

# Food & Beverage

## LITIGATION UPDATE

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## LITIGATION UPDATE

### Legislation, Regulations and Standards U.S. Congress

#### [1] Safe Food Act of 2004 Would Create Single Food Agency

Comprehensive legislation (H.R. 5259 and S. 2910) introduced last week by Representative Rosa DeLauro (D-Conn.) and Senator Richard Durbin (D-Ill.) would consolidate the responsibilities of various federal agencies by creating a Food Safety Administration. “Our current food safety system has turned into a food fight among more than 35 federal agencies,” Durbin said. Responsibilities of the new agency would include (i) random inspections of *all* food processing facilities, (ii) increased oversight of imported foods and (iii) new rules for tracing foods to their points of origin. Both lawmakers have promised to reintroduce the legislation early next year if Congress fails to act on the proposal in 2004. See *Press Release of Congresswoman Rosa L. DeLauro*, October 7, 2004.

#### [2] Childhood Obesity Target of Kennedy Legislation

Early last week, Senator Edward Kennedy (D-Mass.) introduced a bill (S. 2894) that would amend the Public Health Service Act to provide for coordination of federal government activities and policies to

prevent childhood obesity. Among other things, the Prevention of Childhood Obesity Act would establish a federal leadership commission charged with (i) coordinating anti-obesity activities across all departments and agencies, (ii) requesting a Government Accountability Office study on nutrition assistance programs and agricultural policies related to obesity, (iii) convening a national summit to set guidelines for advertising and marketing to children, and (iv) authorizing the Federal Trade Commission to monitor media compliance with such guidelines. With respect to schools, the legislation would require schools that receive federal funds to (i) prohibit access to soft drinks “or other foods of poor or minimal nutritional value” in vending machines, (ii) prohibit food advertising and marketing in school facilities and (iii) provide age-appropriate daily physical activity. The proposal would also authorize grants to communities for the funding of walking and cycling paths, playgrounds, and dietary education campaigns. S. 2894 has been referred to the Senate Health, Education, Labor, and Pensions Committee.

#### [3] Bipartisan Group of Senators Calls on FDA to Work with Industry on Healthy *Trans* Fat Alternatives

A diverse group of Senate lawmakers led by Senator Tom Harkin (D-Iowa) has urged the Food and Drug Administration (FDA) to work with food manufacturers to ensure the companies replace partially hydrogenated oils with the “healthiest *trans* fat alternatives possible” as they reformulate



various products in response to concerns over the alleged link between *trans* fats and the development of cardiovascular disease. In an October 4, 2004, [letter](#) to HHS Secretary Tommy Thompson and FDA Acting Commissioner Lester Crawford, Harkin and colleagues say they are “concerned by reports that some food manufacturers may replace *trans* fats with other fats and oils, such as palm oil, that are high in saturated fats and thus may be almost as conducive to heart disease as partially hydrogenated oils.” The senators recommend that manufacturers switch to non-hydrogenated replacements derived from soy, corn, sunflower, or canola oil. Other signatories to the letter include Senators Kit Bond (R-Mo.), Kent Conrad (D-N.D.), Jim Talent (R-Mo.), Byron Dorgan (D-N.D.), Peter Fitzgerald (R-Ill.), Mark Pryor (D-Ark.), Ben Nelson (D-Neb.), Richard Durbin (D-Ill.), Sam Brownback (R-Kan.), and Saxby Chambliss (R-Ga.). *See Press Release of U.S. Senator Tom Harkin*, October 4, 2004.

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

### [4] USDA Issues Security Guidance for Agricultural and Food Transporters

USDA has issued a [guide](#) that provides voluntary security measures to help commercial agricultural and food transporters protect their facilities and vehicles against terrorist attacks. The guidance includes detailed security tips for companies – e.g., verifying personal information when hiring employees, securing water supply systems, assessing facilities for potential sabotage of bulk ingredients – and drivers – e.g., varying routes if possible and not leaving trucks unattended.

## Other Developments

### [5] New CAMY Study Takes Aim at Alcohol Industry’s Compliance with Advertising Reform

A [study](#) issued yesterday by Georgetown University’s Center on Alcohol Advertising and Youth (CAMY) concludes that “How well the industry meets its new code provisions for the placement of alcohol ads and how effective those provisions will be in reducing underage youth exposure to alcohol advertising will require independent, public-health-oriented monitoring.” The study analyzes television advertising for alcohol products from 2001 to 2003, finding an increase each year in the number of ads aired on programs in which 30 percent or more of the audience are underage viewers. CAMY also asserts that 11.6 percent of alcohol ads during the first six months of 2004 aired on programs with a greater than 30 percent underage-youth viewership. Alcohol manufacturers vowed to stop advertising in media where underage individuals compose 30 percent or more of the audience in September 2003, after a [congressionally mandated report](#) called for establishment of such thresholds to reduce youth exposure to alcohol ads.

“Every single day, 7,000 kids under age 16 take their first drink, and \$6 billion of alcohol advertising and marketing each year isn’t helping,” CAMY’s executive director was quoted as saying. “More of the same is not progress, and this report shows that that is what we are seeing from the alcohol industry,” he said. Among the CAMY report’s findings: (i) the number of alcohol ads on television rose from 51,084 in 2001 to 69,054 in 2003; and (ii) industry spent more than \$30 million in 2003 to place advertising on the top 15 programs popular among teenage viewers. *See CAMY Press Release*, October 12, 2004.



**[6] British News Outlet Questions Sugar Industry's Role in Nutrition Report; Trade Group Seeks NGO Status with World Health Organization**

Undisclosed sugar industry funding in effect undermined the Food and Agriculture Organization's (FAO's) 1998 *Carbohydrates in Human Nutrition* report, according to the BBC News program "Panorama," which aired the allegations in a segment titled "The Trouble with Sugar" on October 10, 2004. Produced as a result of an April 1997 meeting of independent nutrition experts held in Rome, the carbohydrate report's recommendations included: (i) sugar is not linked to the development of diabetes; (ii) sugar is one of many factors that affect the development of dental cavities; and (iii) controlling a single dietary component like sugar is not likely to affect significant changes in the number of calories consumed. BBC News claims that documents it obtained show that both the U.K.-based World Sugar Research Organization (WSRO) and the U.S.-based International Life Sciences Institute (ILSI) provided partial funding to FAO for the 1997 Rome meeting as well as the names of potential nominees for the expert panel. The news outlet asserts that the sugar industry has often pointed to the report's conclusions to discredit purported relationships between sugar consumption and adverse health effects and the science underlying the World Health Organization's (WHO's) 2004 *Global Strategy on Diet, Physical Activity and Health*.

In light of the BBC News investigation, some members of the expert panel now reportedly say they would not have participated in authoring the carbohydrate report if they had known of the sugar industry's role in the Rome meeting. "My guess would be that I certainly, and probably my colleagues, would not have been prepared to be involved with such an activity had it been funded by

these organizations," James Mann, a nutrition professor at New Zealand's University of Otago, was quoted as saying. Mann told *The Guardian* newspaper that news of the industry's involvement explains "why there was a very strong attempt to dilute everything we said about sugar."

An FAO assistant director general reportedly responded to the BBC's allegations by saying the industry's involvement in the consultation process was not illegal, but "did contravene commonsense norms of transparency and the avoidance of perceived conflict of interest." Hartwig de Haen further stated that while WSRO and ILSI were asked to nominate experts to serve on the panel, FAO made the final decision in determining who served on the committee and that FAO would soon convene a new expert panel to review the carbohydrate report. An ILSI spokesperson reportedly said the organization saw "no reason why ILSI's partial support of the consultation or our participation in the process would call into question the credibility of the consultation." See *BBC News*, October 8, 2004; *The Guardian*, October 9, 2004.

Meanwhile, Britain's *Observer* newspaper has suggested that WSRO is attempting to subvert any forthcoming WHO nutrition policies by trying to gain status with the health agency as a non-governmental organization. A "confidential" WSRO document obtained by *The Observer* reportedly states that "It is clear that WSRO will need to offer some form of collaboration with WHO, involving substantial sponsorship, to be considered for NGO status ... What is not clear is the extent of sponsorship expected and whether it will be possible to identify a project that would be acceptable to WHO but of direct value to the sugar industry."

WSRO's top executive reportedly responded to *The Observer's* allegations by saying the trade group



“simply wants an opportunity to make our expertise available,” while a WHO official was quoted as saying, “They know we are not keen to some trade association being recognized as an NGO. We do work with the private sector, but only as far as it is committed to preventing disease.” See *The Observer*, October 3, 2004.

## Scientific/Technical Items

### Artificial Sweeteners

#### [7] Criticisms of Aspartame Are “Unfounded,” Say University of Glasgow Researchers

A recent editorial in the *British Medical Journal* (*BMJ*) concludes that criticisms of aspartame (e.g., NutraSweet), an artificial sweetener found in a wide range of products including soft drinks, tabletop sweeteners, chewing gum, and yogurt, are “unfounded.” (“Aspartame and Its Effects on Health,” *BMJ* 329: 755-756, 2004). Authors Michael Lean and Catherine Hankey observe that aspartame has been the subject of “much sensationalist journalism, mostly on websites,” and that “evidence does not support links between aspartame and cancer, hair loss, depression, dementia, behavioral disturbances, or any of the other conditions....” The University of Glasgow nutrition researchers point out that aspartame has been approved by European Union and U.S. regulatory authorities and that aspartame consumption might play a beneficial role in helping individuals avoid obesity, manage diabetes and prevent tooth decay.

The editorial provoked a number of “rapid responses” from the journal’s readers, including one comment which observed that long-term studies into the effects of ingestion of aspartame or its components in humans have not been done and,

until they are, “it seems premature to include that aspartame is safe.” (“It’s Not Just Misleading Websites That the Public Should Be Protected From,” John Briffa, October 3, 2004).

## Obesity

#### [8] Obesity Linked to Chronic Kidney Failure and Decreased Odds of Surviving Breast Cancer

Studies published this month report that chronic kidney failure, largely attributed to obesity among Americans, increased by 104 percent during the 1990s ([Morbidity and Mortality Weekly Report 53\(39\): 918-920, October 8, 2004](#)) and that obese women with early-stage breast cancer exhibit significantly lower overall survival rates than their normal-weight counterparts. The first study, conducted by researchers at the Centers for Disease Control and Prevention, found that steep increases in diabetes-related and hypertension-related cases of chronic kidney failure accounted for much of the overall increase in chronic kidney failure in the United States during the 1990s. According to the authors of the study, obesity leads to both diabetes and high blood pressure.

In a study of 2,000 women with early-stage breast cancer, researchers from the Fox Chase Cancer Center in Philadelphia reported that the overall survival rate for obese female breast cancer patients at five years was lower than the survival rate for patients of normal weight. “Despite being diagnosed with early-stage disease, which is more commonly cured, obese women more often developed metastatic disease and more often died,” lead author Penny Anderson, M.D., was quoted as saying. See *Fox Chase Cancer Center News Release*, October 5, 2004; *Reuters*, October 6, 2004.



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