

## HEN POST DEADLINES AND SUBMISSION GUIDELINES

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### Submission Deadlines

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## Regulating Soda in the U.S. – An Uphill Battle?

by Rachel Berger, MS, RD

Earlier this winter food stores across New York City were preparing for the city's sugary beverage portion size limit, set to go into effect March 12. This regulation would limit the size of sugary drinks offered and sold at foodservice establishments to 16 ounces.

Those establishments include restaurants, mobile food carts, delis, and concessions at movie theaters, stadiums or arenas, all falling under the jurisdiction of the city. Sugary drinks were defined as beverages that have sugar, contain less than or equal to 50% milk or milk substitute by volume, or have more than 25 calories per 8 fluid ounces. Alcoholic drinks were not included.<sup>1</sup> RDs were involved in this issue. Lisa Young, PhD, RD, author of the *Portion Teller Plan* and adjunct professor at New York University, testified in support of the sugary beverage portion size limit at the public hearing on July 24, 2012, wrote opinion pieces for the *Daily News* as well as numerous blog posts for the Huffington Post, co-authored an academic article in the November 2012 issue of the *American Journal of Preventive Medicine*,<sup>2</sup> and spoke to the media on the issue.

Though the regulation sparked many debates, New York City was ready for it to take effect. When the Barclays Center, a multi-purpose indoor arena, opened in Brooklyn in September 2012, its management decided to comply with the law early by limiting the largest size of soda available for purchase to 16 ounces.<sup>3</sup> Dunkin Donuts had even produced and displayed signs explaining the procedure for putting sugar into coffee under the new regulation.<sup>4</sup>

Then, on March 11, 2013, the day before the so-called "soda-ban" was set to go into effect, Justice Milton A. Tingling Jr., of the New York State Supreme Court ruled in favor of those challenging the regulation, which included the National Restaurant Association, the American Beverage Association, and the Soft Drink and Brewery Workers Union.<sup>5</sup> The surprising fate of this regulation shows why New York City and other municipalities have had such difficulty in limiting the size of sugary drinks.

Judge Tingling cited multiple reasons for this decision. First, he argued that the regulation was passed through the Board of Health, instead of through the City Council. The Judge did not feel that the Board of Health had the right to regulate the city's food supply, unless there was a true emergency.

(Some would call our obesity epidemic and the \$190 billion in national health care costs associated with it an emergency.<sup>6</sup> New York City alone spends more than \$4.7 billion on obesity related health care expenditures.<sup>7,8</sup>) The Judge felt that since soda regulation is a controversial issue that had failed to pass at the state level in the form of a soda tax, Mayor Bloomberg should have been extra diligent in going through the proper procedures. The Judge also argued that the regulation was too laden with exceptions, since it only covered food service establishments governed by the city (for example, 7-Elevens would be exempt), and did not cover all sugary drinks (such as Starbucks Frappuccinos, which have a high milk content).<sup>9</sup>

The Bloomberg administration has filed an appeal, but the future of the ruling is unclear. What had only days earlier been considered a major victory for public health advocates now looked like a victory for the beverage association and its allies.

That was not the only soda-related event that made the news on March 11, 2013. Mayor Bloomberg, Deputy Mayor for Health and Human Services Linda I. Gibbs and Health Commissioner Thomas A. Farley released new data from the New York City Community Health Survey. The data showed that the prevalence of sugary drink consumption is more than twice as high in neighbor-



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hoods with the highest rates of obesity (42%) than sugary drink consumption in neighborhoods with the lowest rates of obesity (17%).<sup>10</sup> At the same time as more data emerged on the hazards of consuming sugary drinks, the City was stymied in its attempts to limit consumption.

Across the country, reaction to the sugary beverage portion size limit has been mixed. In Mississippi, the state with the highest rates of obesity, the state legislature passed a bill that, among other things, stipulates that counties, districts and towns cannot restrict portion sizes, barring federal regulations.<sup>11</sup>

A look into recent initiatives to regulate soda across the country can provide some insight into why the Bloomberg administration went about trying to regulate soda in this manner. Soda tax legislation has been attempted across the country, in many states including Hawaii, Oregon, Arizona, New Mexico, Texas, Kansas, Nebraska, Mississippi, Tennessee, Illinois, West Virginia, Connecticut, New York, Rhode Island, Massachusetts, and Vermont, as well as in cities including Chicago and Philadelphia.<sup>12</sup> In Washington State in 2010, a tax was passed, but then repealed.<sup>13</sup> And even before then, President Obama and Senate leaders considered a soda tax as a way to finance the Affordable Care Act, but the idea was never fully explored.<sup>14</sup>

Two especially telling and important battles to regulate soda occurred in November 2012, when the cities of Richmond, California and El Monte, California had a penny per ounce soda tax on the ballot. These cities represented different populations, as Richmond, located in the East Bay, is mostly Hispanic and African American, with a diversity of income, while El Monte is located in the LA area, and is mostly Latino and Asian. California is unique in that one way to raise taxes is to put the measure directly on the ballot, which lets the people decide. If these measures had passed, they would have been the first to tax soda in the nation. But these measures met with fierce opposition from the beverage industry, which spent more on these campaigns than on any election. The American Beverage Association spent \$2.5 million to defeat the measure in Richmond, and \$1.3 million in El Monte.<sup>15</sup>

Besides soda taxes and restrictions on the size of beverages, other attempts have been made to regulate sugary beverages at the national level. On February 13, 2013, the Center for Science in the Public Interest petitioned the FDA to

establish a safe level for sugar in beverages. They argued that unsafe levels of sugar in beverages are causing obesity, diabetes, and other health problems, as beverages are the largest source of added sugar in American's diet.<sup>16</sup> Public health organizations, scientists and physicians wrote to the FDA in support of the petition.<sup>17</sup>

New research is constantly emerging on the association between sugary beverage consumption and obesity. On March 19, 2013, Harvard researchers presented a report at an American Heart Association meeting that showed in 2010, soda, sports drinks and fruit drinks were responsible for 25,000 deaths per year in the U.S., and 180,000 deaths around the world. This report showed a correlation between sugary drinks and death from cardiovascular disease, diabetes, and cancer.<sup>18</sup>

The public is certainly becoming better informed about the ill effects of drinking too much soda from all of this publicity, but so far, not a single ruling to regulate soda has been implemented. Perhaps soon we will laugh at the days when soda was so cheap and plentiful. For right now, there is still a lot of work to do. Dr. Young recommends that RDs or RDNs write articles on the topic, reach out to others, and educate clients and patients on portion control. Regardless of the outcome, she is pleased that the proposed soda regulation brought the topic to the forefront of national debate. As dietitians, we have the power to continue to engage and educate the public.

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