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LEGISLATION, REGULATIONS AND STANDARDS

U.S. Surgeon General Tackles Alcohol Misuse in Addiction Report

The U.S. Surgeon General has issued a landmark report intended “to address substance use disorders and the wider range of health problems and consequences related to alcohol and drug misuse in the United States.” Seeking “to galvanize the public, policymakers, and health care systems,” the report claims, among other things, that more than 25 percent of the adult and adolescent population experienced at least one binge drinking episode in the past month—that is, men consumed five or more standard alcoholic beverages in a single occasion and women consumed four or more such beverages in a single occasion.

Divided into seven chapters, the report includes sections on “the neurobiology of substance use, misuse, and addiction,” prevention and early intervention strategies, and recovery paths. In particular, the report highlights “well-supported scientific evidence” purportedly showing that (i) “addiction to alcohol or drugs is a chronic brain disease that has potential for recurrence and recovery”; (ii) “the addiction process involves a three-stage cycle: binge/intoxication, withdrawal/negative affect, and preoccupation/anticipation”; (iii) “disruptions in three areas of the brain are particularly important in the onset, development, and maintenance of substance use disorders: the basal ganglia, the extended amygdala, and the prefrontal cortex”; (iv) “these changes in the brain persist long after substance use stops”; and (v) “adolescence is a critical ‘at-risk period’ for substance use and addiction.” The report also notes supporting evidence showing that changes to the brain “persist long after substance use stops.”

Among other recommendations, the report urges companies in the private sector to “promote only responsible, safe use of legal substances, by adults,” and “support youth substance use prevention.” As it concludes, “Prejudice and discrimination have created many of the challenges that plague the substance use disorder treatment field. These factors can have a profound influence on individuals’ willingness to talk to their health care professional about their substance use concerns; to seek or access treatment services; and to be open with friends, family, and coworkers about their treatment and recovery needs.”

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NOSB Opts to Remove Carrageenan from List of Substances Allowed in Organic Products

The U.S. Department of Agriculture’s National Organic Standards Board (NOSB) has reportedly voted 10-3, with one abstention, to remove carrageenan from the national list of substances allowed in organic processing and handling. Held November 16-18, 2016, in St. Louis, Missouri, the NOSB’s semi-annual meeting included a review of carrageenan on the National List of Allowed and Prohibited Substances that identifies “the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic crop and livestock production.” Other substances slated for sunset in 2018 include agar-agar, animal enzymes, calcium sulfate-mined, glucono delta-lactone, tartaric acid, cellulose potassium hydroxide, silicon dioxide, and beta-carotene extract for use as a coloring agent.

According to news sources, NOSB did not impugn the safety of carrageenan but took into account the availability of other substances to replace the seaweed-based thickening agent. If it accepts NOSB’s recommendation, the National Organic Program will issue a proposed rule in the *Federal Register* to delist carrageenan when it sunsets in 2018. Meanwhile, the Cornucopia Institute, which presented to NOSB proxy letters and a petition that called for the removal of carrageenan from organic food, and the Center for Food Safety (CFS) praised the decision.

“[C]onsumers have expressed discontent with the presence of carrageenan in organic products so ardently that many companies have already successfully abandoned the ingredient altogether,” said CFS Senior Manager for Organic and Animal Policy Cameron Harsh. “The board’s recognition that carrageenan is not essential to organic, as evidenced by the ability of many manufacturers to eliminate it from their products, is an enormous victory for organic integrity.” See *Food Business News* and *Food Dive*, November 18, 2016.

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.

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LITIGATION

Ninth Circuit Finds No Standing in Six States’ Challenge to California Egg Production Laws

The Ninth Circuit Court of Appeals has ruled that the attorneys general of six states—Missouri, Nebraska, Oklahoma, Alabama, Kentucky and Iowa—do not have standing to sue California AG Kamala Harris in an attempt to block enforcement of a law requiring egg-production facilities

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to provide hens enough space to fully extend their limbs and turn around freely in the confinement in which they spend the majority of the day. *Missouri v. Harris*, No. 14-17111 (9th Cir., order entered November 17, 2016).

The court found that the plaintiff states did not have *parens patriae* standing, the standing provided to a governmental entity as the legal protector of its citizens. The states could not “articulate an interest apart from the interests of private egg producers, who could have filed an action on their own behalf,” the court held. Further, the states’ allegations about potential economic damages were speculative, and “the allegations of discrimination were misplaced because the laws do not distinguish among eggs based on their state of origin.” The court remanded the case and ordered the lower court to dismiss the case without prejudice.

Food Manufacturer Sentenced to Prison for Selling Contaminated Cheese

Christian Rivas, owner of Oasis Brands Inc., has been sentenced to 15 months in prison for two charges that he sold cheese contaminated with *Listeria monocytogenes* after the U.S. Food and Drug Administration (FDA) instructed the company to stop distribution until it remedied its practices. FDA inspected Oasis in August 2014, found several violations and required Oasis to halt distribution of any products until they were cleared by laboratory testing. Rivas continued distributing Oasis' cheese, which then failed a random *Listeria* test at a Virginia grocery store. In addition to his 15 months in prison, Rivas is subject to one year of supervised release. *See South Florida Business Journal*, November 16, 2016.

DOJ Sues Potato Company for Alleged Discrimination Against Immigrants

The U.S. Department of Justice has filed a lawsuit against two Washington companies—Washington Potato and Pasco Processing—for allegedly discriminating against immigrants during the employment eligibility verification process. *United States v. Wash. Potato Co.*, No. 16-1320 (D.O.J., filed November 14, 2016). The complaint alleges the companies required non-U.S. citizens to submit specific documentation to process the Form I-9 and E-Verify while allowing U.S. citizens more flexibility in their documentation.

“Federal law protects individuals with legal work authorization from facing discriminatory obstacles during employment eligibility verifica-

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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 inspections, subject to FDA, USDA and FTC regulation.



tion,” said Principal Deputy Assistant Attorney General Vanita Gupta in a November 14, 2016, press release. “All people with legal employment status in the United States must receive an equal opportunity to prove they can work, regardless of their citizenship or immigration status.”

Bean Product Labeling Misled Consumers, Slack-Fill Putative Class Action Alleges

Two consumers have filed a projected class action against Arizona Canning Co. alleging that the image of a bowl full of beans on its Sun Vista products misleads consumers into believing the can is filled completely with beans rather than filled with some beans and a large amount of water. *Beckman v. Ariz. Canning Co.*, No. 16-2792 (S.D. Cal., removed November 14, 2016).

The complaint asserts that the “picturesque” label image depicts “a bowl full of plump and hearty beans with glimmer of shine, and little to no water,” but when the can is opened, it reveals “the repulsive sight of bean water” and “an inappropriately large amount of water and a small amount of beans.” The complaint admits that a reasonable consumer “would expect to find some water within the container,” but one plaintiff’s “home investigation” apparently found that a 29-ounce can of pinto beans contained 13 ounces of beans and 16 ounces of water. “Water is used as a deceptive filler in Sun Vista Beans,” the plaintiffs argue. For alleged violations of California’s consumer-protection statutes, the plaintiffs seek class certification, an injunction, restitution and attorney’s fees.