann, who co-authored a study of the outbreaks published in March, said reports of HAV infections dropped sharply for over the 15-year period the ordinance has been in place. She added, however, that the decrease may mirror the national trend.

"In today's environment, the need

Incidence* of reported acute hepatitis A cases — National Notifiable Diseases Surveillance System, United States, 1966–2013



* Rate per 100,000 population. Rate (number of cases) in 1971 (peak), 1996 (first Advisory Committee on Immunization Practices [ACIP] recommendation for hepatitis A vaccination) and 2013 (low) were 28.9 (59,606 cases), 11.7 (51,032 cases), and 0.4 (1,396 cases), respectively.

may not exist for a mandatory hepatitis A vaccination policy for food handlers in other parts of the U.S.,” the study found.

Lining Up for a Shot, and a Class Action

Litigation over the recent outbreaks includes at least three class actions seeking compensation for potentially exposed people who got HAV vaccinations recommended by public health officials.

“Most of the class actions are ill workers who come to work, they don’t know about the worker carrying the hepatitis A virus, they turn yellow and they call the health department,” Marler said.

Health officials “have to tell everybody, ‘if they ate there in the last two weeks, go get a shot,’” he said. “Then you line up 2,000 or 3,000 or 5,000 people and they get a shot, and everybody’s freaked out about it.”

That spawns class action litigation in addition to personal injury suits filed by sickened people, and the list of defendants grows when an outbreak is traced to tainted food.

The litigation stakes increase further when an imported food is the source because every actor in the supply chain—the restaurant, distributor, importer and foreign supplier—may be implicated, Marler said.

Pathogens on Your Plate?

The FDA Food Safety Modernization Act (FSMA), a federal law designed to shift the national focus from responding to food contamination to preventing it, also puts the onus on companies to ensure the integrity of food products they import.

It also makes plaintiffs’ attorneys jobs easier, and potentially more lucrative, when they don’t.

“In these cases, I don’t have to prove negligence for the most part,” Osterholm, of Pritzker Hageman, said. “Anyone would agree that foods with these pathogens are defective” and “FSMA gives me a better claim for extraordinary or punitive damages.”

Yet, increased U.S. reliance on imported foods, some of which may originate in areas of the world with a high incidence of HAV, may be a recipe for future outbreaks and litigation, Marler said.

“We’re seeing more foods, especially fruits and vegetables and ready-to-eat products, coming in from overseas,” Marler said. “And because hepatitis A particularly is endemic in many of those countries, they’re bringing it to you.”

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