

# Food & Beverage

## LITIGATION UPDATE

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## LITIGATION UPDATE

### Legislation, Regulations and Standards Institute of Medicine (IOM)

#### [1] Institute of Medicine Report Calls for Comprehensive Campaign to Combat Childhood Obesity

Putting a halt to the escalating rates of childhood obesity in the United States will require a national effort involving multiple stakeholders from diverse segments of society, according to a 19-member committee of the National Academies' Institute of Medicine (IOM) who late last week issued an explicit [action plan](#) to address the childhood obesity issue. "We must act now, and we must do this as a nation," Jeffrey Koplan, chair of the IOM committee, was quoted as saying. "We recognize that several of our recommendations challenge entrenched aspects of American life and business, but if we are not willing to make some fundamental shifts in our attitudes and actions, obesity's toll on our nation's health and being will only worsen," he said.

With respect to industry, the action plan calls on (i) the Department of Health and Human Services to convene a national conference "to develop guidelines for the advertising and marketing of foods, beverages, and sedentary

entertainment directed at children and youth with attention to product placement, promotion, and content"; and (ii) Congress to give the Federal Trade Commission the authority and resources to monitor industry's compliance with any standards and guidelines. It also calls on food and beverage manufacturers to expand consumer nutrition information, develop healthier products and provide "clear and consistent" media messages.

Other IOM advisory committee recommendations include (i) encouraging parents to limit children's consumption of "high-calorie, nutrient-poor beverages"; (ii) developing nutritional standards for competitive foods and beverages sold or served in schools; (iii) expanding physical fitness programs in schools; (iv) ensuring that schools "are as advertising-free as possible"; and (v) designating childhood obesity prevention as a priority health issue for health care providers and insurers. *See National Academies' Press Release, Reuters, Associated Press, and The Washington Post, September 30, 2004.*

### U.S. Congress

#### [2] Uniform Food Safety Labeling Legislation Would Preempt Stricter State Laws

By a vote of 30-15, the U.S. House of Representatives Energy and Commerce Committee last week approved an [amended bill](#) (H.R. 2699) that would nullify any state food safety or labeling



laws in favor of uniform federal regulations. Among other things, the National Uniformity for Food Act of 2004 would (i) prohibit states from establishing or enforcing standards not identical to amended provisions of the Federal Food, Drug, and Cosmetic Act (FDCA) and (ii) allow states 180 days from enactment of the Act to petition for an exemption or a new national standard regarding any amended provision of the FDCA or the Fair Packaging and Labeling Act relating to food regulation.

Those opposed to the proposed law reportedly include Energy and Commerce Committee members from California who argue that the bill would effectively invalidate carcinogen warning requirements under California's Proposition 65, the Center for Science in the Public Interest and the Association of Food and Drug Officials. *See CQ Today* and *CSPI News Release*, September 30, 2004.

## U.S. Department of Agriculture (USDA)

### [3] USDA Issues Interim Country-of-Origin Labeling Rule for Fish and Shellfish

As required under the 2002 Farm Bill, USDA has issued an [interim final rule](#) for mandatory country-of-origin labeling for fish and shellfish. Effective April 4, 2005, the final rule requires retailers to label fish and shellfish covered commodities to indicate the products' country of origin and method of production, i.e., wild and/or farm raised. Covered commodities are exempt from the labeling requirements, however, if they are used as ingredients in processed foods. Food service establishments are also exempt from the labeling rules. Comments on the interim final rule must be submitted by January 3, 2005. *See Federal Register*, October 5, 2004.

### [4] International Group Aims to Ensure Food Safety and Security

USDA's Food Safety and Inspection Service has announced a [public meeting](#) on October 13-15, 2004, in Miami to discuss establishment of the Food Safety Institute of the Americas (FSIA). Goals of the FSIA include determining better ways of sharing food safety information and developing international food safety standards throughout North, South and Central America and the Caribbean. Those participating in the three-day meeting are scheduled to include various USDA officials and representatives of the governments of Honduras, Trinidad/Tobago, Mexico, and Argentina. Interested parties are invited to attend the meeting to provide input on (i) identifying educational and informational needs, (ii) fostering collaboration and partnership development, and (iii) establishing strategies and best practices for programs. *See Federal Register*, October 5, 2004.

## Food and Drug Administration (FDA)

### [5] FDA Seeks Nominations for Voting Members of Food Advisory Committee

FDA is [soliciting nominations](#) for more than 25 voting members of the Food Advisory Committee and certain subcommittees in FDA's Center for Food Safety and Applied Nutrition. The parent committee provides advice to FDA officials on emerging food safety, food science, nutrition, and other food-related issues. The agency is accepting nominations for current vacancies and those that may occur through June 30, 2005. *See Federal Register*, October 6, 2004.



**[6] FDA Issues Guidance for Industry on Use of Material from BSE-Positive Cattle in Animal Feed**

FDA has issued a [guidance document](#) for industry describing the agency's current thinking regarding the use of material from cattle that test positive for bovine spongiform encephalopathy (BSE) in animal feed. Stakeholders are encouraged to submit new relevant data or comments on the guidance at any time. *See Federal Register*, September 30, 2004.

## State/Local Initiatives

**[7] California Governor Vetoes Tainted Meat Recall Legislation**

Governor Arnold Schwarzenegger (R) has vetoed a proposed law ([S.B. 1585](#)) that would have required meat and poultry suppliers, distributors, brokers, or processors that sell meat- or poultry-related products subject to U.S. Department of Agriculture (USDA) recalls to notify state health authorities of the recall. In his veto message, Schwarzenegger claimed the bill could have "weaken[ed] our ability to protect public health" by compromising a memorandum of understanding between the state and USDA under which state health officials agreed not to publicly identify the locations where potentially tainted products have been distributed or sold. Instead, the governor directed the state health department to pursue a new agreement with USDA that authorizes the department to share recall information with local public health officials. *See The Sacramento Bee*, October 2, 2004.

## Other Developments

**[8] Consumer Protection Groups Advocate Increased USDA Authority and Other Measures to Ensure Food Safety**

Claiming that "the United States' archaic meat safety laws can't curb threats from an international, industrial food system," a coalition of six consumer rights organizations last week urged Congress to pass legislation that authorizes the U.S. Department of Agriculture (USDA) to set and enforce limits on pathogens in raw meat and poultry products. Other food-safety measures the coalition advocates include (i) establishing an identification program to trace diseased animals or those tainted with human pathogens to their originating farms, (ii) authorizing USDA to impose mandatory recalls and publicize where potentially tainted products have been sold, and (iii) ensuring implementation of various BSE-prevention proposals.

Improved food safety is one of six issues included in an [agenda](#) that the Consumer Federation of America, Consumers Union, National Association of Consumer Advocates, National Consumer Law Center, Public Citizen, and the U.S. Public Interest Research Group want consumers to use as a tool to question government policies. "We see our agenda as a key starting point for consumers and journalists who should be asking their policymakers right now about how they intend to protect the public interest," a coalition spokesperson was quoted as saying. *See Public Citizen News Release*, September 28, 2004.



## Scientific/Technical Items

### Alcohol

#### [9] Alcohol Consumption Linked to 75,000 Deaths Annually in the United States

A recent Centers for Disease Control and Prevention (CDC) [report](#) estimates that nearly 35,000 Americans died in 2001 from cirrhosis of the liver, cancer and other diseases associated with excessive drinking, while another 41,000 died from motor-vehicle crashes and other accidents linked to

excessive alcohol use. “These results emphasize the importance of adopting effective strategies to reduce excessive drinking, including increasing alcohol excise taxes and screening for alcohol misuse in clinical settings,” according to the report.

Seventy-two percent of all alcohol-attributable deaths involved males. Alcoholic liver disease was identified as the leading chronic cause of alcohol-attributable deaths in both men and women, while the leading acute cause of death was injury from motor-vehicle crashes. The study also attributed 2.3 million years of potential life lost to excessive drinking.



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## LITIGATION UPDATE

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Mark Cowing and Mary Boyd in the Kansas City office of SHB.  
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