

# Food & Beverage

## LITIGATION UPDATE

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## LITIGATION UPDATE

### Legislation, Regulations and Standards

#### Alcohol and Tobacco Tax and Trade Bureau (TTB)

##### [1] TTB Issues Final Rule for Alcohol Content of Flavored Malt Beverages

TTB this week issued a [final rule](#) that requires flavored malt beverages to derive 51 percent or more of their alcohol content from the fermentation of malt and grain in order to be taxed and treated as beer or brewed beverages under various federal and state statutes. TTB reportedly undertook the rule-making after determining that a large number of flavored malt beverage products derive most of their alcohol content from flavorings that contain distilled spirits, not from the brewing process. In an effort to help consumers make better-informed choices, the rule also mandates product labeling that discloses alcohol content unless state law prohibits such disclosure. *See Federal Register*, January 3, 2005.

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

##### [2] USDA Lifts Ban on Imports of Young Canadian Cattle

USDA this week issued a [final rule](#) that establishes conditions under which the United States will allow imports of live cattle younger than age 30 months and certain other commodities from countries “with effective bovine spongiform encephalopathy (BSE) prevention and detection measures.” Requirements for minimal-risk status under the final rule include (i) prohibition of specified risk materials in human food, (ii) import restrictions sufficient to minimize exposure to BSE, (iii) surveillance for BSE at levels that meet or exceed international guidelines, (iv) a ruminant-to-ruminant feed ban that is effectively enforced, and (v) epidemiological investigations and risk mitigation measures as necessary.

Recognized by the rule as the first minimal-risk region, Canada will be able to resume cattle exports on March 7, 2005, provided the animals are clearly branded with a large “CN,” shipped by sealed conveyance to one feedlot only and then sent directly to slaughter at a USDA-certified plant. USDA is requesting comments on the [environmental assessment](#) related to Canada’s designation as a minimal-risk region by February 3. The department



indicated Monday that it plans to proceed with lifting the 19-month-old ban on imports of young Canadian cattle despite confirmation over the weekend that an Alberta dairy cow has tested positive for BSE. *See The Wall Street Journal*, January 3, 2005; *Federal Register*, January 4, 2005.

## Food and Drug Administration (FDA)

### [3] FDA Sets New Maximum Levels for Food Irradiation

FDA has [amended](#) food additive regulations under the Federal Food, Drug, and Cosmetic Act by revising the maximum permitted energy level of X-rays for treating food from 5 million electron volts (MeV) to 7.5 MeV, provided the X-rays are generated from equipment that uses tantalum or gold as the target material. The amended regulations reflect no change in the maximum permitted dose levels of irradiation or its current uses. According to FDA, any added radioactivity in food caused by the new maximum permitted energy level will be “trivial” compared to that of the radionuclides that occur naturally in food. The higher energy level is expected to increase production rates and therefore lower irradiation treatment costs. Objections to the revised regulations must be submitted to FDA by January 24, 2005. *See Federal Register*, December 23, 2004.

## Codex Alimentarius Commission

### [4] U.S. Delegates Schedule Public Meeting to Discuss Various Food Labeling Proposals

The U.S. Department of Agriculture, Food and Drug Administration, and Department of Health and Human Services have scheduled a January 19, 2005,

[public meeting](#) in College Park, Maryland, to discuss U.S. draft positions to be presented at the May 9-13 meeting of the Codex Committee on Food Labeling in Kota Kinabalu, Malaysia. Issues to be discussed at the January 19 meeting include (i) draft guidelines for the labeling of foods obtained through certain techniques of genetic modification/genetic engineering, (ii) country-of-origin labeling, (iii) a discussion paper on advertising, and (iv) a proposed draft amendment to the general standard for labeling prepackaged foods. *See Federal Register*, December 29, 2004.

## Litigation

### [5] United States Wins Case Against European Union over Regional Food Names

A World Trade Organization (WTO) panel has reportedly ruled that the European Union’s system of registering and protecting regional food names – e.g., Parma ham, Roquefort cheese – discriminates against the “geographical indications” (GIs) of U.S. foodstuffs and fails to protect U.S. trademarks. “This is a big win for American farmers and food processors,” U.S. Trade Representative Robert Zoellick said. “We brought this case because we believed that, under WTO rules, U.S. farmers, ranchers and other food producers should have the same access to protection for geographical indications [Idaho potatoes, Florida oranges] as European food producers.” The panel reportedly emphasized that “any exceptions to trademark rights for the use of registered GIs were narrow and limited to the actual GI name as registered.” *See Press Release of the U.S. Trade Representative*, December 21, 2004; *Bloomberg News*, December 22, 2004.



## Other Developments

### [6] American Medical Association Claims Flavored Malt Beverage Advertising Targets Teenage Girls

The American Medical Association (AMA) says that results of [two national surveys](#) indicate that alcohol manufacturers are using flavored malt beverage (FMB) products as “starter drinks” or “gateway” beverages to attract young women to drinking. “The percentage of girls who drink is on the rise faster than boys, and the average age of their first drink is now 13,” said AMA President-Elect J. Edward Hill, M.D. “These troubling findings make the aggressive marketing of so-called alcopops even more dangerous,” he said. Findings from the AMA polls include: 51 percent of teenage girls have seen FMB advertising; nearly one-third of teen girls surveyed have tried FMBs; and teenage girls often choose FMBs over other alcoholic drinks, whereas women ages 21 and older rank the products as their least-consumed alcoholic beverage.

### [7] Consumer Group Suggests That Industry Influence Has Affected Federal *Listeria* Rules

“The Bush administration’s USDA, while arguing that its actions are based on sound science, actually has developed rules based on sympathetic science, science that’s driven by industry convenience and political influence,” Carol Tucker Foreman charged yesterday in announcing release of a Consumer Federation of America report critical of the agriculture department’s efforts to control the incidence of *Listeria monocytogenes* in ready-to-eat meat and poultry products. Among other things, the report evidently claims that cases of food poisoning caused

by *Listeria* infection have continued to rise despite USDA’s evolving policies to control it, specifically citing Centers for Disease Control and Prevention data that indicate *Listeria*-related food poisoning jumped from 2.7 cases for every 1 million people in 2002 to 3.3 cases per million people in 2003.

Government and industry officials responded to the consumer group’s report with skepticism, saying it failed to mention other federal data from 2003 that indicate meat and poultry product safety had improved since the previous year. “The progress made in enhancing ready-to-eat meat and poultry safety under the Bush administration is indisputable,” the president of the American Meat Institute was quoted as saying. “These improved product safety data are apparently infuriating to those who clearly have a political ax to grind.” See *Associated Press* and *American Meat Institute Press Release*, January 4, 2005.

## Scientific/Technical Items

### Obesity

#### [8] Fast-Food Consumption Purportedly Linked to Increased Risk of Obesity and Type 2 Diabetes

Young adults who eat at fast-food restaurants more than twice a week tend to gain more weight (an average of 10 pounds) and have a twofold increase for insulin resistance by early middle age, according to a large multi-center study funded by the U.S. National Heart, Lung, and Blood Institute. (M. Pereira, et al., “Fast-Food Habits, Weight Gain, and Insulin Resistance (the CARDIA Study); 15-Year Prospective Analysis,” *The Lancet* 365: 36-42,



January 1, 2005). The study evaluated the frequency of fast-food visits of more than 3,000 young adults ages 18 to 30 and noted the changes in their body weight and insulin resistance over a 15-year period. The authors suggest that several factors could explain their findings: large portion sizes; offerings that often contain high levels of sugar, salt and fat, including *trans*-fatty acids; high-energy density; and high-glycemic load.

An accompanying *Lancet* commentary notes, however, that the study “cannot prove that the association between fast-food consumption and weight gain is causal” because fast-food consumption “could simply be a marker for a generally unhealthy lifestyle (e.g., less restrained eating behavior, preferences for fatty and sweet foods, and a sedentary lifestyle). ...” (A. Astrup, “Super-Sized and Diabetic by Frequent Fast-Food Consumption?” *The Lancet* 365: 4-5, January 1, 2005). The commentary also notes that the study fails to adequately address the role of portion sizes and energy density in reaching its conclusions.

## Cardiovascular Disease

### [9] Controllable Risk Factors for CVD Increasing Among American Youth

More than 10 percent of American children ages 2 to 5 were overweight in 2002, up from 7 percent in 1994, according to the American Heart Association’s [\*Heart Disease and Stroke Statistics – 2005 Update\*](#). The new data show that nearly 4 million children ages 6 to 11 and 5.3 million adolescents ages 12 to 19 were overweight or obese in 2002. “Childhood risk factors carry over into adulthood and may eventually translate into heart disease and other medical problems such as diabetes,” the heart association’s president-elect was quoted as saying. Nearly 1 million 12- to 19-year-olds also have metabolic syndrome, a condition characterized by three or more of the following: high triglycerides, high blood sugar, high blood pressure, low levels of HDL cholesterol, and a waist circumference at or above the 90th percentile for age and sex.



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