



LEGISLATION, REGULATIONS & STANDARDS

Schumer Urges USDA To Delay Hemp Rule

U.S. Sen. Chuck Schumer (D-N.Y.) has called on the U.S. Department of Agriculture (USDA) to “delay the issuance of a U.S. Domestic Hemp Production Program final rule until 2022 and allow hemp growers and producers across the country and in Upstate New York to continue to operate under the 2014 Farm Bill pilot program regulations until that time.”

Schumer’s [press release](#) includes the letter he sent to Secretary Perdue. “[A]s industrial hemp farmers and businesses explore the full benefits of the 2018 Farm Bill, they have experienced serious difficulty integrating the Interim Final Rules into their operations. Particularly in the current COVID climate, I see many farmers and processors in New York struggle with incorporating these changes into the existing state Pilot Programs. In a time when farmers and producers struggle with economic uncertainty, the implementation of the Interim Final Rules will create costs without the support of offsetting revenues.”

“Lastly, I have concerns that the Interim Final Rules will potentially create public health issues in our current COVID environment,” the letter states. “As we move into harvest season, farmers will need to operate with as much certainty as possible but timing and testing requirements will likely create bottlenecks that will push farmers to rush harvests. The potential for greater numbers of people working in facilities to meet the rush may create opportunities for COVID to spread among farm workers.”

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Shook offers expert, efficient and innovative representation to clients targeted by food lawyers and regulators. We know that the successful resolution of food-related matters requires a comprehensive strategy developed in partnership with our clients.

For additional information about Shook’s capabilities, please contact



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FDA Issues Final Rule On Gluten-Free Labeling

The U.S. Food and Drug Administration (FDA) has issued a final rule establishing requirements for “gluten-free” labeling for foods with fermented or hydrolyzed ingredients. Under the rule, FDA will evaluate compliance based on records manufacturers will be required to maintain because the agency “knows of no scientifically valid analytical method effective in detecting and quantifying with precision the gluten protein content in fermented or hydrolyzed foods in terms of equivalent amounts of intact gluten proteins.” The rule takes effect October 13, 2020.

EFSA Completes Assessment Of Glycoalkaloids In Potatoes

The European Food Safety Authority (EFSA) has completed its health risk assessment for glycoalkaloids in food and animal feeds, especially in potatoes. “Experts identified a health concern for infants and toddlers, considering both mean and high consumers,” the agency’s announcement states. “Among adults, there is a health concern for high consumers only. Glycoalkaloids poisoning can cause acute gastrointestinal symptoms, such as nausea, vomiting and diarrhoea.”

“Based on the latest available knowledge, EFSA derived a lowest observed adverse effect level of 1 milligram per kilogram of body weight per day. This equates to the lowest dose at which undesired effects are observed,” according to the statement. “Peeling, boiling and frying can reduce the content of glycoalkaloids in food. For example, peeling potatoes can reduce their content by between 25 and 75%, boiling in water between 5 and 65%, and frying in oil between 20 and 90%.”

LITIGATION

“All Natural” Arizona Gummies Lawsuit To Continue

A New York federal court has trimmed claims in a lawsuit alleging that Arizona Beverages Co. and its parent company Hornell Brewing Co. Inc. misled consumers by labeling Arizona Fruit Snacks as “all natural” despite containing synthetic ingredients, including ascorbic acid, glucose syrup, citric acid, gelatin and



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ABOUT SHOOK

Shook, Hardy & Bacon is widely recognized as a premier litigation firm in the United States and abroad. For more than a century, the firm has defended clients in some of the most substantial national and international product liability and mass tort litigations.

Shook attorneys are experienced at assisting food industry clients develop early assessment procedures that allow for quick evaluation of potential liability and the most appropriate response in the event of suspected product contamination or an alleged food-borne safety outbreak. The firm also counsels food producers on labeling audits and other compliance issues, ranging from recalls to facility

dextrose. *Silva v. Hornell Brewing Co. Inc.*, No. 20-0756 (E.D.N.Y., entered August 10, 2020).

The court declined to dismiss the case on the basis that the U.S. Food and Drug Administration (FDA) holds primary jurisdiction over the issue. “First, while defining the term ‘all natural’ does involve technical and policy considerations, this case does not require a technical definition of ‘all natural,’” the court held. “Instead, this case requires a determination of whether labeling the Product as ‘all natural’ is misleading to a reasonable consumer. That type of legal question is within the conventional experience of the court and does not require FDA guidance.”

The court allowed several claims to proceed, but it dismissed claims brought under the Magnuson-Moss Warranty Act for a lack of written warranty and dismissed a claim for unjust enrichment as duplicative of other claims in the case. The court also dismissed the claim for injunctive relief, finding, “To the extent that plaintiff was deceived by the appearance of the phrase ‘All Natural’ on the Product label, the existence of this lawsuit shows that he is now aware that the Product contains synthetic ingredients. Thus, he will not be harmed again in the same way, and he lacks standing to seek an injunction.”

Plaintiff Challenges “Clean” Panera Food

A consumer has filed a putative class action alleging that Panera Bread Co., or St. Louis Bread Co., markets its products as “100% clean” but sells products with ingredients “that are artificial, chemical, and/or synthetic preservatives, sweeteners, flavors, and colors.” *Sally v. Panera Bread Co.*, No. 20-1068 (St. Louis Cir. Ct., filed August 13, 2020). The complaint asserts that multiple products contain preservatives, including ascorbic acid, citric acid, potassium sorbate and tocopherols. “[A] preservative as defined by the FDA is a substance that ‘tends’ to prevent or retard the deterioration of foods,” the complaint states. “Thus, it is not necessary that it function as a preservative in every single instance for it to qualify as a preservative according to the FDA’s definition, so long as this is its general tendency.” The plaintiff seeks class certification, refunds, injunctive relief, punitive damages, attorney’s fees and costs for an alleged violation of the Missouri Merchandising Practices Act.

inspections, subject to FDA, USDA and FTC regulation.



Webinar: The U.S. Supreme Court Term 2019-2020

On September 2, 2020, Shook Partners [Bill Martucci](#) and [John Barkett](#) will present a [webinar](#) on the U.S. Supreme Court's decisions in the 2019-2020 term and a preview of coming cases in the 2020-2021 term. Highlights include:

- The Arrival of the Roberts Court
- Decisions of Constitutional Significance (Presidential Subpoenas, Abortion Rights, Free Exercise)
- Decisions of Practical Significance (Employment, DACA, Elections, ERISA, Robo-calls, Pandemic Police Power, Intellectual Property, Arbitration, Environmental Law)
- What Voting Statistics Tell Us About the Court

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