



Having trouble reading this email? [View it in your browser.](#)

ISSUE 710 | April 18, 2019



LEGISLATION, REGULATIONS & STANDARDS

“Shame on you, Washington Post”: FSIS Criticizes Reporting on Pork Inspections

The U.S. Food and Drug Administration’s Food Safety and Inspection Service (FSIS) has issued a [press release](#) responding to [The Washington Post’s reporting](#) on an impending change to pork plant inspections. “FSIS is appalled at The Washington Post’s poor attempt at explaining a proposal to modernize inspection,” the press release states. “The Post’s decision to continue to parrot arguments that are devoid of factual and scientific evidence only serves to further the personal agenda of special interest groups that have nothing to do with ensuring food safety. Despite FSIS spending countless hours responding to The Post and providing clarification about the proposed rule, The Post chose to ignore the information and went with an already formed opinion and headline.”

FSIS argues that the article was “deliberately misleading” on several points and lists 11 rebuttals for statements made in the *Post* article, including the assertion that the pork industry “soon will have more power over meat inspections” and that a former FSIS chief veterinarian was involved in a pilot program for the inspection changes.

SHARE WITH [TWITTER](#) | [LINKEDIN](#)

SUBSCRIBE

PDF ARCHIVES

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



Mark Anstoetter

“Shame on you, Washington Post,” the press release states. “This story earns you at least four Pinocchios.”

816.559.2497
manstoetter@shb.com



M. Katie Gates Calderon
816.559.2419
kgcalderon@shb.com

FDA Announces Start Date for Intentional Adulteration Inspections

The U.S. Food and Drug Administration has announced that inspections for compliance with a rule aiming to mitigate the risk of intentional adulteration (IA) will begin in March 2020. The rule, which “is designed to address hazards that may be intentionally introduced to foods, including by acts of terrorism, with the intent to cause wide-spread harm to public health,” requires “the food industry to implement risk-reducing strategies for processes in food facilities that are significantly vulnerable to intentional adulteration.”



Lindsey Heinz
816.559.2681
lheinze@shb.com

“To allow industry time with the forthcoming materials, tools, and trainings, and because the IA rule represents new regulatory territory for all of us, we will be starting routine IA rule inspections in March 2020,” the agency announced.

USDA Seeks Comments on NPIP Program Changes

The U.S. Department of Agriculture will accept comments on proposed changes to the National Poultry Improvement Plan (NPIP) Program Standards until May 13, 2019. Changes include an amended testing protocol for *Mycoplasma*, amended *Salmonella* isolation procedures and updated cleaning and disinfecting procedures.



James P. Muehlberger
816.559.2372
jmuehlberger@shb.com

LITIGATION

Physicians Committee Sues USDA for Response on Adulterant Petition

The Physicians Committee for Responsible Medicine has filed an Administrative Procedure Act lawsuit seeking to compel the U.S. Department of Agriculture (USDA) to respond to the

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.

organization’s petition urging the agency to regulate feces as an adulterant under the Federal Meat Inspection Act and the Poultry Products Inspection Act. *Physicians Comm. for Responsible Med. v. USDA*, No. 19-1069 (D.D.C., filed April 16, 2019). Physicians Committee’s 2013 petition “asserted that meat and chicken that is contaminated with feces regularly passes USDA inspection,” according to the complaint.

“The risk of fecal contamination has increased in the six years since the Physicians Committee petitioned USDA,” the organization argues. Under the system implemented in 2014, one USDA inspector is assigned to a slaughter line, apparently correlating with higher failure rates for *Salmonella*—“a bacteria found in feces”—during inspections.

“Despite the passage of six years, USDA has not shared its determinations regarding the actions requested by the Physicians Committee in the petition,” the organization argues. “This has made it more difficult and costly for the Physicians Committee to achieve its organizational objective of protecting its members and the public from the negative health effects of consuming harmful products. USDA has deprived Physicians Committee of valuable information concerning the reasons and justifications for failing to carry out the actions requested in the petition, thereby requiring the Physicians Committee to expend additional resources monitoring fecal contamination in meat and poultry products and sharing its findings with the public.”

Court Finds ALDF Claim Preempted

A D.C. court has granted summary judgment in favor of Hormel Foods Corp. in a lawsuit alleging that the company misleads consumers into believing that its products “are from animals that are humanely raised and not ‘factory-farmed’ and that its products do not contain preservatives or nitrites that are not from natural sources.” *Animal Legal Defense Fund v. Hormel Foods Corp.*, No. 2016 CA 004744 (D.C. Super. Ct., entered April 8, 2019). The court held that the Animal Legal Defense Fund’s (ALDF’s) claims were preempted, finding that applying the Washington, D.C., consumer-protection statute “to prohibit the use of terms that [the U.S. Department of Agriculture (USDA)] approved would stand as an obstacle to the accomplishment of

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 inspections, subject to FDA, USDA and FTC regulation.



Congress’ purposes for consistent regulation of labeling meat and poultry products.”

“Federal law regulates labeling so that consumers can use labels as the authoritative source of information about a product’s ingredients, and if a producer can accurately use a term in a label, the producer should be able to use the same term in its advertising,” the court held. “Otherwise, for example, a state could make it illegal for a meat producer to state in its advertising that USDA approved labeling its product as ‘natural.’”

Lawsuit Challenges Alcohol Content in Kombucha

A consumer has filed a putative class action alleging that O Organics and Lucerne Foods Inc. “greatly understate” the alcohol and sugar content of their kombucha. *Freedline v. O Organics LLC*, No. 19-1945 (N.D. Cal., filed April 10, 2019). The plaintiff argues that “the beverages contain more than three to five times the alcohol allowed for non-alcoholic beverages” and “are sold to unsuspecting children, pregnant women, persons suffering with alcohol dependence issues, and a host of other people for whom alcohol consumption may pose a grave and immediate safety risk.” The complaint cites lab testing purportedly showing levels of alcohol by volume between 1.63 and 2.63 percent.

The plaintiff alleges violations of California’s consumer-protection statutes as well as breach of warranties, fraud, unjust enrichment and negligent misrepresentation, and he seeks class certification, damages, restitution and attorney’s fees.

SCIENTIFIC / TECHNICAL ITEMS

Nutrition Claims on Children’s Food Confuse Consumers, Study Suggests

A study published in a *BMJ* journal has purportedly found that foods marketed to children in the United Kingdom frequently contain health and nutrition claims that mislead consumers into believing that the products are healthful. Garcia et al., “Confused

health and nutrition claims in food marketing to children could adversely affect food choice and increase risk of obesity,” *Archives of Disease in Childhood*, April 4, 2019. The researchers categorized marketing claims on 332 products and reportedly found that some claims were unsubstantiated, including 75 percent of “one of 5-a-day” fruit or vegetable content claims. The researchers concluded that uniform guidance would help consumers navigate the nutritional quality of food products.

MEDIA COVERAGE

Preservative Could Cause Higher Flu Vulnerability, Quartz Reports

Quartz has reported on a Michigan State University study purportedly finding that tert-butylhydroquinone (TBHQ), which can help preserve unsaturated vegetable oils and animal fats, may cause a higher susceptibility to influenza. Researchers apparently found that TBHQ caused the T cells of lab mice to become more sluggish and thus unable to fight off the flu virus as effectively.

“The researchers’ leading hypothesis is that TBHQ causes these effects by triggering some of the proteins in the body that are known to suppress the immune system,” *Quartz* reports. “The emerging scientific work so far only applies to laboratory mice, which is to say it still has a long way to go before we’ll know whether humans are impacted in a similar way. Still, if the science bears out, it could wind up impacting how food companies operate, and it could give health experts new insight into how people are made more susceptible to the flu.”

SHB.COM

CHICAGO | DENVER | HOUSTON | KANSAS CITY | LONDON
LOS ANGELES | MIAMI | ORANGE COUNTY | PHILADELPHIA
SAN FRANCISCO | SEATTLE | TAMPA | WASHINGTON, D.C.

The choice of a lawyer is an important decision and should not be based solely upon advertisements.

© Shook, Hardy & Bacon L.L.P. All rights reserved.

[Unsubscribe](#) | [Forward to a Colleague](#) | [Privacy Notice](#)