

Food & Beverage

LITIGATION UPDATE

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LITIGATION UPDATE

Legislation, Regulations and Standards

U.S. Department of Agriculture (USDA)

[1] FSIS Issues Final Rule Establishing Uniform Compliance Date for Food Labeling Regulations

USDA's Food Safety and Inspection Service (FSIS) has announced a [final rule](#) that establishes January 1, 2008, as the uniform compliance date for new food labeling rules issued between January 1, 2005, and December 31, 2006. FSIS is harmonizing its compliance schedule with that of the Food and Drug Administration to minimize the economic impact of labeling changes to meat and poultry manufacturers whose products may be subject to the rules of both agencies. See *Federal Register*, December 14, 2004.

[2] Poultry Health to Be Focus of January 2005 NPIP Meeting

USDA's Animal and Plant Health Inspection Service has scheduled a [public meeting](#) of the General Conference Committee of the National Poultry Improvement Plan (NPIP) for January 26, 2004, in Atlanta, Georgia. Members of the committee represent various state agencies and the poultry industry. Topics to be discussed at the meeting include (i) the H5/H7 low pathogenic

avian influenza program for commercial layers, broilers and turkeys, (ii) the compartmentalization of notifiable avian flu-free zones, (iii) a national animal identification program for poultry, and (iv) cleaning, disinfection and bird disposal costs for commercial poultry flocks. See *Federal Register*, November 24, 2004.

Food and Drug Administration (FDA)

[3] CFSAN Releases Program Priorities for 2005

FDA's Center for Food Safety and Applied Nutrition (CFSAN) recently issued its list of [program priorities](#) for 2005 and reportedly hopes to complete at least 90 percent of its "A-list" goals by September 30. Priority areas include developing guidance to support regulations issued under the Bioterrorism Act; expanding surveys of perchlorate in food; developing an action plan to address the "large-scale unlawful importation of cheeses"; establishing a new obesity working group; initiating rulemakings related to nutrient labeling; and preparing risk profiles for hepatitis A, norovirus and *Listeria monocytogenes* in produce.

[4] FDA to Conduct Food Safety Awareness Survey in 2005

FDA is soliciting [public comments](#) on a proposed telephone survey of some 4,000 adults to gauge public awareness of (i) perceived sources



of food contamination, (ii) knowledge of particular microorganisms, (iii) food handling practices, and (iv) consumption of raw foods from animals. Most questions will reportedly be the same as those in the agency's 2001 Food Safety Survey, though new ones will cover awareness of mad cow disease, acrylamide, refrigeration practices, and washing practices for fresh produce. FDA plans to use data from the survey to support consumer education programs and regulatory development. *See Federal Register*, December 2, 2004.

United Kingdom (UK)

[5] UK's Food Standards Agency Issues Five-Year Strategic Plan

Britain's Food Standards Agency (FSA) last week issued its [strategic plan](#) for 2005-2010. Goals of the independent government department during the next five years include: (i) reducing by 50 percent the incidence of *Campylobacter* and *Salmonella* in UK-produced chicken and pork; (ii) ensuring that BSE controls are based on the most current science; (iii) collaborating with health departments and other stakeholders to reduce UK adults' average intake of salt and saturated fat; and (iv) developing better mechanisms by which to inspect imported foods.

Litigation

Contamination

[6] India's Supreme Court Calls for Warning Labels on Soft Drinks

India's Supreme Court last week reportedly ordered the Indian subsidiaries of Coca-Cola and PepsiCo to draft language for labels warning consumers of possible pesticide residues in their soft drinks. The high court's action comes after disputed allegations from the New Delhi-based Center for Science and Environment that random samples of Coke and Pepsi beverages collected in 2003 contained traces of lindane, DDT, malathion, and chloropyrifos at levels 30 to 36 times higher than European Union limits. The companies maintain that the treated water used in their products conforms to all necessary standards. According to press sources, the companies must submit the draft warnings to the state court of Rajasthan for approval. *See Associated Press*, December 7, 2004; *Reuters*, December 8, 2004.

Media Coverage

[7] "Shared Nightmare over the Food Supply," Elizabeth Becker, *The New York Times*, December 11, 2004

Inspired by departing HHS Secretary Tommy Thompson's recent remarks about his fear of the U.S. food supply falling prey to terrorist attacks, this article discusses criticisms of current safeguards against food-related terrorism, claiming that less



than 6 percent of meat products and less than 1 percent of produce entering the nation are inspected at the border. “Even this low percentage of inspection is mostly visual, looking at the packaging and labeling, and not inspecting for contamination with a sophisticated laboratory test,” a representative of Public Citizen is quoted as saying. In the event of contaminated ground beef, the author asserts that “one batch of hamburger can contain meat from hundreds of cows in dozens of states and several countries,” often making it difficult to find the source of contamination. “You wouldn’t even need to infect the cow with *E-coli* to spread the disease,” an independent food safety expert said. “You could dump *E-coli* into a gargantuan feedlot where there are thousands of cattle pressed up against each other or you could give it to someone at a slaughterhouse where worker turnover is sometimes 100 percent. The worker could dump it into a huge grinder and there it goes – the country is infected.”

[8] “You Are What They Eat,” *Consumer Reports*, January 2005

In this overview of U.S. animal feed practices, *Consumer Reports* concludes “that the federal government isn’t doing enough to protect the feed supply and that as a result, the food we eat may not be as safe as it could: Regulatory loopholes could allow mad cow infection, if present, to make its way into cattle feed; drugs used in chickens could raise human exposure to arsenic or antibiotic-resistant bacteria; farmed fish could harbor PCBs and dioxins.”

Scientific/Technical Items

Obesity

[9] Obesity in Middle Age Linked to Increased Medicare Expenses

Men and women who are obese in middle age will incur nearly twice the annual medical expenses under Medicare as those who aren’t overweight, according to a study published last week in *The Journal of the American Medical Association* (M. Daviglius, et al., “Relation of Body Mass Index in Young Adulthood and Middle Age to Medicare Expenditures in Older Age,” *JAMA* 292(22): 2743-2749, December 8, 2004). The research team investigated weight data from 9,978 men and 7,623 women between 1967 and 1973, and then assessed health care charges once the study subjects became eligible for Medicare at age 65. They found that men who were of normal weight at the beginning of the study had annual Medicare expenses of \$7,205, compared to \$13,672 for those who were severely obese. Similar differences were noted for women—severely obese women had significantly higher yearly costs than normal-weight women, \$12,342 versus \$6,224, respectively. The analysis included cardiovascular disease-related, diabetes-related and total-average-annual Medicare charges, and the results were adjusted for age, race, education, and smoking.



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