



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.

- **Louisiana Senate passes bill banning "cauliflower rice" and similar terms.** On April 22, the Louisiana Senate unanimously approved a bill that sets out "truth in labeling requirements of agricultural products." The law would prohibit food companies from labeling products sold in Louisiana with such terms as vegetarian "meat" or "cauliflower rice." "Far too long the issue has gone unchecked," said state Senator Francis Thompson, a supporter of the measure. "Broccoli is not rice. Cell cultures are not meat. And certainly tofu burgers are not meat." The Plant Based Foods Association, which represents companies that make soy milk and similar products, responded that the bill would lead to serious First Amendment issues and that, in any case, plant-based products are already clearly labeled as vegetarian. Those found to have violated the new law could be fined up to \$500 a day, with each day being regarded as a separate offense. The *American Press* newspaper of East Lake St. Charles mocked the new law, asking, "Do our state lawmakers think we are that ignorant?" Louisiana is the third-largest rice-producing state.
- **Number of Q1 food recalls down.** The Stericycle Expert Solutions Recall Index reported on May 7 that the FDA initiated only 99 food and beverage recalls in Q1 2019 – a decline of 36.5 percent, and the second lowest number of recalls since Q3 2015 and the third lowest since at least 2012. The reason for the recall? The

government shutdown, which drastically slowed inspections. "The Q1 2019 numbers are misleading," said Chris Harvey, director of recall solutions at Stericycle Expert Solutions. "Fewer inspections mean more potentially dangerous products entered the market unnoticed during this period, which could also have an impact in the months ahead."

- **Schumer calls for expansion of FDA budget to prevent food contamination.** On April 28, Senator Charles Schumer (D-NY), the minority leader of the US Senate, called on Congress to substantially increase the budget of the FDA in order to give the agency more money to inspect the nation's food supply. Schumer said the reason for making this proposal is to ensure that the agency can respond to the discovery of harmful bacteria at facilities that manufacture ice cream. Following a series of food recalls, an examination by the FDA found foodborne bacteria, such as Listeria and Salmonella, at ice cream production plants in 32 states, New York among them. The senator wants \$16 million to support additional food safety inspectors and another \$16 million to develop technology that would keep bad food from getting on store shelves in the first place.
- **Nonprofit advocates call salt a health hazard, seek FDA action.** A May 1 opinion article by Michael Jacobson and Peter Lurie of the nonprofit Center for Science in the Public Interest strongly urged the FDA to proceed with its two-year and 10-year voluntary reduction goals for salt intake. It said that salt may be the "single most harmful ingredient in our diet" and that hundreds of studies in the past 75 years have shown that salt leads to high blood pressure, which in turn causes stroke, heart disease and kidney disease in many people. The article noted that several food companies have already taken major steps to reduce the sodium content of their products – but also decried what it said was the stance of many food industry groups that "are still trying to thwart FDA action."
- **FDA plans concerted effort to leverage new technology, including AI, for food safety.** On April 30, the FDA announced plans to develop a "Blueprint for a New Era of Smarter Food Safety" to address ways the agency may apply new and emerging technologies to advance food safety. These technologies will be used to address traceability, digital technologies and evolving food business models. A public meeting scheduled for later this year will function as a platform for stakeholders to share ideas about the agency's strategy. For example, the FDA's new acting commissioner, Ned Sharpless, noted in a public statement that the agency "plans to conduct a new pilot that will leverage artificial intelligence and machine learning to explore new ways to enhance the agency's review of imported foods at ports of entry to ensure they meet U.S. food safety standards. The number of import food lines is increasing year after year and applying the best predictive and analytical tools will help ensure we're targeting the greatest risks to protect consumers."
- **FDA takes steps to continue to regulate biologically modified animals.** The FDA has recently brought on additional staff to further support its regulatory obligations regarding the scientific review of biologically modified animals. The new hirings suggest that the agency does not intend to cede this type of oversight to the USDA. On May 2, acting FDA Commissioner Ned Sharpless said that the biological modification of animals, which includes the use of genetic engineering as well as new gene-splicing methods, has "great potential to address animal health issues." Livestock industry groups, however, are objecting, saying the FDA is too slow in its review of these techniques and that the USDA is better positioned to take on the issue because of its experience regulating genetically engineered plants. Dan Kovich, director of science and technology at the National Pork Producers Council, said, "The FDA's regulatory framework for gene edited livestock will seriously damage U.S. agriculture by virtually ensuring that this breakthrough technology is ceded to foreign competitors."
- **Hep A in the news.** Florida has become the latest state struggling to address a nationwide outbreak of Hepatitis A. On May 1, a case of Hep A was confirmed in a food service worker in a country club restaurant in Hernando County, and on April 30, another case was confirmed in a dishwasher at a popular sports bar in St. Petersburg. To date, 950 Hep A outbreak cases have been confirmed in Florida – outpacing the previous epicenter of this outbreak, Michigan, which has 913 confirmed cases. The CDC reports that since the Hep A outbreaks were first identified in 2016, across the US "more than 15,000 cases, 8,500 (57%) hospitalizations, and 140 deaths as a result of hepatitis A virus (HAV) infection have been reported." The outbreak is also moving strongly into such states as New Mexico, Virginia, Georgia, Ohio and Vermont. See some of our earlier coverage of the outbreak [here](#) and [here](#).
- **California beverage tax proposal is dead for 2019.** The leading supporter of a bill to impose a statewide tax on sugary drinks in California announced on April 22 that the measure is dead, at least for this year, due to industry opposition. Assembly member Richard Bloom said he will take up the idea next year. The California Medical Association and the California Dental Association, which are sponsoring several bills intended to reduce sugar consumption in the state, are considering the possibility of proposing a ballot initiative in November 2020 – a direct result of the legislature's decision in 2018 to forbid local jurisdictions from taxing sweetened beverages

until 2030. In response to Bloom's statement, Steve Maviglio, a spokesman for the American Beverage Association, said, "We are glad the Legislature delayed action because California's voters oppose a beverage tax, which would be an unfair burden on working families, neighborhood businesses and employees already struggling with the state's high cost of living."

- **Oklahoma may reverse its "alcohol modernization" regime.** A bill pending in the Oklahoma legislature would require manufacturers of alcoholic beverages selling their products in Oklahoma to make their top 25 products available to all wholesalers in the state. This would represent a major change from current law, which permits manufacturers to decide which wholesalers they will deal with. The current law, which was part of a past campaign for "alcohol modernization," was intended to reduce prices throughout the state, but many observers say it has actually led to higher prices and less competition. The state's two largest alcohol wholesalers, who control the top brands, and their national supplier partners oppose the measure, while the state's third-largest wholesaler, who claims that he is being squeezed out of the market, opposes it. On April 19, three undecided legislators gained publicity by visiting a series of liquor stores in what they called a fact-finding mission. Said one, "We decided to escape the lobbying and go to the people on the ground. We want to handle these bills in the way our constituents want us to."
- **Texas House moves to permit to-go sales of beer from breweries.** The Texas House, on April 26, gave final approval to two major changes to the state's alcoholic-beverage laws, permitting the sale of beer and wine at grocery stores starting at 10 AM on Sundays, two hours earlier than the law currently permits, and permitting breweries to sell beer to go from their taprooms. The bill now moves to the state senate, which can remove those provisions and make other changes. Texas is currently the only state that does not permit to-go sales from its in-state breweries. "Texas craft brewers' success is limited by an illogical inconsistency in the alcohol beverage code that prohibits these small businesses from engaging in to go sales, like the rest of the craft beverage industry in Texas and in the United States," a legislative supporter said. "This amendment accomplishes a very simple purpose. It answers the calls you've been hearing from your constituents who want the simple right to buy beer to go from Texas breweries."
- **New York mayor bans alcohol advertising on city property.** On April 30, New York City Mayor Bill de Blasio issued an executive order, effective immediately, banning advertisements for wine, beer and spirits on most city-owned property. The ban includes such sites as city-owned bus shelters, newsstands and wi-fi kiosks. "This order banning alcohol ads from city property reaffirms our commitment to health equity and our stand to protect the well-being of all New Yorkers," de Blasio said. The Metropolitan Transit Authority, which is under the control of New York Governor Andrew Cuomo, banned alcohol ads a year ago. Jay Hibbard, vice president of the Distilled Spirits Council, called the mayor's action "misguided and unsupported by the scientific research." He noted that in New York City, "underage drinking has declined by more than 35% over the last 10 years and binge drinking is at an all-time low."
- **Economist decries possible effort to treat alcohol like tobacco.** In a May 4 interview in *Forbes* magazine, British economist Christopher Snowdon, a frequent critic of government regulation, said "anti-alcohol campaigners" with a "thirst for draconian action" are eager to cast doubt on the benefits of moderate alcohol use and to impose harsh anti-alcohol rules and laws around the world. Much "neo-prohibitionist" thinking, he said, is "politically-oriented junk" based on bad and deliberately misinterpreted science. Snowdon said the primary goal of what he called "the temperance lobby" and "neo-prohibitionists" in major NGOs like the World Health Organization "is to get an international treaty on alcohol of the kind already achieved for smoking." He noted, "The evidence showing that moderate drinkers live longer than teetotalers, mostly due to the benefits of alcohol on the heart, is very strong. It has been tested and retested over decades precisely because there are so many people who are inclined to disbelieve it."

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