

Washington Regulatory Update

January 29, 2020

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Topics

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- **Proposition 12**
- **Alternative Proteins**
- **“GIPSA” Rule**
- ***Salmonella***
- **Labeling**

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PROPOSITION 12

Proposition 12

- Ballot Initiative enacted with 62+% of the vote
- Prohibits confining “covered animals” in California “in a cruel manner”
- “Covered animal” – veal calf, breeding pig, or egg-laying hen kept on a farm
- “Confined in a cruel manner” includes confining a covered animal so the animal cannot lie down, stand up, extend its limbs, or turn around freely
 - 43 square feet usable floor space – veal calves (today)
 - 24 square feet usable floor space – breeding pigs (2022)
- Prohibits the sale of certain fresh pork and veal products and eggs (shell and liquid) from covered animals “confined in a cruel manner.”

Proposition 12

- Whole veal meat, whole pork meat, shell eggs, and liquid eggs
- “Whole” meat means uncooked meat comprised entirely of meat, except for seasoning, curing agents, flavoring, preservatives, and similar additives
- Bacon is covered by the law
- “Combination food products” -- soups, sandwiches, pizzas, hotdogs, or similar processed or prepared food products are exempt

Proposition 12

- The sale restriction imposes the confinement requirements on farms outside California if the relevant meat products from animals raised on those farms are sold in California

Proposition 12

- Meat Institute filed lawsuit challenging constitutionality of Prop 12 (Central District CA)
 - Discriminates against out of state producers – impermissible leveling effect (6 years for CA)
 - Extraterritoriality – no legitimate food safety risk and controls conduct wholly outside CA
 - Unduly burdens interstate commerce – substantial cost burdens with no legitimate local benefits

Proposition 12

- Preliminary Injunction Motion denied
- Appealed to United States Court of Appeals for the Ninth Circuit
- Separate lawsuit filed by NPPC and AFBF (Southern District CA)

Proposition 12

- California Department of Food and Agriculture Rulemaking
- September 1, 2019 deadline
- December 24, 2019 Draft Proposed Rules for Eggs – burdensome regulatory environment

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ALTERNATIVE PROTEINS

NAMI policy

- Cell-based products should be inspected by FSIS and
- FDA and FSIS need to address misleading, plant-based product labels

Joint Oversight – Cell Based Products

- FDA
 - oversees cell collection
 - cell banks
 - cell growth and differentiation
- “transition” during “cell harvest stage”
- USDA oversees production and labeling of “food products derived from the cells of livestock and poultry”

Plant Based Products Developments

- Considerable activity in plant-based protein sector.
- Several “traditional” meat and poultry companies are producing and marketing plant-based protein products
- One startup engaged had an IPO
- Several restaurant chains, traditional and quick service, added plant-based products to menus and plant-based products have made inroads in some retail grocery chains.

Plant Based Products Developments

- The key issue -- nomenclature
- Nomenclature prompted 10 states to enact laws to regulate labeling alternative products.
- Legal challenges
- Proliferation of plant-based products prompted bills in the House and Senate
- Plant Based Food Association published a nomenclature guide

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Ensuring a Level Playing Field

GIPSA Rule



GIPSA Rule

- 2008 Farm Bill – lots of history
- Proposed new criteria for determining whether an “undue or unreasonable preference or advantage” has been provided in violation of the Packers and Stockyards Act
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GIPSA Rule

- Articulates four criteria
 - cost savings related to dealing with different producers, sellers, or growers
 - meeting a competitor's prices
 - meeting other terms offered by a competitor
 - a reasonable business decision that would be customary in the industry
- Proposal says Secretary would not be limited to the four, leaving companies uncertain about what is and is not permissible.

GIPSA Rule

- Something is missing.
- Agency says it does not intend to create criteria that conflict with established judicial precedent.
- Yet, the economic analysis factors in litigation costs because AMS expects someone to challenge in court certain practices.
- The proposed rule does not reference the established legal standard: to prove a P&S violation, a plaintiff must show the preference or advantage harms or is likely to harm competition.

Salmonella



Salmonella

- Food Safety and Inspection Service sampling results from CY 2018 show the prevalence *Salmonella* spp. for raw ground beef components is 7.35 percent and 3.89 percent in raw ground beef.
- November 2019, FSIS released new performance standards for beef.
- Pork standards expected in spring 2020.

Salmonella

- Marler petition to FSIS asking that 31 serovars be declared adulterants in meat and poultry products.
- Arguments
 - Contends *Salmonella* doesn't occur naturally in final products.
 - Cites outbreak history.
 - Cites recalls related to foodborne illness.
 - Cites studies that *Salmonella* is more resilient than previously thought.
 - Cites prevalence and severity of cross-contamination, primarily due to poor sanitation and cooking practices among consumers.
 - Asserts consumer education on sanitation and cooking practices has failed.

LABELING



Labeling

- “Product of U.S.A.” – two petitions and more
 - OCM – turn back the clock to 1983
 - USCA – Defer to the Federal Trade Commission
 - Capitol Hill and COOL
 - More?
- CSPI and Consumer Reports petition asks FSIS
 - 1) to rescind the rule requiring labels on products using “non-synthetic” sources of nitrite or nitrate to say “uncured”
 - 2) require companies to declare on a product’s PDP the presence of nitrites or nitrates.
- FDA considering “natural” and ramifications for FSIS

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Questions?