



ML Strategies Update

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## FOOD LABELING, FOOD SAFETY & NUTRITION

From a national action plan on combating antibiotic-resistant bacteria in food-producing animals and a presidential task force on fishing and seafood fraud, to proposed rules on nutrition and supplement fact labeling, the Obama Administration continues a robust use of executive authority on issues related to food labeling, food safety, and nutrition. On Capitol Hill, while other issues languish, the House and Senate appear poised to take action on food and nutrition-related issues, whether it is through newly re-introduced legislation on the labeling of bioengineered foods, or debate on the funding and organization of federal food safety and nutrition programs. ML Strategies is pleased to share this Update on Food Labeling, Food Safety, & Nutrition, highlighting some of the key regulatory and legislative developments in this area.

### REGULATORY OUTLOOK

The Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA) have primary regulatory authority and an active regulatory agenda for issues related to food labeling, food safety, and nutrition. The regulatory agendas for both agencies, along with more than 60 other federal departments and agencies, can be found [here](#). Highlights of regulatory and other administrative actions are below.

#### **White House Action Plan for Combating Antibiotic-Resistant Bacteria**

On March 27, the White House released the [National Action Plan for Combating Antibiotic-Resistant Bacteria](#), a five-year plan to address the increase in antibiotic-resistant bacteria that includes the elimination of the use of medically-important antibiotics for growth promotion in food-producing animals. The plan calls for the development, by 2020, of at least three new drug candidates or probiotic treatments as alternatives to antibiotics for promoting growth or preventing disease in animals, and for the development of a global database to collect harmonized quantitative data on the use of antibacterial agents in animals. A White House fact sheet can be found [here](#).

#### **Presidential Task Force on Illegal, Unreported, and Unregulated (IUU) Fishing and Seafood Fraud**

On March 15, the Presidential Task Force on Illegal, Unreported, and Unregulated (IUU) Fishing and Seafood Fraud released its [action plan](#). Co-chaired by the Departments of Commerce and State, the task force was established in June 2014. The action plan articulates the steps that Federal agencies will take, both domestically and internationally, to implement the task force's December 2014 [recommendations](#). The plan identifies actions that will strengthen enforcement, create and expand partnerships with state and local governments, industry, and non-governmental

organizations, and create a risk-based program to track seafood from harvest to entry into U.S. commerce. The plan also highlights ways the United States will work with foreign partners to strengthen international governance, enhance cooperation, and build capacity to combat IUU fishing and seafood fraud. A summary and highlights of key actions is found [here](#).

### **FDA Guidance for Nutrition Labeling**

On March 12, the FDA released its [Small Entity Compliance Guide](#) intended to help restaurants and retail food establishments comply with the final rule “[Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments](#),” which was released December 1, 2014 and becomes effective December 1, 2015.

### **Revision of the Nutrition and Supplement Facts Labels**

A proposed rule by the FDA would amend the labeling regulations for conventional foods and dietary supplements to provide updated nutrition information on the label to assist customers in maintaining healthy dietary practices. The proposed rule “[Food Labeling: Revision of the Nutrition and Supplement Facts Labels](#),” was first proposed in 2003. This rule would modernize the Nutrition Facts label, including updating the list of nutrients declared, Daily Reference Values, and Reference Daily Intake values, and revising the format and appearance of the label. The comment period for the proposed rule ended in June 2014, with 287,890 comments received. The final rule is expected in March 2016, with a compliance date of two years after the effective date for the final rule.

### **Serving Size Proposed Rule**

The FDA is also proposing to amend its labeling regulations for foods to provide updated Reference Amounts Customarily Consumed (RACCs) for certain food categories. The proposed rule “[Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed At One-Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain RAACs](#)” was first proposed in 2005. This rule would update nutrition facts labels to provide nutrition information based on the amount of food that is customarily consumed, rather than on what “should” be eaten, in order to assist consumers in maintaining healthy dietary practices. In addition to updating certain RACCs, the FDA is also considering amending the definition of single-serving containers; amending the definition of serving size for breath mints; and providing for dual-column labeling, which would provide nutrition information per serving and per container, for certain containers.

### **Scientific Report of the 2015 Dietary Guidelines Advisory Committee**

The debate over the [2015 Dietary Guidelines Advisory Committee](#) (DGAC) report continues, with 70 groups, including representatives from the meat industry and public health and environmental advocacy groups, offering testimony during a meeting on the DGAC Report at the National Institute of Health on March 24. The report called for limits on saturated fats, sodium, and added sugar, and for reduced consumption of red and processed meats. Public Comments on the DGAC Report are being accepted through May 8, 2015.

## **LEGISLATIVE OUTLOOK**

While the regulatory agenda is certain to outpace legislative outcomes on issues related to food labeling, food safety, and nutrition, there are various measures in the House and Senate that will see debate and potentially become law.

### **GMO Labeling**

Reps. Mike Pompeo (R-KS) and G.K. Butterfield (D-NC) have re-introduced the [Safe and Accurate Food Labeling Act](#), legislation that seeks to bar the labeling of most genetically modified food (GMO) ingredients. The bill would preempt state efforts to define “natural” foods and set up a program for pre-market notification to the FDA of new products. It also creates a government-

backed voluntary certification system for GMO-free foods. The bill has 20 co-sponsors, including 12 Republicans and eight Democrats, the majority of whom sit on either the Agriculture or Energy & Commerce Committee. On March 29, the editorial board of the Washington Post [endorsed](#) the Pompeo-Butterfield legislation.

Related to this legislation, on March 24, the House Committee on Agriculture held a hearing on "Mandatory Biotechnology Labeling Laws" with testimony from Mr. David Schmidt, President and CEO of the International Food Information Council; Dr. Nina Fedoroff, a senior science advisor at OFW Law; Mrs. Joanna Lidback, owner of the Farm at Wheeler Mountain in Westmore, VT; Mr. Lynn Clarkson, president of Clarkson Grain Company; Mr. Thomas Dempsey, CEO of the Snack Food Association; and Mr. Chris Policinski, president and CEO of Land O'Lakes, Inc. ML Strategies has a summary of the hearing available [here](#).

### **Country-of-Origin Labeling Requirements**

On March 25, the House Agriculture Livestock and Foreign Agriculture Subcommittee heard officials from the U.S. Chamber of Commerce and National Association of Manufacturers, who called on Congress to move quickly to repeal legislation regarding Country-of-Origin Labeling (COOL) for meat products. Both Canada and Mexico have threatened retaliation if the World Trade Organization's Appellate Body finds the most recent COOL rule does not comply with global trade rules, retaliation that might portend a "dark cloud" over future business deals.

### **Preservation of Antibiotics for Medical Treatment Act**

Sens. Susan Collins (R-ME) and Dianne Feinstein (D-CA) have introduced bipartisan legislation, [S. 621](#), the Prevention of Antibiotic Resistance Act, a bill intended to combat the overuse of medically-important antibiotics in agriculture. In the House, Rep. Louis Slaughter (D-NY) has re-introduced the Preservation of Antibiotics for Medical Treatment Act (PAMTA) ([H.R. 1552](#)), intended to preserve the effectiveness of medically important antibiotics by phasing out the use of these drugs in healthy food-producing animals. The legislation also requires the FDA to apply the same higher standards to new applications for approval of animal antibiotics.

### **ENRICH Act**

Reps. Tim Ryan (D-OH) and Pat Tiberi (R-OH) have re-introduced H.R. 1411, the [Expanding Nutrition's Role in Curricula and Healthcare Act](#) (ENRICH Act), which would establish a \$15 million competitive grant program with the aim of expanding nutrition and physical activity programs to at least 30 medical schools. Grants would allow medical schools to design curricula to improve provider preparedness to prevent and combat obesity, cardiovascular disease, diabetes, and cancer. Schools would also educate students on nutritional needs, physical activity training and programs, food insecurity, and malnutrition among at-risk populations.

### **Child Nutrition**

Rep. Kristi Noem (R-SD) has re-introduced the [Reducing Mandates on School Lunch Act](#), intended to push back on USDA's involvement in school lunch standards. The bill, H.R. 1504, would prevent the USDA from imposing calorie limits or rules that increase costs for school food service programs, stave off future sodium restrictions, and move the whole grain-rich mandate back to 50 percent. The National School Boards Association and the School Nutrition Association (SNA), which have both urged Congress to roll back some of the new Healthy, Hunger-Free Kids Act meal standards, are split on the bill, with SNA arguing it goes too far in dialing back whole grain-rich and sodium requirements.

### **Supplemental Nutrition Assistance Program**

On March 25, the House approved a budget plan containing a significant reorganization to the Supplemental Nutrition Assistance Program (SNAP), also known as food stamps. The budget plan

would shift control for SNAP from the USDA to individual states by 2021, creating an allotment system to allow individual states increased autonomy in administering the program. Agriculture Secretary Tom Vilsack has opposed block granting SNAP, on the grounds that it “would create a confusing, crazy quilt of efforts in nutrition” harming a unified national food policy. Changes to SNAP are not included in the Senate’s budget plan.

### **Fiscal Year 2016 Appropriations**

With the fiscal year budget plans nearly finalized – the House and Senate are aiming to produce a final plan by April 15 – the appropriations process will pick up steam. There have already been a number of hearings by both the House and Senate Appropriations Committees on the various spending bills, including hearings by the House and Senate Appropriations Subcommittees on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies on FDA’s fiscal year 2016 budget request. FDA’s increased funding request for implementation of the Food Safety Modernization Act was a key topic of discussion at both hearings. At the House hearing, the subcommittee chairman Rep. Robert Aderholdt (R-AL) stated that FDA’s budget request “includes increases for budget authority that disregard the debt crisis facing our nation.” In the Senate, subcommittee chairman Sen. Jerry Moran (R-KS) noted that FDA has authority over approximately 20 cents of every dollar spent in America. As the appropriations process continues, there will be additional hearings on food safety and nutrition as a part of the review of spending priorities at FDA and USDA for the upcoming fiscal year, which starts on October 1, 2015. In addition to hearings on FY 16 spending, with the Republican-controlled Congress making oversight of the Democratic-led administration a priority, there will surely also be various oversight hearings on food safety and nutrition issues.

### **UPCOMING MEETINGS**

The FDA will hold a FSMA Public Meeting: “Focus on Implementation Strategy for Prevention-Oriented Food Safety Standards” on April 23 & 24, 2015 in Washington, DC. Registration information is available [here](#).

The National Food Policy Conference will be held April 21 & 22, 2015 in Washington, DC. Registration information is available [here](#).

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