

# Food & Beverage

## LITIGATION UPDATE

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## LITIGATION UPDATE

### Legislation, Regulations and Standards

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

##### [1] USDA Secretary Unveils New Food Guidance System

Agriculture Secretary Mike Johanns yesterday released the agency's new food guidance system and symbol for MyPyramid, a series of motivational and educational tools designed to help consumers make healthier food choices. The system replaces the 1992 Food Guide Pyramid and reflects recommendations in the *2005 Dietary Guidelines for Americans*. Eight color-coded elements of the new symbol represent recommended daily proportions of grains, vegetables, fruits, milk, meat and beans, oils, discretionary calories, and physical activity. Individuals are encouraged to visit [MyPyramid.gov](http://MyPyramid.gov) to ascertain specific intake recommendations based on age, gender and activity level. See *USDA Press Release*, April 19, 2005.

##### [2] USDA Issues Voluntary Security Plans for Meat, Poultry and Egg Processing Facilities

USDA Secretary Mike Johanns last week announced the availability of [model food security plans](#) for meat, poultry and egg processing plants and import facilities. "Food security is a shared responsibility of USDA and our many partners

to prevent or respond to the contamination of food products, and we continue to make these efforts a priority," Johanns said. USDA will host a series of [workshops](#) around the nation during May and June 2005 to discuss development and implementation of effective food security plans. See *Federal Register*, April 15, 2005.

#### U.S. Congress

##### [3] Missouri Senator Reintroduces National Food and Agricultural Science Act

Senator Christopher Bond (R-Mo.) has reintroduced legislation ([S. 767](#)) that would establish a Division of Food and Agricultural Science within the National Science Foundation (NSF) and fund various projects at agricultural research facilities. Goals of the new NSF division would include (i) developing foods that improve health and combat obesity, (ii) increasing the competitiveness of U.S. agriculture in the world marketplace, (iii) improving "food safety and food security by protecting plants and animals in the United States from insects, diseases, and the threat of bioterrorism," and (iv) decreasing U.S. dependence on foreign oil by developing bio-based fuels and materials from plants. A 24-member Standing Council of Advisors composed of 12 independent scientists and 12 stakeholders would provide oversight of the division. Representative Gil Gutknecht (R-Minn.) reintroduced companion legislation (H.R. 1563) in the House of Representatives.



## State/Local Initiatives

### [4] Cal/EPA Seeks Public Input on Options for Regulating Acrylamide Under Prop. 65

Cal/EPA's Office of Environmental Health Hazard Assessment (OEHHA) has issued a notice for a "potential regulatory action" that would exempt acrylamide in foods from warning requirements under the state's Safe Drinking Water and Toxic Enforcement Act of 1986 (Prop. 65) as well as three specific regulatory proposals for the chemical.

The potential rulemaking would exempt "exposures to listed chemicals that form in a food solely as a result of naturally occurring constituents in the food being cooked or heat processed." OEHHA is inviting public input on the proposal at a workshop slated for May 9, 2005, in Sacramento.

In the first of three possible regulations, OEHHA proposes a new "no significant risk level" (NSRL) for acrylamide of 1.0 microgram per day to replace the current 0.2 limit. The agency asserts that the 1.0 level represents an exposure to the chemical that would result in no more than one excess case of cancer in a population of 100,000, assuming exposure over a lifetime of 70 years.

A second regulatory proposal would set an NSRL for acrylamide in breads and cereals of 10.0 micrograms per day (a limit of 200 parts per billion) that would reportedly result in no more than one excess case of cancer in a population of 10,000. The agency's third proposal would establish new warning requirements for stores and restaurants if products sold by those establishments exceeded any new NSRLs for acrylamide. Such warnings would be required only at the point of sale or point of display of the affected food products, not on individual

package labeling. More information about the proposals and a May 24 public hearing to discuss them is available [here](#).

## Other Developments

### [5] PHAI Solicits "Concerned" Parents for Campaign Against Soft Drinks in Schools

The Public Health Advocacy Institute (PHAI), a nonprofit group founded by antitobacco lawyer Richard Daynard at Northeastern University's School of Law in Boston, is "seeking parents with children enrolled in public schools who are interested in stopping the sale of harmful soft drinks to their children." According to a [notice](#) posted on the PHAI Web site, the advocacy group has "been working with community activists, parents and public health organizations ... and private lawyers to stop Coca-Cola, Pepsi and others from engaging in practices that harm kids." The notice invites parents to e-mail PHAI their contact information and states that "Litigation is an important tool that can be used with, not in place of, the work of advocates, parents and community members. Our goal is to work with parents and advocates to use all the tools at our disposal to improve the health of children." PHAI hosted conferences on legal approaches to the obesity epidemic in both 2003 and 2004. *See PHAI Notice*, April 12, 2005.

### [6] University of Arkansas to Host Conference on Using the Law to Address Obesity

"America's Epidemic: The Uses of Law to Address Obesity" is the theme of a May 5-6, 2005, conference to be held at the University of Arkansas in Little Rock. Co-sponsored by the university's College of Public Health and Bowen School of Law, the two-day event will feature lectures by



Stephen Joseph, the California lawyer who has brought *trans* fat lawsuits against Kraft Foods and McDonald's Corp.; Margo Wootan, the director of nutrition policy for the Center for Science in the Public Interest; Carol Tucker Foreman, executive director of the Food Policy Institute of the Consumer Federation of America; and Jason Smith, managing attorney of the Public Health Advocacy Institute at the Northeastern University School of Law. More information about the conference is available [here](#).

## Scientific/Technical Items

### Obesity

#### [7] “Insufficient” Evidence Links Advertising to Childhood Obesity, Says American Heart Association; Group to Increase Prevention and Treatment Efforts

An American Heart Association (AHA) [scientific statement](#) on childhood obesity published this week includes a brief discussion of the controversy over the effect of food advertising on children and concludes there is “insufficient causal evidence to definitively link advertising directly with childhood obesity.” The statement’s authors review the latest data on the issue and champion prevention strategies involving “families, the health care system, health care insurers, government agencies, the school system, the food and entertainment industries, and public health professionals.” AHA asserts that overweight children and adolescents are likely to develop type 2 diabetes, obstructive sleep apnea, hypertension, dyslipidemia, and the metabolic syndrome.

AHA has also announced new efforts to address the prevention and treatment of childhood obesity. In an editorial in a special obesity-themed issue of the journal *Circulation*, AHA’s president-elect asks, “How can this epidemic be stopped? Society as a whole has begun to exert some small pressure. Healthier options are appearing in restaurants ... but for many parents and for kids themselves, the nutritional understanding and tools to address these issues in their personal lives are not easily available.”

Over the next year, AHA intends to (i) publish revised dietary guidelines for children, (ii) hold an obesity and cardiovascular disease symposium in January 2006, (iii) enhance Internet-based nutritional programs, (iv) develop a campaign to help AHA “create a new identity with children and inspire them to be advocates for their own health,” (v) publish an “obesity sourcebook” in conjunction with the Robert Wood Johnson Foundation, and (vi) continue advocacy efforts with the Food and Drug Administration and the Federal Trade Commission about the role food labeling plays in assisting consumers make informed dietary choices. See *AHA Press Release*, *The New York Times*, and *Associated Press*, April 18, 2005.

### Chemical Exposures

#### [8] Plastics Additive Used in Food Packaging May Pose Health Risks

Debate over the safety of low-doses of bisphenol A, a chemical used to manufacture plastic food and beverage containers was renewed last week with the publication of a paper inviting public health and regulatory bodies to reconsider the issue in light of new scientific evidence. (F.S. vom Saal



and C. Hughes, "An Extensive New Literature Concerning Low-Dose Effects of Bisphenol A Shows the Need for a New Risk Assessment," *Environmental Health Perspectives* doi:10.1289/ehp.7713, on-line publication, April 13, 2005). The authors cite recent studies that indicate bisphenol A can leach into foods and water when plastic containers are heated, washed or exposed to acidic foods. They also review other studies reporting that exposures to low doses of the chemical in experimental animals can affect growth rates and sexual maturation, hormone levels in the blood, reproductive organ function, fertility, immune function, enzyme activity, brain structure, brain chemistry, and

behavior. These effects, the authors argue, are observed at doses that are below the current predicted "safe" or reference dose of bisphenol A. "You can't open a scientific journal related to sex hormones and not read an article that would just floor you about this chemical," study co-author Frederick vom Saal was quoted as saying. "The chemical industry's position that this is a weak chemical has been proven totally false. This is a phenomenally potent chemical as a sex hormone." See *The Los Angeles Times*, April 13, 2005; *USA Today*, April 15, 2005.



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## LITIGATION UPDATE

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