



2018 Food Law Update

American Agricultural Law Association
Susan Schneider



2018 Food Law Update

Resources:

Morning Ag
Politico News
Shook, Hardy, Bacon
Harvest Public Media
NPR "The Salt"
Bill Marler
Food Safety News



POLITICO

Morning Agriculture

A daily briefing on agriculture and food policy



HARVEST
PUBLIC MEDIA

SHOOK
HARDY & BACON

FSN
FoodSafetyNews.com

Presented by Marler Clark LLP, P.S.

Government Research Reports:

Cong. Res. Service
USDA ERS
GAO
OIG



GAO
.GOV

Six Major Areas

- 1) Organic Products
- 2) Food Safety
- 3) Common Names / Standards of Identity
- 4) Biotechnology
- 5) Obesity, Health, and Nutrition Labeling
- 6) Food Security: Concerns for the Future

Organics



Continued Growth in the Market

- 2017 US Organic sales \$49.4 billion
- Up 6.4% from the previous year and reflecting new sales of nearly \$3.5 billion.
- Organic food - \$45.2 billion in sales; Sales of organic non-food products rose by 7.4 percent to \$4.2 billion

How to Assure Integrity

- Import Fraud
- Cornucopia Report (June 2018)
- Other Import Concerns
- USDA Enforcement



Food Safety



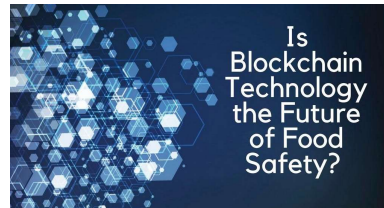
Romaine Lettuce

- Multistate outbreak of E. coli O157:H7
- 210 people/36 states; 96 hospitalizations and five deaths
- Traceback
- Economic impact
- Food waste

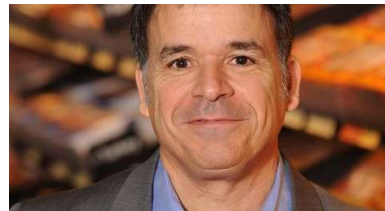


New approaches?

- Blockchain?



- Frank Yiannas, New Deputy Commissioner for Food Policy and Response



New Draft Guidances

October 2018

- “Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption: Guidance for Industry”
- “Guide to Minimize Food Safety Hazards of Fresh-cut Produce”

Food Additives and GRAS Ingredients

- Reports that raise concerns about children and food packaging and additives
- FDA is removing authorization for 7 artificial flavors; 83 Fed. Reg. 50,490 (Oct. 9, 2018)



IENTS: HIGH FRUCTOSE CORN SYRUP, WATER, SUCROSE GUM, CARAMEL COLOR AND ARTIFICIAL FLAVORS. HEXAMETAPHOSPHATE, CITRIC ACID AND SODIUM BIPHOSPHATE (PRESERVATIVES).
IRITATED BY

Common Names & Standards of Identity:

Plant-Based Proteins, Cell-based Meat, and the Standard of Identity for Milk



New Plant-Based Meat Alternatives

- New technologies
- Farmer vs Farmer



What To Do About Cell-Based “Meat”



- What is it?
- What to call it?
- Who regulates it?
- What is the life cycle analysis?

Investments in Alternative Proteins



Non-Dairy "Milk"



- Good Food Institute
- Dairy Lobby
- Proposed legislation
- FDA Gottlieb says FDA plans to "adjudicate" certain claims
- Inching closer . . .

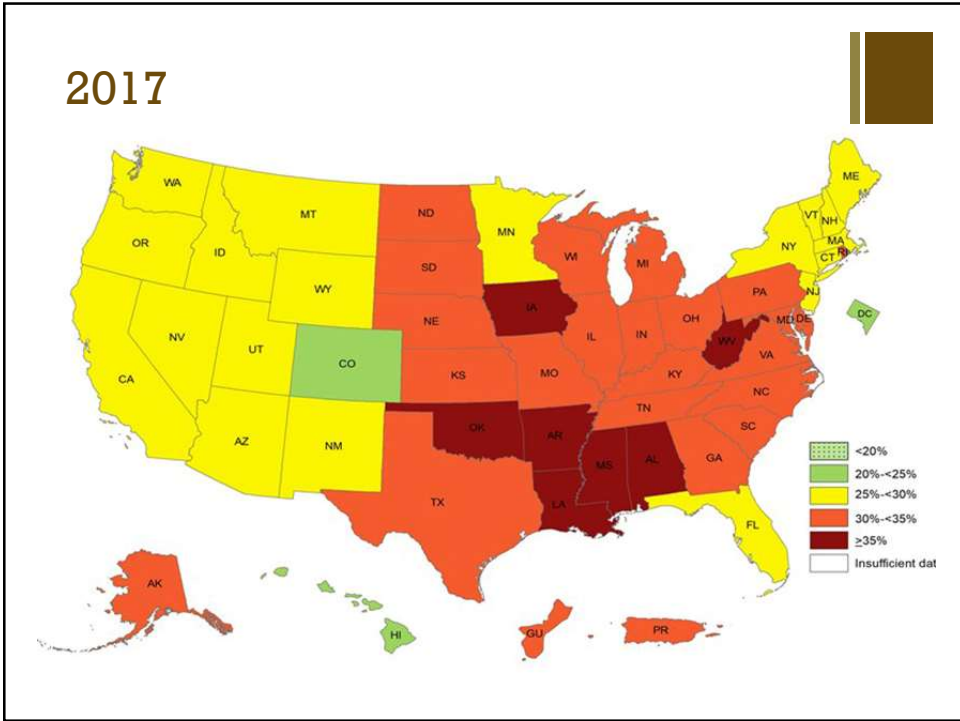
Consumer Survey



- Are consumers confused?
- Do consumers care?
- Can you reclaim an identity?
- What about nutritional values?



Obesity, Health &
Nutrition



- # Nutrition Innovation Strategy
- Modernizing claims
 - Modernizing ingredient labels
 - Modernizing the Standards of Identity
 - Implementing Nutrition Facts Label & Menu Labeling
 - Reducing Sodium

FOOD SERVING SIZES GET A REALITY CHECK

Serving Size Changes
 What's considered a single serving has changed in the decades since the original nutrition label was created. So now serving sizes will be more realistic to reflect how much people typically eat at one time.

CURRENT SERVING SIZE | **NEW SERVING SIZE**

Packaging Affects Servings
 Package size affects how much people eat and drink. So now, for example, both 12 and 20 ounce bottles will equal 1 serving, since people typically drink both sizes in one sitting.

1 SERVING PER BOTTLE FOR EITHER BOTTLE SIZE

Revised “Reference Amount Customarily Consumed”

Nutrition Facts
 Serving Size 2/3 cup (55g)
 Servings Per Container About 8

Amount Per Serving	
Calories 230	Calories from Fat 72
% Daily Value*	
Total Fat 8g	12%
Saturated Fat 1g	5%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 160mg	7%
Total Carbohydrate 37g	12%
Dietary Fiber 4g	16%
Sugars 1g	
Protein 3g	
Vitamin A	10%
Vitamin C	8%
Calcium	20%
Iron	45%

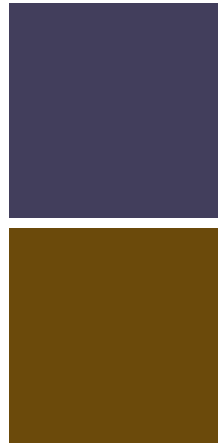
* Percent Daily Values are based on a 2,000 calorie diet. Your daily value may be higher or lower depending on your calorie needs. Calories: 2,000 2,500

Total Fat	Less than 65g	80g
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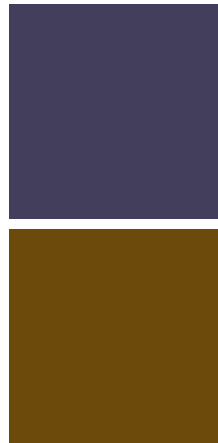
Nutrition Facts
 8 servings per container
Serving size 2/3 cup (55g)

Amount per serving	
Calories 230	
% Daily Value*	
Total Fat 8g	10%
Saturated Fat 1g	5%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 160mg	7%
Total Carbohydrate 37g	13%
Dietary Fiber 4g	14%
Total Sugars 12g	
Includes 10g Added Sugars	20%
Protein 3g	
Vitamin D 2mcg	10%
Calcium 260mg	20%
Iron 8mg	45%
Potassium 235mcg	6%

New Nutrition Fact Panel



FDA Still Considering the Definition of “Natural”



FDA does not care about the Definition of “Natural”

Biotechnology

BUTTER, SKIM MILK, LACTOSE
IN SYRUP, DEXTRIN, COLORING (L
LAKE, BLUE 2), GUM ACACIA.
S, MILK AND SOY. MAY CONTA
PARTIALLY PRODUCED WITH
GENETIC ENGINEERING.



Proposed rule for GMO
Labeling - “BE”

USDA Unified Agenda

- APHIS is proposing to revise its regulations regarding the importation, interstate movement, and environmental release of certain genetically engineered organisms

Climate, weather, and food
production

Weather-Related Stress to Production & Distribution of Food



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