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## Director's Message



### NTP and the Need for Crisis Management

As I write this, I am preparing for the two presentations I will be giving at the "Quo Vadis Aloe Vera" symposium the IASC is sponsoring in Nuremberg, Germany. I'm looking forward to meeting many of you who will be attending, as well as making new acquaintances in the Aloe vera industry.

My presentations focus on providing general, global market data to demonstrate the current breadth and estimated potential of the overall market of Aloe vera, which we all know spans the gamut from cultivation to raw materials processing and supply to the myriad of finished products we see available and in more and more innovative applications, the science of Aloe vera and its benefits, the IASC certification program, and the threats to the industry, such as the pending NTP study, that are looming large and potentially threatening to take it all away.

While I don't mean to sound like an alarmist (or a broken record - this has been a topic of conversation for just about a year now), what I do want to point out is there is a great deal at stake. There are many jobs and many lives that would be affected should what I've taken to calling the "Titanic version" of the NTP threat come to pass - which would include the addition of Aloe vera to the California Proposition 65 list of chemical substances known to cause cancer, and would thereby require mandatory warning labels on products ("Ingredients in this product are known to the State of California to cause cancer"), possibly spur a great deal of class action litigation, and even more likely, cause a global regulatory issue.

Usually when I discuss this topic with members, their first reaction is something akin to "How can we make the NTP stop or not release the study", and that's certainly what we'd like to be able to do...but unfortunately it's not as simple as that.

What we know is the NTP did not study the Aloe vera that the vast majority of manufacturers put in their products during their two-year oral consumption study with mice and rats. We know the raw material that was given to the mice and rats in the study was unfiltered Aloe vera, and full of anthraquinones (aloe latex). What we also know is the NTP is a multi-disciplinary government agency that does not answer to the public directly, and are not swayed by public opinion or action - and very likely are also not swayed by any kind of legislative pressure.

That said, we also know we will be given an opportunity to tell the NTP what we know - that they studied an ingredient our industry does not sell, that we have data to prove it thanks to our analysis efforts - but what we don't know or have is any sense of surety that our information will be enough to stop the NTP from releasing the results anyway. There is no "silver bullet" that will kill the study. There is no single person or entity responsible that can "make it all go away". And when I tell people this - they usually get angry or frustrated about it, and understandably so, as it's their livelihood that is at stake. However distressing and seemingly unfair, we need to figure out what to do rather than react emotionally. What I'm getting at with this is that there are no guarantees

that there is anything we can do to absolutely stop the NTP from releasing the study results.

But here's what we CAN do - we can be prepared. At the behest of the board, the IASC has obtained proposals from global and recognized crisis management firms that have dealt with NTP issues in the past, and have outlined a plan to counter any negative reaction from the release of the NTP study data - and the advice we have been getting from these firms who are expert at handling situations just like ours (ie: acrylamide in potato chips, BP-A, etc.) - is if we are to be successful in a campaign against the NTP, any such actions need to be proactive and comprehensive, meaning we need to start them NOW and focus our actions across a myriad of "fronts" - and not wait until after the NTP study has been released and act reactively. These "fronts" include PR/communications - from identifying "experts" to clear messaging and media monitoring - to targeted legal and legislative actions.

Every IASC member and person making a living or getting support from the Aloe vera industry needs to ask themselves this - can we afford to "wait and see" what happens? Because waiting and seeing might equate to losing what may be "the" fight the Aloe vera industry faces - and losing the fight could very well mean losing Aloe vera.



Devon Powell  
Executive Director

## What is NTP?



### What Is the National Toxicology Program (NTP) and What Does It Have to Do with the Aloe Industry?

By Katia Fowler

Four years after the passage of the Dietary Supplement Health & Education Act (DSHEA), the Department of Health and Human Services' National Toxicology Program (HHS/NTP) hosted an "International Workshop to Evaluate Research Needs on the Use and Safety of Medicinal Herbs."<sup>[1]</sup> In addition to concerns that "herbal formulations are not subject to Food and Drug (FDA) pre-market toxicity testing" and that usage had "increased substantially" post-DHSEA,<sup>[2]</sup> NTP held the workshop because over the past several years it had received a number of nominations for herbs - mostly, if not all, by federal agencies.

In January 1998, NTP recorded goldenseal (*Hydrastis canadensis*), and constituents berberine and hydrastine; comfrey (*Symphytum officinale*); and saw palmetto (*Serenoa repens*) as new nominations for study by NTP. These herbs were nominated by the National Institute of Environmental Health Sciences of the National Institutes of Health (NIEHS/NIH). Following the workshop, the National Cancer Institute (NCI) in 1999 nominated several more herbs for testing: aloe vera (*Aloe vera*), ginseng (*Panax* spp.), kava (*Piper methysticum*) and milk thistle (*Silybum marianum*).<sup>[3]</sup>

Since the late '90s additional herbs and herbal compounds have been accepted for study by NTP including black cohosh (*Actaea racemosa*), bladderwrack (*Fucus vesiculosus*), *Echinacea purpurea* extract and bitter orange (*Citrus x aurantium*). Several months ago, during a July 2009 meeting, NTP's Board of Scientific Counselors recommended the program move forward with toxicological studies on dong quai (*Angelica sinensis*) root and extract. Whether or not this herb will be selected for study by NTP will be determined by the NTP Executive Committee. Evening primrose (*Oenothera biennis*) oil, butterbur (*Petasites* spp.), and valerian (*Valerianaoficinalis*) extract and oil are also awaiting review by the NTP Executive Committee.<sup>[4]</sup>

While new herbs are being nominated, toxicological studies on herbs accepted for study over a decade ago are wrapping up and results are under review for publication as NTP Technical Reports and peer-reviewed journals. The International Aloe Science Council (IASC) is actively working to prepare for the publication of NTP's findings on aloe vera. [5] Additionally, the American Herbal Products Association (AHPA) filed several comments on NTP's Technical Report on goldenseal. [6]

In light of the recent activity, this article is meant to serve as a source of information on NTP and its relevance to the aloe products industry. It also aims to inspire IASC member companies to become involved in the association's NTP-related work.

#### *What is the National Toxicology Program (NTP)?*

The Department of Health and Human Services (HHS) established NTP in 1978 to "coordinate toxicological testing programs within the Department; develop and validate improved testing methods; and provide information about potentially toxic chemicals to health regulatory and research agencies, the scientific and medical communities and the public." [7]

NTP is an inter-agency program composed of the National Institute of Environmental Health Sciences of the National Institutes of Health (NIEHS/NIH), the National Institute for Occupational Safety and Health of the Centers for Disease Control and Prevention (NIOSH/CDC), and the National Center for Toxicological Research of the Food and Drug Administration (NCTR/FDA).

NTP writes that it has "developed an increasingly interactive relationship with regulatory agencies. Through this relationship, the NTP plays an important, although indirect role in shaping public health policy."

#### *Who nominates substances and how does NTP decide which to study?*

Anyone can nominate substances for testing by NTP, including the public, federal and state agencies, international and non-governmental organizations, labor groups (occupational safety issues), industry and academia. In actual practice, however, it is often government entities that nominate substances for testing.

Each nomination undergoes several layers of review before being selected for testing. Nominations are preliminarily reviewed by representatives from federal agencies on the Interagency Committee for Chemical Evaluation and Coordination (ICCEC) and made available to the public for review and commentary. Next, an external advisory body to NTP, the NTP Board of Scientific Counselors reviews the nominations and public comments. A decision on whether to recommend the chemical for further study is made by the NTP Board of Scientific Counselors during an open public meeting. The final decision to proceed with testing is made by the NTP Executive Committee.

NTP identifies the following nomination principals for NTP studies:

- Chemicals found in the environment and not closely associated with a single commercial organization
- Biological or physical agents that may not be adequately evaluated without federal involvement
- Commercial chemicals with significant exposure that were first marketed prior to current testing requirements or those that generate too little revenue to support further evaluations
- Potential substitutes for existing chemicals or drugs that might not be developed without federal involvement
- Substances that occur as mixtures for which evaluations cannot be required of industry
- Chemicals or agents that will aid the understanding of chemical toxicities or an understanding of the use of test systems to evaluate potential toxicities
- Chemicals that should be evaluated to improve the scientific understanding of structure-activity relationships, and thereby help limit the number of chemicals requiring extensive evaluations
- Emergencies or other events that warrant immediate government evaluation of a chemical or agent

*Why are aloe and other herbs nominated and selected for testing by NTP, and what other compounds are being tested?*

NTP studies a wide variety and thousands of chemicals in consumer products, environmental surroundings, the workplace, medicines and therapeutics. In addition to herbal medicines, NTP stated in 2001 it was focusing on several other areas that "have received inadequate attention in the past": photoactive chemicals, contaminants of finished drinking water, endocrine-disrupting agents, DNA-based therapies and certain occupational exposures. Recently, NTP's attention has turned to Bisphenol A (BPA), nanoscale materials and formaldehyde. Additional chemicals currently under study include acetaminophen (the active ingredient in Tylenol) and indole-3-carbinol, which NIEH describes in its 1999 press release as "a substance in cruciferous vegetables such as broccoli, and thought to have potential to reduce the risk of cancer."

Information provided by NTP indicates herbs have been nominated and accepted for study based on "widespread and growing" usage and as "biological or physical agents that may not be adequately evaluated without federal involvement." As noted earlier in this article, most herbs have been nominated for study by federal agencies and a concern is repeatedly cited that FDA pre-market toxicity testing is not required of herbal medicines prior to marketing.

In a February 2009 document entitled, "Looking Deeper: How Today's Research is Building a Safer Tomorrow,"[\[8\]](#) NTP describes an interest broadened to dietary supplements in general. NTP writes:

Once a product is marketed, the FDA has the responsibility for monitoring safety and must show that a dietary supplement is not safe before it can take action to restrict its use or remove it from the marketplace. The NTP is working closely with the FDA to address questions about the safety of a broad range of dietary supplements including:

- Multipurpose and miscellaneous use supplements (e.g., goldenseal and milk thistle)
- "Women's health" supplements (e.g., black cohosh)
- Cancer chemoprevention supplements (e.g., green tea and resveratrol) "Anti-aging" supplements (e.g., *Ginkgo biloba* and ginseng)
- Weight loss aids and sports supplements (e.g., bitter orange and androstenedione[\[9\]](#))

*Who oversees the testing process and how does it work?*

Following selection for study by NTP Executive Committee, NTP designs and initiates studies based on "resources, priorities, and knowledge gaps." Substances may be studied for a variety of health-related effects, such as reproductive and developmental toxicity, genotoxicity, immunotoxicity, neurotoxicity, metabolism, disposition and carcinogenicity.

Each substance studied by NTP is assigned an NIEHS/NIH study scientist who designs a comprehensive testing strategy (design, methods, hypothesis, etc.). A project review committee evaluates the testing strategy and proposes a vehicle for execution (grant, contract, etc.).

Additionally, NTP receives external science oversight and peer review from the NTP Board of Science Counselors, the Technical Reports Subcommittee, Report on Carcinogens Subcommittee and the Advisory Committee on Alternative Toxicological Methods.

*What difference does it make to my company that aloe is being tested by NTP?*

NTP identifies itself as playing an important, although indirect, role in shaping public health by "providing needed scientific data, interpretations, and guidance concerning the appropriate uses of these data to regulatory agencies and other groups involved in health-related research."

NTP's scientific data, interpretations and guidance is primarily provided through the program's publications. NTP publishes longer-term studies, generally two-year rodent studies, as NTP Technical Reports and in peer-reviewed scientific journals. NTP's major publication, however, is its *Report on Carcinogens*.

For the herbal products industry, the regulatory impact of these publications would primarily be felt through

California's Proposition 65, which maintains a list of chemicals "known to the state of California" to cause cancer or reproductive toxicity. Under Proposition 65's disclosure requirements, a food or dietary supplement to which a listed carcinogen is added is generally required to provide a "clear and reasonable warning" that the food "contains a chemical known to the State of California to cause cancer."

The listing of chemicals in the Proposition 65 list is overseen by the State of California's Office of Environmental Health Hazard Assessment (OEHHA). OEHHA identifies NTP as an "authoritative body" for purposes of supporting the listing of a chemical as a carcinogen or reproductive toxin. Under the law, the "formal identification" of a chemical as a carcinogen by an authoritative body is a sufficient basis for including that chemical in Proposition 65's listing. The inclusion of a chemical in NTP's *Report on Carcinogens* (RoC) is generally agreed to be "formally identifying" a chemical as a carcinogen. According to OEHHA, an NTP Technical Report may also formally identify a carcinogen if certain criteria are met. [\[10\]](#)

The implication of this is that "sufficient" evidence in a Technical Report may lead OEHHA to list a substance, and in turn, require products including that substance bear a warning under Proposition 65. This may have additional public relations and legal repercussions.

*How can my company help?*

Please contact IASC Executive Director Devon Powell ([dpowell@iasc.org](mailto:dpowell@iasc.org); 301-588-2420) for more information.

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*Katia Fowler is Director of Communications for the American Herbal Products Association (AHPA). This article is based on an article originally published in the January 2010 AHPA Report.*

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[\[1\]](http://ntp.niehs.nih.gov/index.cfm?objectid=06F61238-E0BB-FD4F-E08DDB63E69442CC#HERBS) Description available at <http://ntp.niehs.nih.gov/index.cfm?objectid=06F61238-E0BB-FD4F-E08DDB63E69442CC#HERBS> <http://www.niehs.nih.gov/news/releases/news-archive/1998/herbsfin.cfm>

[\[2\]](http://ntp.niehs.nih.gov/ntp/Factsheets/HerbalFacts06.pdf) NTP's 2006 "Medicinal Herbs: Fact Sheet": <http://ntp.niehs.nih.gov/ntp/Factsheets/HerbalFacts06.pdf>

[\[3\]](http://ntp.niehs.nih.gov/ntp/msr.pdf) NTP's Dec. 18, 2009 *Management Status Report* (MSR) does not include comfrey and saw palmetto: <http://ntp.niehs.nih.gov/ntp/msr.pdf>. The MSR gives the status of those NTP agents selected for Study in one or more of the standard 2-week, 13-week, and/or 2-year Toxicology and Carcinogenicity Protocols.

[\[4\]](http://ntp.niehs.nih.gov/?objectid=9BEB6C5F-F1F6-975E-7D3F691C4A24FC33) To check the status of a nomination, visit NTP's "Nomination Status Search" Web page: <http://ntp.niehs.nih.gov/?objectid=9BEB6C5F-F1F6-975E-7D3F691C4A24FC33>.

[\[5\]](http://www.iasc.org/insidealoe.html) IASC's activities in response to the pending publication of NTP's findings are discussed in the association's newsletter: <http://www.iasc.org/insidealoe.html>. For more information, contact Executive Director Devon Powell ([dpowell@iasc.org](mailto:dpowell@iasc.org); 301-588-2420).

[\[6\]](mailto:mmcguffin@ahpa.org) For more information on AHPA's activities, please contact AHPA President Michael McGuffin ([mmcguffin@ahpa.org](mailto:mmcguffin@ahpa.org); 301-588-1171 x201)

[\[7\]](http://ntp.niehs.nih.gov/ntp/Main_Pages/PUBS/NTP2001CurrDir.pdf) NTP's 2001 "Current Directions & Evolving Strategies" [http://ntp.niehs.nih.gov/ntp/Main\\_Pages/PUBS/NTP2001CurrDir.pdf](http://ntp.niehs.nih.gov/ntp/Main_Pages/PUBS/NTP2001CurrDir.pdf)

[\[8\]](http://ntp.niehs.nih.gov/files/NTP_CurrentDirectionsBrochure_Final_508.pdf) Available online at [http://ntp.niehs.nih.gov/files/NTP\\_CurrentDirectionsBrochure\\_Final\\_508.pdf](http://ntp.niehs.nih.gov/files/NTP_CurrentDirectionsBrochure_Final_508.pdf)

[\[9\]](http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2004/ucm108262.html) Editor's Note: Androstenedione products marketed as dietary supplements are in fact unapproved drugs, as clearly established by FDA in 2004. See <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2004/ucm108262.html> and <http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/ComplianceEnforcement/ucm081788.htm>

[10] "NTP Technical Reports with findings of "clear evidence" of carcinogenic activity in at least one experiment are examined to determine whether listing via the authoritative bodies mechanism is required. In such cases, OEHHA examines the Technical Report to determine whether the technical criteria in Section 12306(e) are met. Thus, the evidence is deemed "sufficient" for listing via this mechanism if there is "an increased incidence of malignant tumors or combined malignant and benign tumors in multiple species or strains, in multiple experiments (e.g., with different routes of administration or using different dose levels), or, to an unusual degree, in a single experiment with regard to high incidence, site or type of tumor, or age at onset" (Section 12306(e))." For a complete discussion see [http://oehha.ca.gov/prop65/policy\\_procedure/ntpotechrev.html](http://oehha.ca.gov/prop65/policy_procedure/ntpotechrev.html)

## Ullman Shapiro & Ullman INSIDE LAW



### Registering the Copyright in Website and Company Materials

By Charles H. Knull, Esq.

The Federal Copyright Act protects the "original expression" of an idea or ideas when such expression is "fixed", that is, when it is printed, painted, recorded or filmed. The ideas themselves are not protected by copyright. Anybody making or marketing consumer products must seriously consider registering copyrighted material such as the text and illustrations of a web site or of print advertising, tapes of infomercial recordings, the labels on the goods and its packaging, and any instructional or informational material packed with products or offered as handouts.

A little over a month ago, in Elsevier v. United Health Group, the U.S. District Court for the Southern District of New York (Manhattan) decided *once again* that copyright owners, which include anybody who owns a website or puts out printed publications or advertising, must register works with the U.S. Copyright Office in order to collect any meaningful damages and attorney's fees from an infringer. The owner of a copyright has the right to prevent (by injunction) others from copying, distributing and otherwise using the copyrighted material *at the owner's own expense* if it does not register before an infringement. However, if the copyright owner has made a timely filing of an application for registration of the material with the U.S. Copyright Office, the copyright owner can also recover "statutory damages" (in practice, a form of punitive damages) and its own attorney fees from the infringer. Thus, as a simple infringement might not carry much in the way of monetary damages and may cost tens of thousands dollars in legal fees, a company that makes timely registrations of its material can make it extraordinarily costly for anyone to copy such material. This is very inexpensive protecting. With prior registration, a court can award the owner of a copyright a \$100,000 plus its attorney's fees for prosecuting the case. Without the registration, the company pays its lawyers for the privilege of recovering a few thousand dollars at most.

An application for copyright registration is a simple document to complete and the government filing fee is only \$50.00 or \$30.00 using the online application. Few protective actions are as cost-effective and simple to do.

What is more, the Copyright Office has revised its regulation that use to require website copyrights to include copies of the entire websites with applications. Starting February 24, 2010, the copy need not be submitted (although it is a good idea permanently retain a backup copy of the website at the time of application). This change removes a large obstacle for companies that should be registering copyright in their websites but have been unwilling to make the copy. Until it was too late to make the difference.

Businesses should take the effort to register the U.S. copyright in materials such as catalogs, marketing materials, instruction sheets, websites and even product labels. Since people bent on borrowing a company's good will by trading on trademarks ordinarily care little about also borrowing packaging, web site text, or instructional inserts, having registered copyrights, combined with a trademark infringement suit, can obliterate such an infringer. The Copyright Office has made registration of copyrights a lot easier by offering online registration of claims to copyright. Online registration through the electronic Copyright Office (eCO) should be the preferred way to register basic claims for literary works; visual arts works; performing arts works, including motion pictures; sound recordings; and single serials. Advantages of online filing include a lower filing fee; the fastest processing time; online status tracking of your claim; secure payment by credit or debit card, electronic

check, or Copyright Office deposit account; and the ability to upload certain categories of deposits directly into eCO as electronic files. To register your claim electronically, go to the Copyright Office website at [www.copyright.gov](http://www.copyright.gov) and click on the eCO logo.

Makers of nutritional products invest in marketing and advertising in order to set their products apart from other products. It is penny wise and pound foolish not to reinforce this investment by taking the necessary steps to protect the valuable copyrighted material that are the by-product of such marketing and advertising. Much of the clout in the copyright law comes from early filing and registration.

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*"Inside Law" is an "Inside Aloe: Online" exclusive column by IASC General Counsel Ullman, Shapiro and Ullman.*

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Ullman, Shapiro & Ullman attorneys have long established nationwide reputations in the areas of Food and Drug Law, Intellectual Property and Trade Regulation Litigation.

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**IASC members receive a 10% discount**

## IASC NEWS



### IASC & ChromaDex Develop HPLC Method for Aloin Analysis

In conjunction with ChromaDex Corp (OTCBB: CDXC), the IASC has developed a High Performance Liquid Chromatography (HPLC) method for analyzing the quantity of aloin in finished liquid or powder products containing Aloe vera. The method is currently undergoing additional validation work for inclusion in the IASC developed monograph on Aloe vera juice being created by the American Herbal Pharmacopeia, which is expected to be released by the end of March, but is currently available for general usage.

"We're excited to have been involved in the development of this HPLC methodology with ChromaDex, which has a limit of detection below the EU standards of 0.1ppm and has proven to be very consistent", said IASC Executive Director, Devon Powell. "The industry needed this method to be able to offer manufacturers a way to clearly demonstrate that products sold on the market conform to the IASC standard of <10ppm of aloin in finished products, and perhaps more importantly, differentiate them from the National Toxicology Program (NTP) study sample material".

Powell further encouraged all Aloe vera manufacturers to submit their finished products to ChromaDex for analysis and provide a copy of the results to the IASC to be used as substantiation in its report to the National Toxicology Program (NTP) and FDA regarding the NTP's 2-year oral study on Aloe vera for carcinogenicity. "Of course, a business can run aloin analysis in house using any fit-for-purpose methodology - but as we used this method to test the NTP sample used in their study, there will be a greater "apples-to-apple" comparison that is more likely to convince the FDA and NTP of the results."

"We are honored to be chosen by the IASC to develop this important analytical method," said Frank Jaksch, co-founder and CEO of ChromaDex. "ChromaDex will continue to support the natural products community with innovative and new analytical technology as the demand grows."

For more information on where to send samples or for information on the methodology, contact ChromaDex by phone at 949-419-0288, by e-mail at sales@chromadex.com, or visit the ChromaDex website at www.chromadex.com, or contact Devon Powell at the IASC office (dpowell@iasc.org or 301.588.2420 ext. 102).

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**About ChromaDex** *ChromaDex is a world leader in the development of Phytochemical and Botanical Reference Standards and the creation of associated intellectual property. ChromaDex is committed to sustainable "Green chemistry" and provides the dietary supplement, food, beverage, nutraceutical and cosmetic industries with the analytical tools and services to meet product regulatory, quality, efficacy and safety standards.*

## CONGRESSIONAL NEWS: McCAIN BILL



### Senator McCain Introduces Legislation Regarding "FDA's Current Regulation of Dietary Supplements"

Senator John McCain (R-AZ) held a press conference Feb. 3 at which he announced his intention to introduce legislation that would amend the Federal Food, Drug and Cosmetic Act (FFDCA) in several areas that would affect dietary supplements. The bill (S 3002) introduced Feb. 4 is co-sponsored by Senator Byron Dorgan (D-ND).

The bill would make the following amendments to the FFDCA's current governance of dietary supplements:

- New facility registration requirements to identify all brands, products, and ingredients
- A revised definition of new dietary ingredients (NDIs) that would rely on an FDA-generated positive list of allowed ingredients
- Extension of existing adverse event report (AER) requirements, such that even minor AERs would need to be submitted to FDA annually
- Policing and record maintenance obligations for downstream manufactures and retailers, who will be obliged to obtain written confirmation, from ingredient suppliers or from supplement brand marketers, respectively, of compliance with facility registration and product notification and rules.
- Obligations and authority for FDA with regard to removing products that present the risk of serious adverse health consequences or death, or are adulterated or misbranded

"Though we have not yet examined this bill completely, it places new burdens on dietary supplements that are not required for any other class of food," noted Devon Powell, Executive Director of the International Aloe Science Council (IASC). "And at least in the case of the proposed policing responsibility for retailers, it appears to be more stringent than retailer requirements under current drug laws."

More specifically, the bill's new registration requirements on dietary supplement facilities would establish that these companies disclose "all trade names under which the dietary supplement registrant conducts business [and] a list of all dietary supplements manufactured, packaged, held, distributed, labeled, or licensed by the facility." Dietary supplement facilities would also need to identify all product ingredients and to submit all product labels, and all required information would be required to be updated annually.

While all food facilities are now required to be registered with FDA, there is no current requirement for disclosure of products, brands and ingredients, or for supplying labels, and the bill would not extend such new obligations to any other foods.

The bill would also replace the definition of "new dietary ingredients." Under the Dietary Supplement Health and Education Act (DSHEA), these are defined as any ingredient that "was not marketed in the United States before October 15, 1994 and does not include any dietary ingredient which was marketed in the United States before



October 15, 1994." The bill would replace this definition by creating a list of "Accepted Dietary Ingredients", to be prepared, published, and maintained by the Secretary," and define a new dietary ingredient as any ingredient not included on such list.

Revisions would also be made to the current new dietary ingredient notification process, such that even ingredients that are presently used in food and would be used for the first time in dietary supplements are subject to notification.

With regard to both facility registration and compliance with NDI regulations, the bill would establish a requirement for dietary supplement companies and retailers of supplements to "obtain adequate written evidence from the preceding responsible entity in the chain of commerce" that supplements they receive are registered as required under the facility registration rules, and that all NDI notification obligations have been met. All received evidence of such compliance would be subject to FDA review and inspection.

The draft legislation also addresses adverse event reporting. Dietary supplement marketers are currently required to submit serious adverse event reports to FDA within 15 days of receipt. The McCain legislation would also require annual submission of a compilation report of all adverse event reports. This would establish a requirement that is similar to the current law for prescription drugs. Marketers of conventional foods have no adverse event reporting requirements, even for serious adverse events.

Finally, the bill would create a new responsibility for FDA to issue orders for a supplement company to cease distribution of any product for which FDA determines a "reasonable probability that a dietary supplement or a product marketed or sold as a dietary supplement would cause serious, adverse health consequences or death, or is adulterated or misbranded." The agency would also be given mandatory recall authority. This new agency responsibility and authority now exists only for certain medical devices.

During the Feb. 3 press conference, Senator McCain's office identified several groups that support the yet-to-be-introduced legislation. These include USADA, as well as Major League Baseball, the National Basketball Association, the National Football League, the National Hockey League, the United States Olympic Committee, the American College of Sports Medicine, National College Athletic Association and the PGA Tour.

The text of the bill is available here:

[http://thomas.loc.gov/cgi-bin/query/z?c111:S.3002:](http://thomas.loc.gov/cgi-bin/query/z?c111:S.3002)

#### THE SCIENCE OF ALOE - Recently Published Studies

- [Estimation of tolerable upper intake level \(UL\) of active aloe.](#)
- [Combinative method using HPLC fingerprint and quantitative analyses for quality consistency evaluation of an herbal medicinal preparation produced by different manufacturers.](#)
- [Antimalarial herbal remedies of Msambweni, Kenya.](#)
- [Safety studies conducted on a proprietary high-purity aloe vera inner leaf fillet preparation, Omatrix\(R\).](#)
- [Susceptibilities of Escherichia coli and Staphylococcus aureus to Aloe barbadensis.](#)

- [A new approach to postoperative peritoneal adhesions: Prevention of peritoneal trauma by aloe vera gel.](#)
- [Intestinal absorption of aloin, aloe-emodin, and aloesin; A comparative study using two in vitro absorption models.](#)
- [Pre-Treatment with Aloe vera Juice Does Not Enhance the in vitro Permeation of Ketoprofen across Skin.](#)
- [The use of complementary and alternative medicine by patients attending a general otolaryngology clinic: can we afford to ignore it?](#)
- [Antitumor Properties and Modulation of Antioxidant Enzymes' Activity by Aloe vera Leaf Active Principles Isolated by Supercritical Carbon Dioxide Extraction.](#)
- [Investigation of the effects of Aloe barbadensis on rat ovaries: a preliminary study.](#)

## IASC NEWS: COMMENTS FILED WITH FDA



### FDA Overreaches in Liquid Product Draft Guidance - IASC, AHPA Joint Comments

In joint comments filed Tuesday, the International Aloe Science Council (IASC) and the American Herbal Products Association (AHPA) assert the Food and Drug Administration (FDA) overreaches when it suggests that packaging or serving size may be factors - and potentially the only factor - that are indicative of whether a liquid supplement product is represented as a conventional food.

IASC and AHPA submitted comments in response to FDA's draft guidance for industry, "Factors that Distinguish Liquid Dietary Supplements from Beverages, Considerations Regarding Novel Ingredients, and Labeling for Beverages and other Conventional Foods." According to the draft guidance released Dec. 4, 2009, "Liquid products that suggest through their serving size, packaging, or recommended daily intake that they are intended to be consumed in amounts that provide all or a significant part of the entire daily drinking fluid intake of an average person are represented as beverages."

However, IASC and AHPA point out that it is nowhere written in FDA's food labeling regulations that serving sizes for conventional foods are reserved for conventional foods only. Likewise, there is no regulation that implies that any form of packaging is reserved to conventional foods and not available to dietary supplements.

"Simply stated, neither packaging nor serving size 'represents' the 'form' of a food," said IASC Executive Director Devon Powell. "The first is required to carry and preserve the food for the consumer, and the second is required

to be stated as part of the nutrition information for both dietary supplements and conventional foods."

The trade associations also note the draft guidance fails to acknowledge and take into account prior statements by FDA regarding dietary supplements in conventional food form, and request that any final guidance be revised as needed to make all of the points previously communicated by the agency. For example, in the preamble to a final rule addressing nutrient content claims, health claims and statements of nutritional support for dietary supplements, FDA writes: "...a dietary supplement may be a product with physical attributes (e.g., product size, shape, taste, packaging) that are essentially the same as a conventional food, so long as it is not represented for use as a conventional food" (62 FR 49859, Sept. 23, 2997).

"The draft guidance represents new and original thinking by the agency that is in direct opposition to prior policy provided to industry in a rulemaking process," said Powell. "If FDA does not accept the suggestions of IASC and AHPA, the issuance of an unamended guidance as final would constitute de facto rulemaking and be in opposition to the rulemaking requirements of the Administrative Procedure Act."

The joint comments filed by IASC and AHPA are available here:

[http://www.iasc.org/pdfs/10\\_0202\\_AHPA\\_IASC\\_Comments\\_FDALiquidProductsDraftGuidance.pdf](http://www.iasc.org/pdfs/10_0202_AHPA_IASC_Comments_FDALiquidProductsDraftGuidance.pdf)

FDA's draft guidance is on the agency's Web site:

<http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/ucm192702.htm/>.

## REGULATORY NEWS: FDA'S FOOD FACILITY REGISTRY

### Are You in Compliance? OIG Finds Significant Problems with FDA's Food Facility Registry

According to a Department of Health and Human Service's Office of Inspector General (HHS/OIG) report released on Friday, almost half of 130 domestic food facilities surveyed by OIG failed to provide accurate information for the Food and Drug Administration's (FDA) Unified Registration and Listing System ("the food facility registry"). Additionally, five percent of the facilities failed to register with FDA, and two percent did not cancel their registration when required under the law.

The food facility registry was established by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 ("the Bioterrorism Act") and requires that certain food facilities - including AHPA member companies engaged in the manufacturing, processing, packing, or holding of dietary supplements and dietary ingredients - provide certain specified information to FDA to help the agency (1) readily locate facilities during an outbreak of foodborne illness; and (2) locate these facilities for inspection. Retailers, restaurants and transporters are among the narrow group of exempt entities.

"Proper registration under the Bioterrorism Act helps FDA find the source of contamination during an outbreak of foodborne illness and remove contaminated products from the supply chain," said Executive Director Devon Powell. "IASC encourages companies to confirm the accuracy of their registrations, properly inform and train employees in this obligation and provide optional contact information to FDA as appropriate."

According to OIG, 52 percent of managers (67 of 130) at the surveyed facilities were either unaware of FDA's registry requirement (5 of 67) or unaware the law required them to update the information in the registry within 60 days of a change in the facility's information (62 of 67).

The most frequent pieces of information that were either inaccurately or not reported by companies were:

- Contact information for the facility
- Emergency contact phone number
- Contact information for the owner or operator

- Contact information for the parent company

OIG writes, "Facility managers most commonly reported that they failed to provide FDA with accurate information either because they did not update the information for the registry as required; they incorrectly entered the information during the initial registration; or the responsibility for maintaining the registration was transferred to another person who mistakenly reregistered the facility." OIG also notes several facilities had multiple registrations for the same facility.

The OIG report is available here <http://oig.hhs.gov/oei/reports/oei-02-08-00060.pdf>

For additional information see the FDA Web site:

<http://www.fda.gov/Food/FoodDefense/Bioterrorism/FoodFacilityRegistration/default.htm>

## ALOE IN THE NEWS



[As more people use supplements, researchers warn of mixing herbs, meds - Sun Sentinel](#), Feb. 15, 2010

[Aloe Vera: nature's gift to health - The Gleaner](#), Jan. 16, 2010

[2010 Top 10 Flavor Trends by Category - Food Product Design](#), Jan. 15, 2010

[Aloe Mania - The Nelson Mail](#), Jan. 15, 2010

[Herbalists score major victory - Daily Nation \(Kenya\)](#), Jan. 5, 2010

[Aloe Vera - the money spinner - Asian Tribune](#), Jan. 4, 2010

[Fresh juicy and aloe - Express Buzz](#), Dec. 24, 2009

[7 Ways to Empty Flexible-Spending Accounts Now - SmartMoney](#), Dec. 22, 2009

## REGULATORY NEWS: NEW CBP RULE

### New CBP Filing Rule for Imports via Ocean Vessels Effective January 26, 2010

The U.S. Bureau of Customs and Border Protection (CBP) published an interim final rule on Nov. 25, 2008 that requires, among other things, that importers of cargo into U.S. ports submit an Importer Security Filing (ISF) by way of a CBP-approved electronic data interchange system before the cargo is brought into the United States by ocean vessel.[1] The ISF rule, now found at 19 CFR 149, implements sections of the Security and Accountability for Every (SAFE) Port Act of 2006 and the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002.

Although this rule became effective 60 days after publication, CBP provided a compliance date one year later, on Jan. 26, 2010. As of that date, importers must provide certain information 24 hours "before the cargo is laden aboard the vessel at the foreign port," including: the seller; the buyer; the importer of record number or foreign trade zone applicant identification number (e.g., a Social Security Number or Employer Identification Number); the consignee number(s) (as defined in the rule); the manufacturer (or supplier); the ship to party; the country of origin; and the commodity Harmonized Tariff Schedule of the United States (HTSUS) number. Additional information, consisting of the location at which the cargo container was stuffed and the identity of the consolidator, must be provided "as early as possible, in no event later than 24 hours prior to arrival in a United States port (or upon lading at a foreign port that is less than a 24 hour voyage to the closest United States port)."

Submission of the newly required ISF filing is in addition to, and must be made separately from the existing "prior notice" requirement established by the Bioterrorism Act of 2002. Importers of food, including dietary ingredients and dietary supplements, are already required to submit much the same information to the Food and Drug Administration prior to importation via any carrier (i.e., land, sea, or air).

Failure to comply with the ISF rule may result in CBP-issued liquidated damages of \$5,000 per violation, and the agency may withhold release or transfer of the cargo or refuse allow merchandise to be unloaded, seize merchandise unloaded without permission, or subject cargo "do not load" orders at origin or further inspection on arrival.

Additional information on the ISF rule, commonly referred to as "10+2" in reference to the 10 data elements required to be submitted by importers and two additional elements provided by the transportation carrier, is available at [http://www.cbp.gov/xp/cgov/trade/cargo\\_security/carriers/security\\_filing/](http://www.cbp.gov/xp/cgov/trade/cargo_security/carriers/security_filing/).

[1] The rule itself does not include the word "ocean," but an explanatory document produced by CBP clarifies that the rule "only applies to cargo arriving in the United States by ocean vessel; it does not apply to cargo arriving by other modes of transportation" (see [http://www.cbp.gov/linkhandler/cgov/newsroom/publications/trade/import\\_sf\\_carry.ctt/import\\_sf\\_carry.pdf](http://www.cbp.gov/linkhandler/cgov/newsroom/publications/trade/import_sf_carry.ctt/import_sf_carry.pdf)).



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