

# Food & Beverage

## LITIGATION UPDATE

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## LITIGATION UPDATE

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

#### [1] Senator Harkin Calls on Food Industry to Reduce Advertising Aimed at Youth

Claiming the food industry spent some \$10 billion on “bombarding” children with advertising in various media during 2004, Senator Tom Harkin (D-Iowa) today urged food manufacturers to limit advertising for “junk” food and announced two legislative measures that would regulate the marketing of unhealthy foods and beverages to kids. “Although parents may want their kids to eat healthy, they often lose out because Sponge Bob Square Pants, Shrek and cartoon superheroes entice kids to eat fast food and sugary snacks,” Harkin said during a press conference. “The childhood obesity epidemic is real, and the time to act is now.” Harkin plans to reintroduce legislation that would give the Federal Trade Commission the authority to restrict food advertising to youth under age 18. Other legislation he intends to sponsor would give USDA the authority to restrict junk food advertising in schools. Appearing at the press conference with Harkin were Center for Science in the Public Interest Director Michael Jacobson, New York University’s Marion Nestle, and Susan Linn, co-founder of Campaign

for a Commercial-Free Childhood. *See Press Release of Senator Tom Harkin and CSPI Press Release*, March 16, 2005.

### Federal Trade Commission (FTC)

#### [2] FTC and HHS to Host Workshop on Youth Marketing

The FTC and the Department of Health and Human Services (HHS) will convene a two-day workshop during summer 2005 to discuss industry’s self-regulatory efforts regarding marketing and advertising to children as a way to help minimize the risk of obesity. “This is not the first step toward new government regulations to ban or restrict children’s food advertising and marketing,” FTC Chair Deborah Majorus said in remarks last Friday at a Consumer Federation of America conference. “The FTC tried that approach in the 1970s and it failed. But it is a call to action for industry to examine what is working and what more can be done through responsible marketing, product innovations, and other approaches to promote healthy food choices and lifestyles in children,” she said. Senator Tom Harkin (D-Iowa) was quoted as saying the agencies’ decision to convene the workshop represents only “an initial step toward acknowledging the problem” because the agencies failed to follow the Institute of Medicine’s explicit recommendation that participants in such an



event develop guidelines for the marketing of food and beverages to children. *See Reuters and Press Release of Senator Tom Harkin*, March 11, 2005.

## Government Accountability Office (GAO)

### [3] GAO Issues Reports on Agroterrorism and Safety of Cattle Feed

“Our nation’s ports could be unnecessarily vulnerable to the intentional introduction of a disease or pest, unless agencies analyze the reasons for declining agricultural inspections and streamline the flow of information between USDA and DHS inspectors at ports of entry,” concludes a [GAO report](#) on the government’s efforts to protect the nation from agroterrorism. Several agencies, including the U.S. Department of Agriculture, the Department of Homeland Security (DHS), the Department of Health and Human Services, and the Environmental Protection Agency, all play roles in responding to the threat of agroterrorism. GAO recommendations include requiring (i) DHS and USDA to determine the reasons for declining agricultural inspections, (ii) USDA to mandate that accredited veterinarians be trained to recognize the clinical signs of foreign animal diseases, and (iii) USDA to evaluate the costs and benefits of developing stockpiles of ready-to-use vaccines.

Meanwhile, a [GAO report](#) on preventing mad cow disease in the United States concludes that weaknesses in FDA’s enforcement of its 1997 ban prohibiting certain animal protein in feed for cattle and other ruminant animals put U.S. cattle at risk of spreading bovine spongiform encephalopathy (BSE). GAO’s nine recommendations for improved FDA oversight and enforcement of the feed ban include (i) developing uniform

procedures for identifying all firms subject to the feed ban, (ii) ensuring that USDA and states are notified when inspectors discover that feed or feed ingredients containing prohibited material might have been fed to cattle, and (iii) developing guidance for inspectors to confirm the adequacy of firms’ methods of cleaning equipment and vehicles of prohibited material before the equipment or vehicles are used to process or transport cattle feed or feed ingredients.

## Food and Drug Administration (FDA)

### [4] FDA Requests Data and Comments on Preventive Controls for *Listeria* in Retail and Foodservice Establishments

As part of its continuing review of the 2001 Food Code, FDA is [requesting](#) data and comments on provisions of the code that address preventive controls for *Listeria monocytogenes* in retail and foodservice establishments. Specific information the agency seeks includes (i) the levels of *L. monocytogenes* in products stored in retail and foodservice establishments; (ii) the levels of *L. monocytogenes* on food contact and nonfood contact surfaces; (iii) the effects of short- and long-term refrigerated storage on the pathogen; and (iv) the efficacy of cleaning procedures and sanitizing agents on environmental surfaces and utensils. Data and comments are due by May 3, 2005. *See Federal Register*, March 4, 2005.



## Codex Alimentarius Commission

### [5] U.S. Delegates Announce Public Meeting to Discuss Various Procedural Concerns

The U.S. Department of Agriculture, Food and Drug Administration, and Department of Health and Human Services have scheduled a March 29, 2005, [public meeting](#) in Washington, D.C., to discuss U.S. draft positions to be presented at the April 11-15 meeting of the Codex Committee on General Principles in Paris, France. Issues to be discussed at the April meeting include (i) draft working principles for food safety risk analysis, (ii) draft revisions to the Code of Ethics for International Trade in Foods, and (iii) proposals for redefining the term “food.” See *Federal Register*, March 15, 2005.

## Litigation

### Beef Imports

### [6] Ninth Circuit Court of Appeals Grants Meat Industry Group’s Request to Intervene in Lawsuit Challenging USDA’s Plan to Lift Ban on Imports of Canadian Beef

The National Meat Association (NMA) is attempting to intervene in a lawsuit disputing the agriculture department’s plan to lift a ban on Canadian imports of live cattle younger than age 30 months and beef products derived from cattle of the same age. *Ranchers Cattlemen Action Legal Fund United Stockgrowers of America v. U.S. Department of Agriculture, et al.*, No. CV-05-06-BLG-RFC preliminary injunction granted (D. Mont., Billings Div. 3/2/05). NMA seeks to challenge a March 2, 2005, preliminary injunction issued by U.S. District Judge Richard Cebull delaying resumption of the beef

imports. The Ninth Circuit Court of Appeals has accepted the NMA’s emergency appeal from Judge Cebull’s denial of NMA’s motion to intervene. In its emergency motion for an expedited briefing schedule, NMA reportedly claims the ban on live cattle imports is causing “irreparable harm” to U.S. meatpackers. NMA’s opening brief is due March 21, while answering briefs from R-CALF and USDA are due March 28. See *NMA News Release*, March 11, 2005; *Meatingplace.com*, March 15, 2005.

## Other Developments

### [7] FDA Science Forum to Include Food and Animal Feed Safety Sessions

Sessions at the [2005 FDA Science Forum](#) will include those targeting (i) the public health significance of BSE/TSE, (ii) genetically engineered organisms and food, (iii) novel methods of detecting toxins in food and animal feeds, and (iv) the government’s new dietary guidelines. Deemed as an event that will “bring FDA scientists together with representatives from other components of HHS, industry, academia, government agencies, consumer and patient advocacy groups, Congress, international constituents, and many other stakeholders, the forum will be held April 27-28, 2005, at the Washington Convention Center in Washington, D.C.



## Scientific/Technical Items

### Acrylamide

#### [8] New Study Concludes That Acrylamide Does Not Increase Breast Cancer Risk

A study of acrylamide intake among 43,000 Swedish women published in this week's *Journal of the American Medical Association* found no association between acrylamide intake in foods and the risk of breast cancer. (L. Mucci, et al., "Acrylamide Intake and Breast Cancer Risk in Swedish Women," *JAMA* 293(11): March 16, 2005. The World Health Organization has classified the by-product of high-temperature cooking processes as a "probable human carcinogen." It is commonly found in potato chips, French fries, breads, and coffee. The women in the study were participating in the Swedish Womens' Lifestyle and Health Cohort and were first asked about their diets and how many acrylamide-containing foods they consumed in 1991. They were reassessed in 2002, and at the time, 667 of the members of the cohort had developed breast cancer. The researchers compared women with the lowest daily acrylamide intakes to those whose intakes were higher and found no increased breast cancer risk. They also found no increased risk of breast cancer in women who ate greater quantities of foods known to contain acrylamide.



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## LITIGATION UPDATE

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