



LEGISLATION, REGULATIONS & STANDARDS

FDA Releases Reopening Guidelines for Food Establishments

The U.S. Food and Drug Administration (FDA) has published a [food-safety checklist](#) for retail food establishments that have been closed or operating in a limited capacity during shelter-in-place orders. The list covers issues that may arise if a facility has been closed, such as ensuring water and sewage lines or coolers and freezers are working, and approaches to slowing the spread of COVID-19, such as social distancing measures and increased outdoor air circulation. Checklist sections include facility operations; water, plumbing and ice; cleaning, disinfecting and sanitizing for food contact and non-food contact surfaces; food temperature control; product inspection and rotation; warewashing equipment; handwashing stations; employee health; and social distancing.

State Attorneys General Urge Trump Administration to Make Meatpacking Safety Measures Mandatory

Following an [executive order](#) directing the U.S. Department of Agriculture to ensure the continued supply of meat and poultry, twenty state attorneys general have submitted a [letter](#) urging President Trump to strengthen guidance for meatpacking facilities by requiring increased access to testing and personal protective equipment, implementation of physical distancing where possible, suspension of line speed waivers, and paid leave for workers in

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Shook offers expert, efficient and innovative representation to clients targeted by food lawyers and regulators. We know that the successful resolution of food-related matters requires a comprehensive strategy developed in partnership with our clients.

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[Mark Anstoetter](#)
816.559.2497
manstoetter@shb.com

isolation or quarantine following exposure to COVID-19. “The industry’s failure to act earlier to protect its labor force, and the Administration’s lack of leadership and support for testing, procurement of personal protective equipment (PPE), and enforcement of federal worker safety standards, will be among the many regrettable lapses contributing to the tragic story of America’s experience with this pandemic,” the letter asserts.

The letter calls for voluntary guidance provided to meatpacking facilities to become mandatory. “Even if these recommendations were sufficient to maintain worker safety, however, they are entirely voluntary. Without making these standards mandatory and taking decisive action to enforce them, the Administration will fail in its duty to provide meaningful protection to workers that have been deemed essential to maintaining our food supply.”

Proposed Texas Consumable Hemp Rule Published

The Texas Department of State Health Services has published a proposed rule that would regulate “the manufacture, distribution, and retail sale of consumable hemp and consumable hemp products in the State of Texas.” The rule details licensure for consumable hemp manufacturers or distributors; required testing to determine the presence or concentration of cannabinoids, THC, pathogens, pesticides and heavy metals; packaging and labeling requirements; and enforcement measures. The earliest possible date of adoption for the rule is June 7, 2020.

LITIGATION

Family of Deceased Meatpacking Plant Worker Sues JBS for Alleged COVID-19 Negligence

The estate of a meatpacking plant employee who died from a COVID-19 infection has sued JBS S.A. for negligence, wrongful death, misrepresentation and survival, alleging that the man’s death “was the predictable and preventable result of the JBS Defendants’ decisions to ignore worker safety.” *Benjamin v. JBS S.A.*, No. 200500370 (Pa. C.P., Phila. Cty., filed May 7, 2020). According to the complaint, JBS increased production in March 2020 to meet increased demand for meat as shelter-in-place orders began to take effect across the United States. The estate argues that JBS “failed to provide sufficient personal protective



M. Katie Gates Calderon

816.559.2419

kgcalderon@shb.com



Lindsey Heinz

816.559.2681

lheinze@shb.com



James P. Muehlberger

816.559.2372

jmuehlberger@shb.com

ABOUT SHOOK

Shook, Hardy & Bacon is widely recognized as a premier litigation firm in the United States and abroad. For more than a century, the firm has defended clients in some of the most substantial national and international product liability and mass tort litigations.

Shook attorneys are experienced at assisting food industry clients develop early assessment procedures that allow for quick evaluation of potential liability and the most appropriate response in the event of suspected product contamination or an alleged food-borne safety outbreak. The firm also counsels food producers on labeling audits and other compliance issues, ranging from recalls to facility

equipment,” “forced workers to work in close proximity,” “forced workers to use cramped and crowded work areas, break areas, restrooms, and hallways,” “discouraged workers from taking sick leave in a manner that had sick workers in fear of losing their jobs,” and “failed to properly provide testing and monitoring for individuals who may have been exposed to the virus that causes COVID-19.”

inspections, subject to FDA, USDA and FTC regulation.



Kern’s Nectar Not “100% Natural” Because of Malic Acid, Plaintiff Argues

A consumer has filed putative class action alleging that Vilore Foods Co. Inc. misleadingly marketed Kern’s Nectar canned beverages as natural because they contain malic acid, “a synthetic chemical that is used to make manufactured food products taste like real fruit.” *Gross v. Vilore Foods Co. Inc.*, No. 20-0894 (S.D. Cal., filed May 13, 2020). The complaint asserts that the products violate the federal Food, Drug and Cosmetic Act because they “contain additional flavoring ingredients that simulate and reinforce the characterizing flavor,” thus requiring Vilore “to disclose those additional flavors rather than misleadingly suggest that the Product is flavored only by the labeled natural juices.” A footnote indicates that the can packaging contained the statement as of 2017 but the “manufacturer apparently has since deleted ‘100% Natural’ on the retail can labels.” The plaintiff seeks damages and injunctions prohibiting deceptive advertising and requiring corrective advertising for alleged violations of California’s consumer-protection statutes.



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