



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 says no to faster poultry processing.** The USDA on January 31 rejected a proposal that, as part of a new inspection system, would have significantly increased speeds on poultry processing lines. Under the proposed regulations, processors could have accelerated line speeds from an average of 140 birds per minute to 175 birds per minute. The National Chicken Council petitioned the USDA to allow the higher speed in September 2017. The proposal was widely attacked by unions and food safety, worker and consumer advocates, and its rejection is being seen as a rare regulatory victory under the current administration. Twenty US plants that are part of a USDA pilot program already operate at the higher speeds, and they will be allowed to continue. Attention now turns to a USDA proposal to raise line speed caps in hog processing plants.
- **Congress members assail USDA on organic meat issue.** In a January 17 letter, a US senator and a US representative criticized the USDA for threatening to withdraw a widely popular final rule passed near the end of the Obama Administration that would heighten animal welfare standards for organic producers. Senator Patrick Leahy (D-NH) and Representative Peter DeFazio (D-OR) wrote that the current USDA position, which contends that the department lacks the power to impose sweeping changes concerning how organic animals are housed, transported and slaughtered, is incorrect under the law. As the original proponents of the organic law, Leahy and

DeFazio said their intent was to have the department be free to require producers to engage in any and all types of humane practices for animals whose meat bears the "organic" label. See our earlier coverage of this story.

- **FDA faces hearing over its food-recall policies.** On January 19, the US House of Representatives' Energy and Commerce Committee held hearings on the food-recall process under the aegis of the FDA. Responding to a recent critical report by the inspector general of the Department of Health and Human Services, members of the committee criticized the process as too slow and insufficiently transparent. Committee Chair Gregg Harper (R-MS) said, "The OIG found that FDA was woefully slow in starting recalls. The average length before a recall began once FDA knew of the safety issue was 57 days. The report also raises questions about the FDA's ability to cope with uncooperative companies." FDA official Douglas Stearn, a witness at the hearing, said that the agency has improved its recall policies in recent years and that it has a new team and policy called SCORE, the Strategic Coordinated Oversight of Recall Execution, that is expediting all recall procedures. Stearn also noted that the Food Safety Modernization Act shifts the focus of the food safety system from responding to contamination incidents to preventing them.
- **Convictions upheld.** The US Court of Appeals for the Eleventh Circuit in Atlanta has upheld the convictions of Peanut Corporate of America CEO Stewart Parnell; his brother, peanut broker Michael Parnell; and Mary Wilkerson, formerly a quality manager at PCA. All three are now serving time in federal prisons for their parts in a massive cross-border Salmonella outbreak that killed nine people and sickened thousands more in late 2008 and early 2009. The 2013 indictment in the case listed 76 federal felony charges; ultimately, Stewart Parnell was sentenced to 28 years, Michael Parnell to 20 years; and Mary Wilkerson to a single count of obstruction that brought her five years. These sentences are the harshest ever handed down in a food safety case. Prosecutors had sought life in prison for the 61-year-old Parnell.
- **Hep A in the news.** On January 23, the **San Diego County** Board of Supervisors declared that San Diego's public health emergency around a deadly outbreak of Hepatitis A is at an end. County public health officer Wilma Wooten, MD, announced, "The sustained vaccination, sanitation, and education efforts we undertook will continue and we will remain vigilant to make sure that the outbreak activity doesn't return." However, elsewhere in the US, the outbreak marches on – **Hawaii** and **Missouri** are the latest states reporting cases of the same strain of Hep A. In Salt Lake County, **Utah**, the Board of Health has amended its health regulations as of February 1: when anyone in a food establishment has been in contact with a person infected with Hep A, then all the food workers in that establishment must be vaccinated. In **Michigan**, meanwhile, the outbreak has become the nation's deadliest – at this writing, 727 cases, with nearly 550 requiring hospitalization and a death toll of 22. The state has allocated \$7.1 million to fighting the outbreak, largely for community outreach and vaccination targeting high-risk groups. On January 23, reports the Detroit Free Press, the Detroit Health Department asked all food workers in the city to get a Hep A vaccine and all food establishments in the city to make arrangements for workers to get vaccinated; in early February, it is holding another series of free vaccination clinics around the city. More than 150 of Michigan's cases have been found in Detroit residents. Nationwide, about two-thirds of those who have fallen ill are homeless or drug users, but the remaining victims fit neither of those categories.
- **Taking sodium reductions with a grain of salt?** The Salt Institute is urging the FDA not to take any action in pursuit of voluntary reduction of the amount of sodium in the American diet. The institute, which represents salt manufacturers, was responding to the agency's 2018 Strategic Policy Roadmap, which lists dietary sodium reduction among its priorities. Lori Roman, president of the institute, stated, "Research shows Americans already eat within the safe range of sodium consumption and population-wide sodium reduction strategies are unnecessary and could be harmful." The average American consumes about 3,400 milligrams of sodium daily, an amount the institute said "may actually be on the low side of the healthy range." Roman, said on January 26, "The FDA's efforts under previous administrations to pursue unwarranted and unwise population-wide sodium reduction is another example of the government creating policy based on outdated, incorrect sodium guidelines that have been refuted by ten years of research."
- **FDA signs off on Chinese GM rice.** The FDA has notified a research team at China's Huazhong University that its genetically modified rice, Huahui No.1, has passed safety and nutritional inspections – a key step toward the export of the grain and its products to the US. The Huazong team developed the rice to resist such damaging pests as the rice stem borer. The agency said, "Genetically engineered Huahui No.1 rice grain does not raise issues that would require premarket review or approval by FDA." Huahui No.1 still cannot be planted in the US until the USDA has cleared it. While China is investing billions of dollars in developing GM crops, it continues to prohibit them in commercial farming and food production. Huahui No. 1 received a safety certificate from the Chinese government in 2009, but authorities have never approved it, or any other GM grain, for commercial use in China.

- **Pondering soda taxes worldwide.** Former Treasury Secretary Lawrence Summers, in a *Washington Post* opinion column published January 19, announced that he and former New York Mayor Michael Bloomberg are kicking off a global Task Force on Fiscal Policy for Health. The purpose of the task force is to explore ways in which "underused fiscal-policy tools" can reduce the incidence of disease and premature death worldwide. What this means on a practical basis, Summers wrote, is the possible deployment of taxes to reduce purchases of items like alcohol, tobacco and sugar. The article's title: "If We Want to Improve Global Health, We Need to Tax the Things That Are Killing Us." If Summers's proposals become influential, many nations would soon be considering excise taxes on sugary products. Bloomberg has already spent many millions of his personal fortune to support such taxes in the United States.
- **Federal appeals court will rehear ruling on San Francisco soda warnings.** On January 29, the US Court of Appeals for the Ninth Circuit agreed to rehear a ruling that had blocked a San Francisco law that required health warnings in connection with the sale of soda and other sugary beverages. The ruling striking down the health warnings was issued last year by a three-judge panel; the decision will be reconsidered by a panel of 11 judges. No date has been set for the new hearing. The ruling last year found that the city law could interfere with retailers' First Amendment rights and that it applied only to sugar-sweetened beverages like sodas and not to other types of beverages that could have the same amount of sugar.

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