

## National Legislative Update

### **Senate Passes Four-Bill Spending Package, Rejecting Amendment to Protect Plant-Based Milks:**

Earlier this month, the Senate passed a four-bill appropriations package containing fiscal 2019 funding for the Agriculture-FDA, Interior-Environment, Transportation-HUD and Financial Services measures. The vote on [H.R. 6147](#), the minibus vehicle, was 92-6. The Agriculture-FDA Spending bill would allocate about \$20.2 billion in discretionary spending for USDA and nearly \$3 billion for FDA. For the two agencies together, the bill proposes spending \$225 million above the current enacted level.

Included in the spending package is a directive for the FDA to study what can be called “milk,” and whether use of the word for marketing and labeling purposes should be limited to products made from an animal’s milk. Senator Mike Lee (R-UT) proposed an amendment to block this funding – arguing there is no consumer confusion about the source of plant-based “milk” products – in an effort to interfere with FDA’s ability to crack down on the labeling of non-dairy beverages as “milk.” In a win for the dairy industry, the amendment was defeated 14-84.

The National Milk Producers Federation responded by saying, “Today’s vote should send a very strong message to food marketers who have long been ignoring FDA’s food labeling standards by inappropriately using dairy terms on products that do not contain any dairy.”

The FDA is soliciting public comments on updating the ‘standards of identity’ (i.e. definitions) for a variety of foods, a process that is likely to go beyond whether almond-, coconut- and soy-based products can be labeled as milk to include other products such as “riced” or “noodled” vegetables. FDA said in a meeting Wednesday that there would likely be an issuance of guidance and FDA would welcome any data we have regarding whether the nutritional characteristics of the products are understood by consumers.

Meanwhile, the Senate did pass an amendment from Senator Susan Collins (R-ME) exempting maple syrup, honey and other sugars sold as single ingredients from the “added sugars” labeling requirement created by the Nutrition Facts panel update.

Majority Leader Mitch McConnell said the Senate hopes to send to conference nine out of the 12 spending bills with the House, and then send them to President Donald Trump's desk shortly after Labor Day. He has not said what will come of the remaining three measures, which would fund the Departments of State, Homeland Security, Justice and Commerce, as well as foreign operations and science programs.

**Argus Leader Update:**

Also of significance in August, Supreme Court Justice Gorsuch granted an administrative stay in the ongoing appeal of the *Argus Leader* Freedom of Information Act (FOIA) case, which temporarily prohibits the release of store-level SNAP sales data. The administrative stay will remain in effect until a decision is reached by the Court. FMI filed a response on August 21. Everyone is still waiting for a decision from Justice Gorsuch who can decide whether to grant or deny the stay or to refer it to the full Court for a ruling on whether the stay will remain in effect pending our final appeal. The timing for a decision remains unpredictable at this point.

In addition to the Supreme Court activities, the Texas Retailers Association filed suit against the U.S. Department of Agriculture (USDA) on August 6, urging a Texas federal judge to revisit the earlier court's ruling concerning the release of the information. Following this development, the judge in that case granted the Texas Retailers Association request for a temporary restraining order. While the temporary restraining order only applies to data from Texas Retailers, the Supreme Court's administrative stay covers retail data in all states. A preliminary injunction hearing took place yesterday. A decision on the request for a preliminary injunction is expected by September 5. Additionally, USDA has agreed to a preliminary injunction for SNAP redemption data from 2011 to the present. We will continue to keep you updated on any new developments related to the litigation.

**Joint FDA-USDA Jurisdiction of Cell-Cultured Meat?**

The North American Meat Institute (NAMI) and Memphis Meats, a San Francisco cell-cultured meat start-up, are joining forces to call for both FDA and USDA to have regulatory jurisdiction over cell-cultured meat products. In a letter to President Donald Trump yesterday, the two outlined how they would like to see both FDA and USDA have a role in overseeing the growing sector. The two federal agencies have each claimed jurisdiction over these cell-cultured products.

Importantly, the two said they have also agreed on their preferred nomenclature for the new wave of products: "cell-based meat and poultry." The letter suggests that FDA should have oversight over premarket safety evaluations and that USDA should then regulate the products "as it does with all other meat and poultry products, applying relevant findings from FDA's safety evaluation to ensure products are safe, wholesome, and properly labeled." The two are also calling for a joint meeting involving the White House, USDA, FDA, meat-industry interests and representatives of the cell-cultured meat industry. House Energy and Commerce Committee Chairman Greg Walden (R-OR) (center) with Lauren Johnson (right), CEO and President of Newport Avenue Market during a store visit to Newport Avenue Market in Bend, Oregon last week.

**White House Reviews Drug Price Plan:**

White House staff is reviewing a proposal that may require pharmaceutical companies to be more transparent about their pricing, a key piece of President Trump's plan to lower drug costs. The Office of Management and Budget has received a regulation proposed by the HHS dealing with drug-pricing transparency in the Medicare and Medicaid systems. OMB typically reviews regulations before they're made public. The proposal, posted online Tuesday, was titled "Medicare and Medicaid Programs; Regulation to Require Drug Pricing Transparency." Little other information was made publicly available.

Released in May, Trump's 'American Patients First' blueprint to lower prescription drug prices states that HHS may make "Medicare and Medicaid prices more transparent, hold drug makers accountable for their price increases, highlight drugs that have not taken price increases, and recognize when competition is working with an updated drug pricing dashboard." The online dashboard provides Medicare and Medicaid spending data.