Blogs
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Imported food contaminants, potential criminal liability for allergen-related deaths, and a growing demand for hemp seed and cannabidiol (CBD) products amidst regulatory uncertainty were all topics of discussion at this year's American Conference Institute (ACI) Advanced Summit on Food Law Regulation, Compliance, and Litigation, held in Chicago.

Representatives from the country's largest food manufacturers, food and beverage agency regulators, and food litigation experts gathered in April to discuss recent product trends and regulatory developments in the food and beverage space. A few highlights from the conference are discussed below. **FDA's New Strategy to Protect Against Contaminants in Imported Foods** Protecting consumers from the importation of contaminated foods from abroad continues to be a top priority for the U.S. Food and Drug Administration (FDA). In February, the FDA introduced a new "imported food safety strategy," which outlined 16 agency objectives, including: optimizing the use of foreign inspections; incentivizing importers to use verified suppliers of safe foods through the Voluntary Qualified Importer Program (VQIP); and refining the FDA's import screening and entry review processes. While the FDA offers early inspection and faster screening programs, like VQIP, to help importers remain in compliance, if contaminants are identified *after* importation, the FDA will pursue recalls, seizure of contaminated foods, suspension of facility registration, and/or issuance of an Import Alert in order to alert the public that the FDA has enough evidence to detain the product. The FDA's new strategy comes on the heels of a few large-scale contamination outbreaks. The E. coli outbreak linked to romaine lettuce rattled the food industry earlier this year, and just last month, a nonprofit "watchdog" group called on U.S. agencies to clarify that it is illegal for companies to import and distribute contaminated poppy seeds, and that companies who do so are subject to federal prosecution. An otherwise harmless baking ingredient, *unwashed* poppy seeds can be contaminated with other parts of the opium poppy plant, and have caused at least 12 deaths in the United States since 2010. **Criminal Liability for Inadequate Disclosure of Allergens?** Conference panelists identified criminal liability for corporate executives for allergen-related deaths as an "emerging issue" in the food space. Using the catch phrase, it's "so negligent, it's criminal," the speakers highlighted two international cases in which restaurants failed to adequately disclose allergens contained in their foods and faced criminal charges in the United Kingdom and Canada. While U.S. prosecutors have not yet sought criminal charges relating to the inadequate disclosure of food allergens, conference speakers noted that litigation trends in the U.K. and Canada often foreshadow prosecutorial trends in the U.S. **What's Next for Cannabis?** The December passage of the 2018 Farm Bill meant "industrial hemp" is now excluded from the Controlled Substances Act and is no longer listed as a "Schedule 1" drug. However, Congress explicitly preserved the FDA's authority to *regulate* products containing cannabis and/or CBD, a now mainstream hemp-extract found in retail food and beauty products. To that end, the FDA recently announced several planned actions to advance its "consideration" of a new regulatory framework, including a public hearing on the issue scheduled for the end of this month. The agency also plans to form an internal agency working group that will explore lawful marketing options and necessary statutory changes. In the meantime, conference speakers warned that passage of the Farm Bill does not preempt state law; at least 10 states restrict CBD to medical use or still label it as a controlled substance; and, at least 10 states prohibit hemp-growing within the state. The speakers were optimistic that policy initiatives in other states, including Colorado, California, and Kentucky may support a patchwork, test-market approach to FDA regulation.

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