Packaging Law Works

by Ronald Doering

ONE LITTLE KNOWN AND often misunderstood area of Canadian food law relates to the regulation of food packaging materials. The safety of all materials used in the packaging of foods is controlled by a single page in Division 23 of the Food and Drugs Act and Regulations. Specifically, Section B.23.0001 prohibits the sale of foods in packages that may impart harmful substances to their contents. This puts the onus clearly on the food seller (manufacturer, distributor or vendor) to ensure that any packaging material that is used in the sale of food products will meet that requirement. Non-compliance could result in a range of enforcement actions including, product detention or a food recall.

Since the Canadian law is so general and in the absence of positive lists delineating permitted ingredients, many suppliers of packaging material intended for use with food voluntarily submit their material (whether in the form of a finished product to include: laminated film or a container, a formulated product such as a resin or colour concentrate) for a premarket assessment of their chemical safety. Obtaining a "no objection letter" from the Canadian Food Inspection Agency (CFIA) does not constitute formal approval in a legal sense; but it gives the recipients the confidence to assure their prospective customers that the products they are selling has been deemed acceptable from a chemical safety standpoint for use in specified food packaging applications.

Hundreds of these applications are made every year to the CFIA with perhaps half of them requiring some kind of formal health risk assessment by Health Canada. Simple applications with complete data can be done within a couple of months while more complex material (particularly when some data is missing) can take up to a year or more.

In my experience, the CFIA do an excellent job of managing this area of food regulation; they phone you back within a day or two, they will work with you and try to provide timely responses, and they provide excellent guidance for submissions. (By the way, there is mandatory pre-market approval required for all meat labels, but that is a subject for another day.)

The regulation of food packaging materials could serve as a good model for many other areas of agriculture and food law. Without compromising safety, risk assessments are completed and are communicated immediately. Prior approved substances are listed so that they effectively receive a GRAS (generally regarded as safe) type of status. Red tape is minimal. "No objection letters" can be issued the same day and because no regulatory change is required, there is no need to trigger our sclerotic regulatory system that requires years for simple regulatory changes. At the same time, the food sellers remain on notice that they still retain the onus of ensuring that the material is safe. Processing aids are regulated through a similar regime. Could new additives, new feed ingredients and novel foods also be regulated in this manner? ■

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