

Food & Beverage

LITIGATION UPDATE

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Legislation, Regulations and Standards

Food and Drug Administration (FDA)

[1] FDA Board to Consider Obesity Report at Upcoming Meeting

The FDA Science Board will convene for a [public meeting](#) on April 22, 2004, at the agency's headquarters in Rockville, Maryland. Among other things, the advisory committee will discuss the FDA Obesity Working Group's [March 2004 report](#) which emphasizes "the scientific fact that weight control is mainly a function of caloric balance." The report also recommends (i) improving the accuracy of food labels, (ii) encouraging restaurants to provide more nutritional information and (iii) collaborating with various stakeholders on obesity research. See *Federal Register*, April 6, 2004.

[2] New FDA Qualified Health Claim Ties Walnuts to Potential Reduced Risk of Coronary Heart Disease

After reviewing a petition from the California Walnut Commission, FDA has approved the use of a "[qualified health claim](#)" on labels for whole and chopped walnuts that will read: "Supportive but not conclusive research shows that eating 1.5 oz. of walnuts per day, as part of a low saturated fat and low cholesterol diet, and not resulting in increased caloric intake may reduce the risk of coronary heart disease." Some public health groups, such as the

Center for Science in the Public Interest and Public Citizen, have not only criticized the new FDA category of qualified health claims but have also sued the agency to stop the program. See *FDA Press Release*, March 31, 2004; *The Washington Post*, April 1, 2004.

United Kingdom

[3] U.K. Agency Launches Consultation on Food Promotion and Children Action Plan

Britain's Food Standards Agency (FSA) is requesting [public comment](#) on the appropriateness and achievability of proposals that address the ways foods are currently promoted to children. Proposed initiatives include (i) devising guidelines for the food industry with respect to the amounts of fat, salt and sugar in products marketed to kids, (ii) monitoring industry's compliance with such guidance, (iii) working with schools to offer healthier foods to students, and (iv) encouraging celebrities not to endorse foods or beverages deemed unhealthy. FSA is also inviting comments on a partial Regulatory Impact Statement to assess and quantify the costs and benefits the food promotion proposals might pose to consumers, businesses and other stakeholders. Comments must be submitted by June 21, 2004. See *FSA News Release*, March 29, 2004.



State/Local Initiatives

[4] Hawaii Board of Education to Restrict Beverage Offerings in Vending Machines

Citing a desire to help curb the increasing rate of childhood obesity, Hawaii's state board of education has directed the state superintendent to draft regulations restricting the number of soft drinks available in vending machines at public schools. The board reportedly considered a proposal to prohibit soft drinks entirely, but opted instead to require 80 percent of vending machine beverage selections to constitute water, fruit juices and milk. *See Associated Press*, April 6, 2004.

Litigation

Information Quality Act

[5] U.S. Government Sued to Release Salt-Study Data

The Salt Institute and the U.S. Chamber of Commerce have sued the federal government to compel the release of data from a study of blood pressure and dietary salt. [*Salt Institute v. Thompson, No. 04-CV-359 \(E.D. Va.\) \(filed March 31, 2004\)*](#). Plaintiffs' complaint claims that the National Heart Lung and Blood Institute (NHLBI) "has wrongfully withheld important and readily available scientific information from the public and interested researchers, inappropriately used incomplete and potentially unsound scientific data, and disseminated inaccurate influential health risk information in violation of controlling legal standards and good scientific practice." The lawsuit followed the institute's denial of a petition filed in May 2003 under the Information Quality Act.

"The DASH-Sodium results show that improving dietary quality improves blood pressure and that salt intake is unimportant for the population at large, though it may be important for older people suffering high blood pressure. But that's not what NHLBI claims from the results," according to the Salt Institute's president, Richard Hanneman.

The lawsuit's filing coincided with a public hearing on dietary salt consumption convened by the Dietary Guidelines Advisory Committee.

Other Developments

[6] Rising Obesity Rates Worldwide Likely to Affect Life Insurance Premiums

A report issued this week by the Zurich-based Swiss Reinsurance Co. warns that as rising rates of obesity begin to affect life expectancy, life insurers worldwide are likely to consider raising premiums not just for those individuals who are deemed obese, but for those people prone to obesity. According to the report, "Addressing the problem [of rising obesity rates] means keeping ratings and pricing up to date and in line with emerging experience. Given that obesity and its effects could become more prevalent in the future, it is worth considering whether the prospective risk of the applicant becoming obese could be underwritten at the application stage." The report also notes that "Obesity is starting to replace, or has already replaced, malnutrition and infectious disease as the primary cause of ill health." *See Swiss Reinsurance Co. News Release* and *The Wall Street Journal*, April 6, 2004.



[7] **BBC to Discontinue Ties Between Cartoons and Snack Foods**

The British Broadcasting Corporation (BBC) has announced plans to phase out ties between its popular children's television characters, e.g., *Tel-etubbies*, and sugary/fatty snack foods. The BBC licenses its children's TV cartoon characters around the world for products ranging from books and videos to food. The network said that while it will still license specialty food items such as themed birthday cakes, its brands will not longer be linked with "everyday" products high in fat, salt and sugar. According to BBC officials, the move is in response to growing concerns over children's diets and the rise in childhood obesity. The phase-out of themed confectionary products now on shelves should be completed within two years. *See Associated Press*, April 5, 2004.

[8] **FDA Science Forum to Include Obesity and Food Security Sessions**

Sessions at the [10th Food and Drug Administration \(FDA\) Science Forum](#) will include those targeting (i) the biology of obesity, (ii) research activities related to obesity and (iii) various issues related to food security. Deemed as an event "designed to bring FDA scientists together with representatives from other components of DHHS, industry, academia, government agencies, consumer and patient advocacy groups," the forum will be held May 18-19, 2004, at the Washington Convention Center in Washington, D.C.

Scientific/Technical Items

Obesity

[9] **High-Fructose Syrup in Beverages Linked to Obesity Trends**

A recently published research report (G. Bray, et al., "Consumption of High-Fructose Corn Syrup in Beverages May Play a Role in the Epidemic of Obesity," *American Journal of Clinical Nutrition* 79: 537-43, 2004) suggests that high-fructose corn syrup (HFCS), which now represents nearly one-half of all caloric sweeteners added to foods and beverages, might be responsible for the rising trends in obesity in the United States. The researchers compared per capita consumption of HFCS through 1990 and trends in obesity, reporting a strong correlation over time. Corn-based syrup is a sweeter, less expensive alternative to sucrose (sugar), and is the sole caloric sweetener used in American soft drinks and fruit drinks. According to the authors, fructose and glucose, the end-products of carbohydrate metabolism, have different metabolic properties and experimental research indicates that, unlike glucose, fructose does not stimulate insulin release. Insulin induces leptin secretion that, in turn, regulates food intake. The authors conclude that overconsumption of beverages sweetened with HFCS, together with increased intake of total fructose in the American diet "may play a role in the epidemic of obesity." They advocate reduced amounts of HFCS in beverages or the use of noncaloric sweeteners instead.

[10] British Survey Reveals Ignorance of Link Between Obesity and Cancer

A survey commissioned by Cancer Research UK's Race for Life has reportedly revealed that only 3 percent of the 1,000 adults queried were aware of the link between excess weight and cancer; 70 percent of those surveyed knew of the relationship between obesity and cardiovascular disease while 16 percent were aware of excess weight's link to diabetes. "Excess body fat is not harmless 'extra padding,' but active tissue producing hormones that can increase the risk of cancer," the director of Cancer Research UK's Health Behavior Unit was quoted as saying. Another representative of the organization called the survey results "extremely worrying as being overweight is the major preventable risk factor for cancer in nonsmokers." See *Cancer Research UK Press Release*, April 5, 2004.

Cadmium

[11] Cadmium Toxicity Leads Researchers to Call for Revised WHO Guidelines

Australian researchers claim that new evidence about cadmium toxicity points to a much needed revision of the World Health Organization's (WHO's) current dietary intake limit for the

chemical and that "international food legislation" establishing a maximum limit for cadmium in agricultural products "is one of the strategies for exposure minimization." (Soisungwan Satarug and Michael Moore, "[Adverse Health Effects of Chronic Exposure to Low-Level Cadmium in Foodstuffs and Cigarette Smoke](#)," *Environmental Health Perspectives*, online March 25, 2004) Satarug's and Moore's literature review discusses recent studies linking cadmium to kidney dysfunction and decreases in bone mineral density in non-occupationally exposed populations. According to the authors, foodstuffs are the main source of cadmium, with approximately two-thirds of dietary cadmium derived from plant products grown in cadmium-rich soils. They report that bone and kidney toxicities linked to the chemical were observed in individuals whose dietary cadmium intakes were well within the limits set by the Joint WHO/FAO Expert Committee on Food Additives. Non-occupational exposures to cadmium have been associated with numerous adverse health effects such as increased bone fragility and risk of fractures, reproductive effects and adverse pregnancy outcomes, as well as pulmonary, renal cell, breast, prostate, and colorectal cancers.



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Food & Beverage Litigation Update is distributed by Mark Cowing and Mary Boyd in the Kansas City office of SHB. If you have questions about the Update or would like to receive back-up materials, please contact us by e-mail at mcowing@shb.com or mboyd@shb.com. You can also reach us at 816-474-6550. We welcome any leads on new developments in this emerging area of litigation.

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