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FOOD & BEVERAGE LITIGATION UPDATE

CONTENTS

LEGISLATION, REGULATIONS AND STANDARDS

Lawmakers Request Information on Arsenic in Rice

U.S. Representatives Henry Waxman (D-Calif.) and Diana DeGette (D-Colo.) have sent **letters** to eight companies requesting information about arsenic levels in rice products. Waxman and DeGette have asked Beech-Nut Nutrition Corp., Carolina Rice, Della Rice, Earth's Best, Nestlé Nutrition's Gerber Rice, Jazzmen Rice, Martin Farms, and Whole Foods Market to respond by November 8, 2012, with details about their practices for monitoring and limiting the amount of arsenic in their rice products.

In requesting this information, Waxman and DeGette pointed to studies authored by the Food and Drug Administration (FDA) and Consumer Reports purportedly showing "worrisome" levels of inorganic arsenic "in popular brands of rice and rice products like rice cereal, breakfast cereal, and rice cakes." The lawmakers have requested all company documents related to arsenic testing as well as those describing any health risk assessments undertaken on each company's behalf. "FDA is currently in the process of analyzing 1,000 more rice samples in order to understand the levels of arsenic exposure and the health risks that consumption of rice might pose," note the letters. "FDA says it does not yet have 'an adequate scientific basis to recommend changes by consumers regarding their consumption of rice and rice products' until a more thorough review of the data is completed."

FTC Issues Guidelines for Facial-Recognition Technology

The Federal Trade Commission (FTC) has **issued** a staff report outlining best practices for the use of facial-recognition technology in online social networks, mobile apps, digital signs, and other products and services. According to an October 22, 2012, FTC press release, facial-recognition technology has "a number of potential uses, such as determining an individual's age range and gender in order to deliver targeted advertising; assessing viewers' emotions to see if they are engaged in a video game or a movie; or matching faces and identifying anonymous individuals in images." But the agency has also expressed concern that these advances could contravene

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consumers' expectations of privacy because they hold "the prospect of identifying anonymous individuals in public, and because the data collected may be susceptible to security breaches and hacking."

FTC is urging companies that use facial-recognition technology to (i) "design their services with consumer privacy in mind"; (ii) "develop reasonable security protections for the information they collect, and sound methods for determining when to keep information and when to dispose of it"; and (iii) "consider the sensitivity of information when developing their facial recognition products and services—for example, digital signs using facial recognition technologies should not be set up in places where children congregate." The agency has also laid out guidelines for informing consumers about facial–recognition technology as well as some scenarios requiring explicit consent.

"The recommended best practices contained in this report are intended to provide guidance to commercial entities that are using or plan to use facial recognition technologies in their products and services," concludes the agency. "However, to the extent the recommended best practices go beyond existing legal requirements, they are not intended to serve as a template for law enforcement actions or regulations under laws currently enforced by the FTC. If companies consider the issues of privacy by design, meaningful choice, and transparency at this early stage, it will help ensure that this industry develops in a way that encourages companies to offer innovative new benefits to consumers and respect their privacy interests."

Environmental Group Contends FDA Documents Show Doubts re: Antimicrobial Drugs

Public Employees for Environmental Responsibility (PEER) has posted to its Website documents relating to the use of antimicrobial drugs in livestock feed received from the Food and Drug Administration (FDA) under a Freedom of Information Act request. According to PEER, internal memos show that FDA is not, as the agency has claimed, working successfully with industry to phase out this use of antimicrobials, estimated at 30 million pounds in feed troughs annually. PEER claims that "70,000 Americans die each year from drug-resistant infections" and that the "rise of drug-resistant 'super diseases' is driven by overuse and misuse of antimicrobial drugs in livestock feed primarily to promote livestock growth."

In litigation, FDA defended its failure to timely follow through on proceedings to withdraw from use two antimicrobials by claiming that it had abandoned formal rulemaking in favor of more effective voluntary measures. Details about a court order requiring that FDA initiate withdrawal proceedings appear in Issue 432 of this *Update*. According to agency documents, one strategy memo states, "We recognized that the voluntary strategy has certain limitations in that (1) it lacks specifically defined/mandated timeframes; (2) its success is dependent on drug sponsors deciding it is in their best interest

to work cooperatively with the agency; and (3) FDA collects insufficient data on drug use . . . to measure the effectiveness of the strategy." *See PEER Press Release*, October 17, 2012.

EFSA Issues Updated Acrylamide Report; New Study Links Acrylamide to Reduced Birth Weight

The European Food Safety Authority's (EFSA's) Dietary and Chemical Monitoring Unit has **issued** an updated report finding little change in the amount of acrylamide produced during food processing since the last data set was released in 2008. Covering 2007-2010, the report used approximately 13,000 data points to monitor the substance, which "typically forms in starchy food products such as potato crisps, French fries, bread, biscuits and coffee, during high-temperature processing, including frying, baking and roasting." Although EFSA apparently received less input from member states in 2010 than in previous years, it did not find "any considerable change" in acrylamide levels between 2007 and 2010 "for the majority of the food categories assessed."

"In terms of the results, there were downward trends in acrylamide levels in the category 'processed cereal-based foods for infants and young children' and the sub-categories 'non-potato based savory snacks' and 'biscuits and rusks for infants and young children," stated the agency in an October 23, 2012, news release. "On the other hand, there were rises in the 'coffee and coffee substitutes' category and in the sub-categories 'crisp bread,' 'instant coffee' and 'French fries from fresh potatoes' though for the latter this was not consistent across Europe."

EFSA has also reiterated its 2013 plan to update the European exposure assessment "based on more recent data on acrylamide levels in food as well as new food consumption data." In the interim, the agency has pledged to work with national food safety authorities and EFSA's Advisory forum to assess acrylamide's "possible impact on public health."

Meanwhile, a recent study has **claimed** that prenatal exposure to acrylamide is associated "with reduced birth weight and head circumference." Marie Pedersen, et al., "Birth Weight, Head Circumference, and Prenatal Exposure to Acrylamide from Maternal Diet: The European Prospective Mother-Child Study (NewGeneris)," *Environmental Health Perspectives,* October 23, 2012. Researchers with the NewGenesis consortium reportedly analyzed data from 1101 mother-child pairs, comparing hemoglobin adducts of acrylamide and its metabolite glycidamide taken from cord blood after birth with food-frequency questionnaires answered by prospective mothers and information on birth weight, head circumference, gestational age, sex, and mode of delivery obtained from maternity records.

The results allegedly revealed that "maternal consumption of foods rich in acrylamide, such as fried potatoes," was linked to higher cord blood acryl-

amide adduct levels and lower birth weights. "This study provides strong evidence that higher prenatal exposure to acrylamide through maternal diet during pregnancy is associated with reduced birth weight and head circumference," concluded the authors, referencing the use of cord blood to provide "a more accurate assessment" of prenatal exposure to acrylamide during the last months of gestation. "If confirmed in other studies, these findings provide evidence supporting the need for changes in food production and for providing clear public health advice to pregnant women to reduce their dietary intake of foods that may contain high concentrations of acrylamide."

UK Announces Voluntary FOP Labeling System

The U.K. Department of Health (DOH) has announced a voluntary front-of-pack (FOP) nutrition labeling scheme designed to "clearly" display the amount of fat, saturated fat, salt, sugar, and calories contained in food products. According to an October 24, 2012, press release, the proposed system will use color coding, guideline daily amounts and "high/medium/low" text to help consumers "make quick, informed decisions about the food they eat."

The announcement apparently followed a three-month consultation with retailers, manufacturers and other stakeholders about the future of FOP labeling. Although DOH will continue to meet with industry about the system's final design, it evidently plans to launch the initiative as early as summer 2013. "The U.K. already has the largest number of products with front-of-pack labels in Europe but research has shown that consumers get confused by the wide variety of labels used," said Public Health Minister Anna Soubry. "By having a consistent system we will all be able to see at a glance what is in our food. This will help us all choose healthier options and control our calorie intake."

Prop. 37 Debate Heats Up, International Accords Could Be Implicated

According to University of Oklahoma College of Law Professor Drew Kershen, writing for the Giannini Foundation of Agricultural Economics publication *Agricultural and Resource Economics*, if California voters approve Proposition 37 (Prop. 37) in November 2012, it could be vulnerable to challenge under World Trade Organization (WTO) agreements. As Kershen notes, the ballot proposition would "impose mandatory labeling on a broad range of raw and processed foods." Those produced "entirely or partially" through genetic engineering would be required to state that fact on product labels, and no processed food could be marketed as "natural," "naturally made," "naturally grown," or "all natural."

Kershen focuses on the WTO Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures and the Agreement on Technical Barriers to Trade (TBT). While the United States, but not California, is a member state

under the agreements, Kershen argues that they nevertheless apply to California's Prop. 37. He contends that Prop. 37 proponents "face a difficult, if not impossible burden of providing scientific evidence to support it as a SPS measure under the SPS Agreement," which can be interpreted as providing that a SPS measure is not compliant with the agreement "if the measure is not necessary and if the measure fails to be based upon and maintained upon sufficient scientific evidence." Because regulatory agencies worldwide have approved genetically engineered crops after evaluating purported human, animal and environmental safety, Kershen concludes that Prop. 37 "almost assuredly is not compliant with the SPS Agreement."

He also examines whether Prop. 37 could be classified as a technical barrier to trade so as to avoid application of the SPS Agreement "and its scientific evidence standards." According to Kershen, like U.S. country-of-origin labeling laws, Prop. 37 could be challenged as a TBT violation "by imposing discriminatory costs and burdens on" food imports into the United States. The article concludes that the ballot measure, if adopted, "may become a very important dispute within the jurisprudence of WTO law and decisions," although questions remain as to whether WTO member states or the United States would challenge it and whether private parties would have standing to bring WTO-based claims.

In a related development, the Giannini Foundation published an article in a July/August 2012 issue that surveys an array of potential impacts on the food industry if voters approve Prop. 37. Titled "California's Proposition 37: Effects of Mandatory Labeling of GM Foods," the article suggests that three general effects can be expected: "Certified non-GM processed food products will virtually disappear from food stores, Organic food will gain market share, [and] Food labels will be confusing for consumers: GM labeled products could have very low traces of GM, while organic products might contain accidental traces of GM ingredients but not be labeled as such."

LITIGATION

Second Circuit Sends Starbucks Tips Dispute to New York Court with Questions

The Second Circuit Court of Appeals has certified to the New York Court of Appeals questions arising under state employment law in a dispute over the distribution of tips in Starbucks stores. ***Barenboim v. Starbucks Corp.*, No. 10-4912**; ***Winans v. Starbucks Corp.*, No. 11-3199 (2d Cir., questions certified October 23, 2012)**.

A federal district court determined that Starbucks properly distributed pooled tips to shift supervisors and that Starbucks was not required to include assistant store managers in its tip pools. The appellants in the consolidated appeals are a putative class of baristas who allege that shift supervisors are

"agents" under New York Labor Law § 196-d and ineligible to share tips, and a putative class of assistant store managers who claim they are entitled to share in the tip pools because they perform the same tasks as baristas and have only limited management authority.

The plaintiffs in both cases sought review before the Second Circuit of the lower court's decision granting Starbucks' motions for summary judgment. According to the appeals court, the plaintiffs have raised novel questions under New York law; thus, the court deferred decision and certified the following questions to the New York Court of Appeals:

> What factors determine whether an employee is an "agent" of his employer under state law and thus ineligible to receive distributions from an employer-mandated tip pool? Is the degree of supervisory or managerial authority exercised by an employee relevant to whether the employee is a "manager or supervisor" and thus an employer's "agent"? If an employee with supervisory or managerial authority renders services that generate gratuities contributed to a tip pool, does New York law preclude that employee from sharing the pool? To the extent that "employer or his agent" is ambiguous under the statute, does the Department of Labor's New York State Hospitality Wage Order reasonably interpret the statute and govern this dispute? If so, does the order apply retroactively?
>
> Does New York labor law permit an employer to exclude an otherwise eligible tip-earning employee from receiving distributions from an employer-mandated tip pool?

The Second Circuit invites New York's high court to expand these inquiries "to address any further pertinent question of New York law as it might pertain to the particular circumstances presented in these appeals."

Jury Agrees with Benihana over Employee Classification

A federal jury in California has reportedly determined that Benihana properly classified three restaurant managers as exempt thus concluding wage-related litigation against the chain. Originally filed as a putative class action in state court, the case initially included claims about overtime wages, accrued vacation pay, rest and meal breaks, and itemized wage statements. By the time the case was tried after removal to federal court, it involved just three named plaintiffs and the overtime dispute. According to a news source, the company nearly derailed the case by alleging that one of the employees had copied and destroyed thousands of files from a computer at the company's Cupertino, California, location. The court levied sanctions against the employee and dismissed him from the case, but then determined that the conduct, alleged to be "wrongful self-help discovery" and the deletion of stolen copies, may not have been "beyond the pale" because some evidence indicated that the

employee was supposed to copy files as part of his job. *See Law360*, October 22, 2012.

Monster Beverage Corp. Hit with Wrongful Death Lawsuit, FDA Investigation

The parents of a 14-year-old girl who allegedly died after consuming two 24-ounce Monster Energy® drinks in a 24-hour period have filed a wrongful death and strict product liability lawsuit against Monster Beverage Corp. in a California state court. *Crossland v. Monster Beverage Corp.*, No. RIC 1215551 (Cal. Super. Ct., Riverside Cnty., filed October 17, 2012). They claim that the teen went into cardiac arrest and was placed in an induced coma at Johns Hopkins Hospital to reduce brain swelling. After six days, life support was terminated, and the girl died. The plaintiffs allege that the autopsy report attributed her death to "cardiac arrhythmia due to caffeine toxicity complicating mitral valve regurgitation in the setting of Ehlers-Danlos syndrome."

The complaint contends that two of the company's energy drinks contain 480 milligrams of caffeine, the equivalent of 14 12-ounce cans of caffeinated soda. Among other matters, the plaintiffs allege that the company classifies its beverages as dietary supplements to avoid "meaningful regulation of its product by the U.S. Food and Drug Administration [FDA]," fails to warn consumers about known risks and side effects of consuming the products, and "failed to conduct adequate testing, studies or clinical testing and research, and similarly failed to conduct adequate marketing surveillance regarding MONSTER ENERGY's adverse effects upon the cardiovascular health of consumers." Claiming that the company "heavily markets" its products to teens and young adults, the complaint also targets other product ingredients, including guarana and taurine, which the plaintiffs assert have synergistic effects with caffeine on human health, such as cardiac arrest.

Alleging strict liability (design defect and failure to warn), negligence (design, manufacture and sale), negligence (failure to warn), fraud, breach of implied warranties, willful disregard for the health and safety of consumers (punitive damages), and wrongful death, the plaintiffs seek compensatory damages for past medical expenses, funeral and burial expenses, past and future mental and emotional distress, interest, attorney's fees, and costs.

According to news sources, FDA disclosed, after the lawsuit was filed, that it had received notice since 2009 of five deaths purportedly related to the consumption of the company's caffeinated beverages and was conducting an investigation. FDA spokesperson Shelly Burgess reportedly said that it was not yet clear that the drinks actually caused or contributed to the adverse events. Still, FDA responded in August 2012 to Senator Dick Durbin's (D-Ill.) request that the agency take action on energy drinks by indicating that caffeine intake of up to 400 milligrams per day is not associated with untoward health effects for most healthy adults. Additional information about FDA's response appears in Issue 451 of this *Update*.

With its share price falling 23 percent over two days since FDA confirmed its investigation, Monster Beverage expressed its sympathy to the family that filed the lawsuit, but contended, "Monster does not believe that its products are in any way responsible for the death of Ms. Fournier and intends to vigorously defend the lawsuit." The company contends that tens of billions of energy drinks have been sold and consumed without incident throughout the world for 25 years, including in excess of 8 billion Monster Energy drinks since 2002. "The company monitors consumer communications it receives, is unaware of any fatality anywhere that has been caused by its products and has never before been the subject of any lawsuit of this nature," the company said. It also noted that Monster Energy® drinks contain 10 milligrams of caffeine per ounce which compares to 20 milligrams per ounce of freshly brewed coffee. It also pointed to warning labels recommending that children or those sensitive to caffeine not consume the product.

Details about a putative securities class action filed against the company for allegedly filing false and misleading financial statements after news that a state attorney general had subpoenaed company advertising, marketing, ingredients, usage, and sale records also appear in Issue **451** of this *Update*. Investors are reportedly concerned about the latest energy drink developments, including a report issued in November 2011 by the Substance Abuse and Mental Health Services Administration indicating that 13,114 emergency-room visits involving energy drinks were logged in 2009, ten times the number reported in 2005.

Meanwhile, a putative nationwide class action has been filed against a company that makes REDLINE Xtreme® Energy Drink Watermelon Flavor, alleging that class members "did not bargain for adverse health effects in exchange for their payment of the purchase price." *Mirabella v. Vital Pharm., Inc.*, No. 0:12-cv-62086-WJZ (U.S. Dist. Ct., S.D. Fla., filed October 23, 2012). While the named plaintiff contends that he was hospitalized with adverse health effects, such as chills, excessive sweating, vomiting, convulsions, chest pain, and rapid heartbeat, he does not seek recovery for personal injury. Alleging violations of Florida's Deceptive and Unfair Trade Practices Act, unjust enrichment, breach of implied warranties of fitness for purpose and merchantability, and violation of the Magnuson-Moss Warranty Act, the plaintiff seeks actual and compensatory damages, injunctive relief including a corrective advertising and labeling campaign, equitable monetary relief, interest, attorney's fees, and costs. *See Law360*, October 22 and 25, 2012; *The Wall Street Journal*, October 22 and 24, 2012; and *The New York Times*, October 23, 2012.

Insurance Corp. Seeks to Rescind Umbrella Policy with *Salmonella*-Contaminated Fish Importer

Golden Eagle Insurance Corp. has filed a complaint for declaratory relief against its insured Moon Marine (U.S.A.) Corp., requesting that the umbrella

policy it issued to the insured be rescinded because Moon Marine allegedly concealed material facts when it obtained the policy. *Golden Eagle Ins. Corp. v. Moon Marine (U.S.A.) Corp.*, No. 12-5438 (U.S. Dist. Ct., N.D. Cal., San Francisco Div., filed October 22, 2012).

According to the complaint, Moon Marine knew that its imported yellowfin tuna (scrape) was linked to a nationwide *Salmonella* outbreak that sickened more than 400 individuals and had, in fact, recalled the product, when the $2-million excess insurance policy was obtained. The plaintiffs allege that Moon Marine failed to inform the insurance carrier's underwriter that the fish importer faced "obvious liability exposure for bodily injury claims from the nationwide salmonella outbreak that had been linked to Moon Marines' importation of Scrape." The first lawsuit was actually filed two days before the plaintiffs quoted and bound the excess policy.

The insurance companies allege that they have "assumed the defense of all tendered suits filed against Moon Marine arising from the salmonella outbreak, which are presently pending in three or more states. Additional suits have been threatened to be filed in other states." They seek a declaration that the Golden Eagle Excess Policy has been rescinded *ab initio* and that the single occurrence limit of $1 million applies rather than the $2-million aggregate limit.

Arizona Dairy Brings Challenge to Milk-Pricing Law Before U.S. Supreme Court

The owners of a Yuma, Arizona-based dairy have filed a petition for review before the U.S. Supreme Court, seeking a hearing on their challenge to the Milk Regulatory Equity Act of 2005, which apparently requires independent producer-handlers to join a dairy cooperative or pay federal marketing fees. *Hettinga v. United States*, No. 12-506 (U.S., petition for writ of *certiorari* filed October 19, 2012). According to the Hettingas, one of the few remaining independents in the United States, lawmakers singled out their dairy when enacting a law that has forced them to sell milk at a higher price than they want to charge. The D.C. Circuit Court of Appeals agreed with the district court that the law did not constitute a bill of attainder nor did it violate the Equal Protection and Due Process clauses. ***Hettinga v. United States*, No. 11-5065 (D.C. Cir., decided April 13, 2012)**.

OTHER DEVELOPMENTS

AAP Report Assesses Organic Foods for Children

The American Academy of Pediatrics (AAP) has published its first **report** on organic foods, concluding that it's more important for children to eat a wide variety of healthy produce than to emphasize an organic diet. Joel Forman, et al., "Organic Foods: Health and Environmental Advantages and Disadvan-

tages," *Pediatrics,* October 2012. According to AAP, research has "convincingly demonstrated" that organic diets can reduce consumer exposure to pesticides and drug-resistant diseases. "However, no well-powered human studies have directly demonstrated health benefits or disease protection as a result of consuming an organic diet," states the report, which urges pediatricians to discuss the weight of scientific evidence when approached by families interested in consuming organic foods.

"What's most important is that children eat a healthy diet rich in fruits, vegetables, whole grains, and low-fat or fat-free dairy products, whether those are conventional or organic foods. This type of diet has proven health benefits," one of the report authors said in an October 22, 2012, AAP press release. "Many families have a limited food budget, and we do not want families to choose to consume smaller amounts of more expensive organic foods and thus reduce their overall intake of healthy foods like produce."

McDonald's Scraps Online Sharing Feature to Protect Children's Privacy

McDonald's Corp. has reportedly announced plans to scrap "forward-to-a-friend" features on some of its online games after drawing complaints from a consumer group concerned about children's privacy. According to media sources, the global restaurant chain said it will disable a sharing option on HappyMeal.com that allowed users "to e-mail ecards, links and photos to family and friends."

"Rest assured, the online security of our guests—especially our youngest guests—remains a top priority for us," a company spokesperson told reporters. "We continuously review and enhance our sites as appropriate and we recently made some updates to HappyMeal.com, including removing the forward-to-a-friend option."

Earlier this year, the Center for Digital Democracy (CDD) filed five complaints with the Federal Trade Commission (FTC) against companies such as McDonald's and General Mills, Inc. over the use of interactive media to allegedly promote foods and TV programs to children. CDD claimed that these so-called "viral marketing" techniques violate the Children's Online Privacy Protection Act (COPPA) and called on FTC to investigate their use. "It took a complaint to get the company to realize that it wasn't respecting either the privacy of the young users or their parents," CDD Executive Director Jeff Chester was quoted as saying. "McDonald's actions illustrate why the FTC must do a better job enforcing COPPA's requirements, and why the commission's proposed updates to cover new privacy threats to kids—such as mobile tracking of kids—should be adopted." Additional details about the FTC complaints appear in Issue **451** of this *Update. See the Washington Post Blog,* October 23, 2012.

MEDIA COVERAGE

Gary Taubes & Cristin Kearns Couzens, "Sweet Little Lies," *Mother Jones*, November/December 2012

Based on hundreds of internal industry documents, this article outlines the alleged decades-long effort by sugar-producing interests to influence the scientific debate about the purported health effects of sugar. According to the authors, the memos, letters and company board reports "show how Big Sugar used Big Tobacco-style tactics to ensure that government agencies would dismiss troubling health claims against their products." The article claims that the industries' goals were the same: "safeguard sales by creating a body of evidence companies could deploy to counter any unfavorable research." As early as 1943, grower and refiners reportedly formed the Sugar Research Foundation to counter calls for sugar-rationing during World War II.

Among other matters, the article claims that the industry purportedly spent hundreds of thousands of dollars on research suggesting that low-calorie sweeteners caused disease in animals and redirected any research funds it was providing through its International Sugar Research Foundation (ISRF) when studies looked like they would establish a link between sugar consumption and disease. ISRF hosted a conference in 1974 to counter a 1973 congressional hearing on sugar, diabetes and heart disease spearheaded by the late Senator George McGovern (D-S.D.). According to an ISRF conference review published in a diabetes journal, "All those present agreed that a large amount of research is still necessary before a firm conclusion can be arrived at."

Industry-funded research proposals in the intervening years were allegedly vetted by industry-friendly scientists, as well as a committee staffed by sugar and major food and beverage company representatives. "Most of the cash," say the authors, "was awarded to researchers whose studies seemed explicitly designed to exonerate sugar." The article discusses industry-linked individuals who had a lasting impact on government initiatives, including the federal diabetes research agenda, the Food and Drug Administration's (FDA's) determination that sugar is generally recognized as safe (GRAS) and the U.S. Department of Agriculture's dietary guidelines, which the authors characterize as making "vague recommendations" regarding sugar intake. The sugar industry also apparently produced newspaper and magazine ads after FDA made its GRAS ruling, claiming "Sugar is Safe!" and it "does not cause death-dealing diseases."

The authors further claim that the Sugar Association directly confronted the World Health Organization (WHO) in 2003 after an expert panel recommended "that no more than 10 percent of all calories in people's diets should come from added sugars." Congressional representatives from states producing sugar beets and sugarcane reportedly wrote to the Secretary of

Health and Human Services calling for his "prompt and favorable attention" to prevent the panel report from becoming official WHO policy. The secretary communicated with WHO about "where the US Government's policy recommendations and interpretation of the science differ" with the WHO report, and the organization omitted the recommendation on sugar intake from its dietary strategy.

The article concludes by discussing some of the recent research linking sugar to the risk of diabetes and heart disease and states, "Like the tobacco industry before it, the sugar industry may be facing the inexorable exposure of its product as a killer—science will ultimately settle the matter one way or the other—but as Big Tobacco learned a long time ago, even the inexorable can be held up for a very long time."

Reuters Targets WHO Ties to Food and Beverage Companies

A *Reuters* special report has claimed that the Pan American Health Organization (PAHO), a regional office of the World Health Organization (WHO), has accepted "hundreds of thousands of dollars" from food and beverage companies to combat obesity. According to journalists Duff Wilson and Adam Kerlin, WHO and five of its regional offices already prohibit industry funding, but PAHO—"founded 46 years before it was affiliated with WHO in 1948—had different standards allowing the business donations." In particular, the report cites contributions from Nestlé and Unilever as evidence that PAHO and other WHO entities are partnering with industry out of necessity since the international agency "cut its own funding for chronic disease by 20 percent since 2010—an even bigger decline than for the agency as a whole."

"The recent infusion of corporate cash is the most pointed example to date of how WHO is approaching its battle against chronic disease. Increasingly, it is relying on what it calls 'partnerships' with industry, opting to enter into alliances with food and beverage companies rather than maintain strict neutrality," write Wilson and Kerlin. "The strategy differs dramatically from WHO's approach to interacting with the tobacco industry—companies with which it is unwilling to partner."

The *Reuters* report also faults WHO for purportedly failing to maintain adequate conflict-of-interest policies, pointing to experts on its Nutrition Guidance Expert Advisory Group with alleged financial ties to food and beverage companies. "Industry is buzzing all around," said Boyd Swinburn, director of WHO's Collaborating Centre for Obesity Prevention in Melbourne, Australia. "Even in things like nutrition guidelines, they're usually in the room at the policymaking table or buzzing around it and putting all sort of pressure on, bringing their huge conflicts of interest and their huge resources to it—and we're wondering why we don't get much public interest policy coming out." *See Reuters,* October 19, 2012.

SCIENTIFIC/TECHNICAL ITEMS

Research Examines Soft Drink Consumption and Stroke Risk

A recent study has reportedly claimed that "soft drink intake is associated with higher risk of ischemic stroke for women." Ehab Eshak, et al., "Soft drink intake in relation to incident ischemic heart disease, stroke and stroke subtypes in Japanese men and women: the Japan Public Health Centre-based study cohort," *American Journal of Clinical Nutrition,* October 2012. After analyzing food-frequency questionnaires and data from approximately 40,000 Japanese men and women aged 40-49 years, researchers evidently concluded during an 18-year follow-up that "soft drink intake was positively associated with risk of total stroke and more specifically ischemic stroke for women." At the same time, however, the results suggested "a nonsignificant inverse trend for risks of total and ischemic strokes…for men" that "was weakened after the exclusion of early incident cases or after the exclusion of participants with baseline comorbidities."

"There was no consensus about why an adverse effect of soft drink is stronger for women than for men," concluded the study's authors, who noted that adjustments for body mass index and total energy intake had little effect on the findings. "No association was shown between soft drink intake and risk of hemorrhagic stroke or IHD [ischemic heart disease] for either sex."

Hospital Walks Back Study Linking Aspartame to Leukemia

Brigham and Women's Hospital (BWM) has reportedly walked back a recent study claiming to link aspartame with an increased risk of leukemia, non-Hodgkin's lymphoma (NHL) and other blood-related cancers. Published ahead of print in the *American Journal of Clinical Nutrition,* the study analyzed diet data from more than 77,000 women and 47,000 men enrolled in the Nurses' Health Study and Health Professionals Follow-Up Study. The results apparently suggested "a positive association between diet soda and total aspartame intake and risks of NHL and multiple myeloma in men and leukemia in both men and women," although "[a] higher consumption of regular sugar-sweetened soda was associated with higher risk of NHL and multiple myeloma in men but not in women." Eva Schernhammer, et al., "Consumption of artificial sweetener—and sugar-containing soda and risk of lymphoma and leukemia in men and women," *American Journal of Clinical Nutrition,* October 2012.

But BWH has since cast doubt on the strength of the evidence, noting that the hospital's experts had not fully reviewed the research before submitting it to the press. "Upon review of the findings, the consensus of our scientific leaders is that the data is[sic] weak, and that BWH Media Relations was premature in promotion of the work," a BWH spokesperson told reporters who had received an embargoed copy of the study before it was published. Media sources have

also cited contacts at the National Cancer Institute, MD Anderson Cancer Center and American Cancer Society (ACS) who found the study's claims inconsistent at best.

"For instance, the increased risk in [NHL] was found only in men, not women. And regular, sugar-sweetened soda also seemed to lead to a similar increased risk of cancer," reported *NPR's* "The Salt" blog, paraphrasing ACS Strategic Director of Nutritional Epidemiology Marji McCullough. "And statistically, some of the findings teetered on the edge of significance." *See NPR's The Salt,* October 24, 2012; *NBC News,* October 25, 2012.

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