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## Surviving The Food Product Recall

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### Presenter



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### Why recall?









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**Who can force you to recall?**



**RECALL ALERT**

[www.Recalls.gov](http://www.Recalls.gov) Your Online Resource for Recalls

**FSN** Food Safety News  
Breaking news for everyone's consumption

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**Regulatory Framework**

- U.S. Food and Drug Administration (FDA)
- United States Department of Agriculture (USDA)
- Food Safety and Modernization Act (FSMA)
- State laws and regulations
- Labeling
- Raw agricultural commodity
- Expansion of product sales to consumers?
- Inherent risks – no kill step
- New technologies

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**Who is covered by FSMA?**

- Produce largely consumed raw
  - Not produce largely not consumed raw
- Value added products
- Consumer packaged goods
- Distribution companies (including meat)
- “Large” importers (over \$1,000,000/year)

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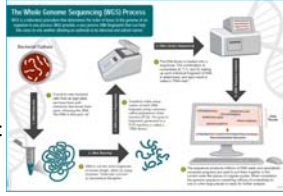
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## FDA on the Offensive

- FDA has the ability to link foodborne illness to a specific food product or company using microbiology
- Enhanced DNA fingerprint procedures, called “Full Genomic Sequencing”
- FSMA gives FDA broad authority, the scope of which is unknown.



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## Dramatic rise

CR CONSULTING REPORTS | Product Reviews | News | Take Action | About Us

### Food Poisoning in Packaged Food: What You Must Know

Wraps, pizza, and salads have been pulled from store shelves across the U.S. Here's how to protect yourself.

By Jason Weeks  
October 20, 2016

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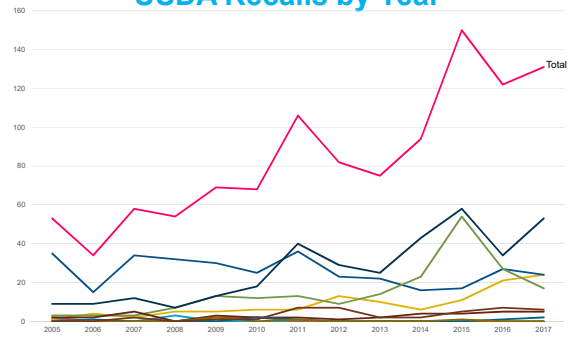
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## USDA Recalls by Year



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## Do you need to recall at all?

- **Park Doctrine:** Management charged with a criminal violation, even without direct knowledge or intent.
- **Peanut Corporation:** Owner sent to prison for knowingly selling peanut products contaminated with Salmonella.
- **Quality Egg:** Company failed to control Salmonella in the egg processing environment. Company executives pled guilty to misdemeanors as "responsible corporate officers" and were sentenced to 3 months in prison. Executives appealed, but criminal sanctions upheld by mere negligence without a showing of intent. The Court found that the mere failure to prevent or remedy the wrong was actionable regardless of intent for a public welfare offense.

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## Can you be forced to recall?

- **Mandatory rules issued by FDA**
- **FDA process requires**
  - Reasonable probability that food is adulterated or misbranded
  - Reasonable probability of serious adverse health consequences or death to humans or animals ("SAHCODA" hazard)
  - Opportunity to recall voluntarily
  - Responsible party has right to request informal hearing within two (2) days of the order



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## How do you learn there's a problem?



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### Misnomered

- Monique is the VP of Food Safety for DulceSweet Industries, a candy manufacturer. Weekly inventory was just completed and something is amiss. There are two excess rolls of wrap that contain the warning “this product may contain allergens, including peanuts.” There are also two few rolls of a different product that do not contain that warning.



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### AntiSocial Media

Pizzaaaahhh LLC is a hip new franchise featuring non-GMO, gluten free, and locally-sourced pizza. Jennifer Martinez, CEO, is relaxing at home with her family when her phone explodes. She has barely read a text from her Marketing VP saying “WTF, check out this link” when she gets a call from a reporter asking for comments on the Twitter reports that numerous customers were sick after eating the “Arugula Special” on Friday night. Jennifer suspects the source is a franchisee, but possibly using arugula distributed by Pizzaaaahhh.



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### How do you know what to recall, when?

- Who do you call for help?
- Is your company responsible for the product issue?
- Determining scope of products
- Determining scope of time
- Tracing process, data and timing?



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### Next Steps – Enhancing Your Risk Management Program

- Don't start from scratch
- Formalize the program – Establish context for the company and make the business case for enhancing your risk management program
- Establish an risk management infrastructure - Assign leadership
- Identify risks, gaps and vulnerabilities
- Determine response strategies
- Formalize communications team and protocols across the company
- Monitor and review



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### BEFORE a Crisis Hits?

1. Know your values: life, health, and personal safety take precedence over everything else
2. Know your products:
  - Where are the top risks?
  - How big/how likely?
  - Regulated? Where?
  - Product composition
  - Life cycle management
3. Control your supply chain:
  - Quality guarantees
  - Access to testing results
  - Facilities access
  - Compliant with all relevant laws and testing standards
  - Indemnities



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### Review Director and Officer Indemnification Provisions

- Does your company have D&O indemnity agreements and insurance?
- Who has an indemnity agreement?
- Does state law require indemnification?
- Is there an indemnity for criminal defense?



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## Insurance Coverage

- **First Party Coverage?**
- **Third Party Coverage?**
- **Business interruption?**
- **Specialty Policies**
  - Are costs of the actual recall covered?
- **Directors & Officers Coverage**


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## WHEN Crisis Hits

1. **Execute your plan.**
2. **Get the facts.**
3. **Speed matters.**
4. **Seek outside advice (legal, public relations, insurance, investigative, technical, etc.).**
5. **Effective communication with all audiences.**

87% of consumers said they would more likely purchase and remain loyal to a brand that handles a product recall honorably and responsibly.

- 2010 report from the Relational Capital Group


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## Communications Considerations

- **Rapid Response**
  - The first hours of a crisis are critical. Act quickly and communicate.
- **Responsible Disclosure**
  - Be as open as possible to share relevant information.
- **One Voice**
  - Ensure all spokespeople are delivering consistent messages to all audiences
- **Manage Relationships**
  - Communicate to partners, as well as customers
- **Media as an Ally**
  - Media can be the conduit to key stakeholders with responsible management.


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**And don't forget the lawsuits...**




**LAWSUITS, RECALLS,**  
and Where Your Pet  
Food Comes From



**FSN** Food Safety News  
Breaking news for everyone's consumption

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**Be prepared so you won't be on this list**

- Menu Foods
- Peanut Corporation of America
- Hallmark Westland meat
- Hudson Foods
- Topps Meat
- SoyNut Butter Co.

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**Thank you!**



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