



Food and Beverage News and Trends

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This regular publication by DLA Piper lawyers focuses on helping clients navigate the ever-changing business, legal and regulatory landscape.

- **USDA, FDA formally agree to coordinate food-oversight efforts.** The USDA and the FDA formally agreed on January 30 to coordinate their efforts to oversee the safety of the nation's food supply. At a White House signing ceremony, Agriculture Secretary Sonny Perdue and FDA Commissioner Scott Gottlieb announced that the two agencies will expand their efforts to work together in food regulation. "Over the last several months, the Secretary and I have worked closely and identified several areas where we can strengthen our collaboration to make our processes more efficient, predictable, and potentially lower cost to industry; while also strengthening our efforts to ensure food safety," Gottlieb said in a statement. "This agreement not only formalizes this ongoing coordination but presents a great opportunity to expand those efforts through better integration and increased clarity to the agriculture and food processing sectors."
- **Beef industry group asks USDA to create formal definition of "beef."** On February 2, the US Cattlemen's Association, which represents beef producers, has formally asked the US Department of Agriculture to define the term "beef" under federal law to exclude synthetic meat or meat grown in a laboratory from animal cells. So-called "clean meat," created in laboratories rather than produced from animals that are slaughtered, has been gaining market share and consumer interest. The petition contends that products of this type, "which are not

derived from animals born, raised, and harvested in the traditional manner, should not be permitted to be marketed as 'beef,' or more broadly as 'meat' products." The petition "marks an important moment, one that promises to pit Silicon Valley foodie futurism against longtime food-industry players," said an article in *Quartz* magazine. The Good Food Institute, which lobbies on behalf of meat-alternative companies, is expected to respond soon to the petition.

- **Pennsylvania high court will hear appeal of soda tax case.** The Pennsylvania Supreme Court announced January 30 that it will hear an appeal of a lawsuit challenging Philadelphia's year-old tax on sweetened beverages. The case is being pursued by retailers and the soda industry. The issue before the court will be whether the tax violates a 1932 law that prohibits the city from taxing a transaction or subject that is already being taxed by the state. Last year, a lower court upheld the 1.5-cent-per-ounce tax, ruling that it does not duplicate the state sales tax because it is imposed on distributors, not retailers. The money from the tax is intended to pay for pre-kindergarten programs, recreation centers and schools. Last year, \$78 million was raised via the tax, but Philadelphia has put off spending those funds pending the state supreme court's decision.
- **New bill would require disclosure of sodium levels in Philadelphia restaurant food.** On January 25, Philadelphia city Councilwoman Blondell Reynolds-Brown introduced new legislation that would require sodium warning levels to be included in all chain restaurant menus throughout that city. Under the proposed law, restaurant chains would be required to place an icon on permanent menu items or combination meals that contain 2,300 milligrams or more of sodium. The icon would read, "Sodium content higher than daily recommended limit (2,300 mg). High sodium intake can increase blood pressure and the risk of heart disease and stroke." Two CDC studies have found that Philadelphia has extraordinarily high rates of hypertension and the highest rate of premature death from heart disease of the ten largest US cities. Hypertension rates are even higher among African Americans. The initiative has already received support from Philadelphia Health Commissioner Thomas Farley and Mayor Jim Kenney. A vote is expected in the spring.
- **Hep A in the news.** A multistate outbreak of Hepatitis A continues to spread. The outbreak is worrisome because Hep A is easily transmitted by food, beverages and contaminated surfaces and objects.
Michigan remains the epicenter of the outbreak – since its start in 2016, more than 730 have fallen ill and at least 24 have died, and there is no sign it is slowing down. The virus is slowly moving north in Michigan, and in the last few days has been reported in mid-state Eaton County and in Saginaw County. County health departments are struggling to address the epidemic. The state health department, noting that men who have sex with men make up 14 percent of state residents who've contracted the virus since August 2016, is bringing mobile vaccination clinics to gay bars in the Detroit area throughout February. Vaccination clinics in southeast Michigan have already been targeting jails and places where the homeless congregate.
In California, Santa Cruz county declared its Hep A outbreak at an end, but on February 5, Monterey County announced an outbreak among its homeless population.
In Erie County, New York, an employee of both a restaurant and a senior living facility exposed hundreds of people to the virus and, reports Food Safety News, very limited time remains for them to seek post-exposure vaccinations.
In Utah, the *Salt Lake Tribune* reported on February 1 that the Hep A outbreak in that state continues growing. Recently, workers at two food outlets were found to be infected with Hep A, potentially exposing thousands, but, the paper said, a highly publicized vaccination campaign appears to have worked – no additional cases linked to those outlets have been discovered so far. In Utah County, vaccination efforts are focusing on the county jail.
In Kentucky, under a law taking effect at the start of the academic year in August, all children are required to have an immunization certificate on file with their school showing they have completed the two-dose Hep A vaccine.
- **Dairy industry asks FDA to delay effective dates of Nutrition Facts label.** The International Dairy Foods Association (IDFA), which represents the nation's dairy manufacturing and marketing industries and their suppliers, urged the FDA in comments filed February 5 to make several updates to its system of regulating dairy products. These include modernizing outdated standards of identity for dairy products, revising "overly burdensome" regulations under the Food Safety Modernization Act and extending the compliance date for the revised Nutrition Facts label. The new Nutrition Facts label is set for a January 1, 2020 compliance date, in the case of companies with \$10 million or more in annual food sales, and by January 1, 2021, for smaller companies. The IDFA asked the FDA to extend both of those deadlines by six months to help the industry reduce costs.
- **Public health researchers ask FDA to regulate "toddler drinks."** In a February 5 press release from New York University, researchers at the NYU College of Global Public Health and the Rudd Center for Food Policy &

Obesity at the University of Connecticut urge the FDA to take steps to regulate "toddler drinks" – products marketed for parents to give children who are from nine to 36 months of age. The researchers say that toddler drinks, which are primarily composed of powdered milk, corn syrup, other sweeteners and vegetable oil, are not more healthful than infant formulas, regular milk or breast milk, and that that they "may undermine a nutritious diet" for toddlers. "The FDA and manufacturers should work together to end the inappropriate labeling of toddler drinks and ensure caregivers have reliable information to nutritiously feed their children," the researchers contend.

- **Humane Society sues USDA over withdrawal of organic rule.** In a lawsuit filed January 12, the Humane Society of the United States contends that the USDA acted improperly when it moved to withdraw the Organic Livestock and Poultry Practices Rule, which was adopted in January 2017 after a decade of input by organic producers and consumers. The rule covers an array of animal-care protocols for animals raised under the "organic" label and was intended to strengthen the standards for organic milk, meat, and eggs that have been in place since 1990. "Withdrawing this rule threatens to erode the integrity of the organic seal and jeopardizes the prosperity of many rural organic farmers who pride themselves on already being capable of meeting higher standards. The fate of this rule leaves a nearly \$50-billion-per-year industry with uncertainty and consumer confusion," the group wrote. The lawsuit was filed in the US District Court for the District of Columbia. See some of our earlier coverage of this story.

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