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Uncertainty Abounds for Food Labeling Rules

In the next year, a number of pending FDA and USDA regulatory proposals threaten to upend the food manufacturing environment and may result in food and beverage companies being forced to change their labels (and possibly their ingredients) multiple times. These rulemakings will not only have the potential to impact product labeling, ingredient sourcing, and co-packing arrangements, they could also play a significant role in driving consumer and marketing trends.

New FDA regulations updating the Nutrition Facts Panel will become mandatory in July 2018. Also due for final promulgation in July 2018 are USDA rules governing packaging notifications for products that contain GMOs.

However, the USDA GMO rulemaking has significant potential to be delayed, either as a result of genuine policy disputes among stakeholders inside and outside of the agency, or because of the Trump administration's aversion to burdensome regulations.

Even the slightest delay in the GMO rule could force food and beverage companies to reprint their labels twice—once to comply with FDA Nutrition Facts Panel rules, and again to comply with USDA GMO rules—within a period of a few short months.

Another regulatory action that companies must monitor is the FDA's expected revision of the rules that govern the use of the term "healthy" on food products. The comment period for this rule has recently been extended to April 26, 2017.

In addition, Congress and the FDA are considering proposals to make ingredient-based determinations on which products can claim to be "milk," and the FDA is examining potential action to govern the use of the term "natural" on food labels, which may prove to be the most controversial proposal of all.

Facing all of these pending regulatory actions, food and beverage companies will have a number of major decisions to make regarding a whole host of factors that will impact their bottom lines. Those seeking market advantages and regulatory certainty would be wise to engage the Trump administration and Congress on these issues sooner than later. If you would like help voicing your position or concerns regarding any of these matters, please contact Brownstein for assistance.

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