

# Food & Beverage

## LITIGATION UPDATE

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## LITIGATION UPDATE

### Legislation, Regulations and Standards

#### Food and Drug Administration (FDA)

##### [1] FDA Bans Use of Enrofloxacin in Poultry

FDA Commissioner Lester Crawford announced late last week that FDA has decided to prohibit the use of the fluoroquinolone antibiotic enrofloxacin (Baytril) to treat bacterial infections in poultry because of the risk that the drug promotes antibiotic-resistant infections in humans. "Fluoroquinolones used in humans are ineffective if used to treat *Campylobacter* infections that are resistant to them," Crawford said. "This failure can significantly prolong the duration of the infections and may increase the risk of complications. The proportion of *Campylobacter* infections that are resistant to fluoroquinolones has increased significantly since the use of enrofloxacin was approved in the U.S." The Bayer Corp., manufacturer of Baytril, has 60 days to appeal the [FDA decision](#) to a federal appeals court. See *FDA News Release*, July 28, 2005; *Federal Register*, August 1, 2005.

##### [2] Center for Science in the Public Interest Calls on FDA to Review Aspartame Safety

An Italian study's recent assertion that aspartame causes statistically significant increases in lymphomas and leukemias in rats has led the Center for Science in the Public Interest (CSPI) to

urge FDA Commissioner Lester Crawford to reevaluate the safety of the ubiquitous artificial sweetener.

The Italian researchers added aspartame to the standard rat diet at various doses, including amounts that simulated daily human intake. Statistically significant increases in lymphomas and leukemias among female rats were subsequently observed at dose levels lower than accepted daily intakes for aspartame consumption in humans currently permitted by U.S. and European regulators. The researchers documented no statistically significant increase in malignant brain tumors. M. Soffritti, et al., "Aspartame Induces Lymphomas and Leukemias in Rats," *European Journal of Oncology* 10(2): 2005 (in press).

CSPI urges the agency to (i) prohibit the use of aspartame while scientists independent of FDA's Center for Food Safety and Applied Nutrition review the conclusions of the Italian study, (ii) advise consumers to choose products sweetened with sucralose, (iii) encourage food companies to replace aspartame with sucralose, and (iv) direct the National Toxicology Program to conduct various animal studies to assess aspartame's carcinogenicity. See *CSPI News Release*, July 27, 2005.

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

##### [3] Consumers Union Questions Integrity of USDA's Mad-Cow Surveillance Program

Citing various shortcomings identified by USDA's Office of Inspector General, Consumers Union last week issued a sharp attack on the agency's efforts



to detect bovine spongiform encephalopathy (BSE) in the nation's beef supply and called on Secretary Mike Johanns to release specific data collected under the department's enhanced BSE surveillance program. "The government keeps telling Americans that they can trust their beef is safe from mad cow, even going so far as to say that finding BSE is like searching for a needle in a haystack," Consumer Union's Michael Hansen said. "Yet, since the agency has so far failed to publicly disclose any information whatsoever about the details of the program, it makes us wonder how meaningful their search for the disease is at all," Hansen said.

The consumer group's action was reportedly motivated by USDA's recent announcement that a cow whose test results the agency deemed inconclusive in November 2004 were seven months later pronounced positive by British scientists employing a different screening protocol to analyze the sample. USDA has reportedly tested more than 380,000 cattle for BSE since initiating the expanded surveillance program in June 2004. Consumers Union requests public disclosure of the age, BSE risk status and location of sampled cattle, including the state where each cow was born, raised and slaughtered. *See Consumers Union Press Release, July 26, 2005.*

## United Kingdom (UK)

### [4] **Britain's FSA Launches Consultation on Nutrient-Based Standards for School Foods; British Medical Association Calls for Action on Childhood Obesity**

Britain's Food Standards Agency (FSA) is [soliciting public comments](#) about proposals for voluntary nutrient specifications for processed foods used in school meals. The proposed standards target the salt, sugar and saturated fat content of cereals, breads, vegetables, and milk

products. The agency specifically seeks opinions on (i) whether the proposed standards would deliver actual nutritional benefits and (ii) the financial impact of product reformulations. Comments are due by October 18, 2005. *See FSA News Release, July 26, 2005.*

Meanwhile, the British Medical Association (BMA) recently issued a [childhood obesity report](#) that encourages government officials, industry and health care professionals to take immediate action to thwart the rising rates of obesity among youth. "Children are being bombarded with mixed messages," a BMA spokesperson was quoted as saying. "On one hand, they might learn about healthy eating at school and then go home and spend hours watching TV and see celebrities eating hamburgers, crisps or drinking fizzy drinks," Vivienne Nathanson, M.D., said. Among the BMA report's recommendations: (i) mandatory nutrient and compositional standards for school meals; (ii) FSA regulation of nutrition labeling and health claims; and (iii) a government-mandated ban on the advertising of "unhealthy" foods to children. The organization also advocates that manufacturers "be legally obliged to reduce salt, sugar and fat in pre-prepared meals to an agreed level within a defined time frame."

## Litigation

### Employment Practices

#### [5] **Alleging Illegal Hiring Practices, Idaho County Sues Agricultural Companies Under RICO Act**

Commissioners in Canyon County, Idaho, last week [filed suit](#) in federal court against several agricultural companies and a local non-profit



organization claiming the groups' "illegal immigrant hiring scheme" has cost the county millions of dollars for health care and criminal justice services. *Canyon County v. Syngenta Seeds, Inc., et al.*, No. 05CV00306 (U.S. District Court, Southern Division, Idaho) (complaint filed 7/27/05).

Initiated by Commissioner Robert Vasquez, a Mexican-American who is reportedly campaigning for U.S. Congress, the lawsuit alleges violations of the Immigration and Nationality Act and the Racketeer Influenced and Corrupt Organizations Act (RICO). "Illegal immigration is not a victimless crime," Howard Foster, a Chicago attorney representing the county, was quoted as saying. "It has cost Canyon County millions of dollars, and we expect to recover it," he said.

Defendants named in the lawsuit include Syngenta Seeds, Inc., Sorrento Lactalis, Inc., Swift Beef Co., Harris Moran Seed Co., and the Idaho Migrant Council, Inc. The complaint accuses the four companies of engaging in a "pattern of racketeering activity" by using the services of a farm labor contractor to provide hundreds of illegal immigrants as part of a plan to reduce labor costs. The Idaho Migrant Council is accused of harboring illegal immigrants by conspiring with the local housing authority to rent the workers housing.

According to a news source, the county's lawsuit is the first by a government entity to use RICO, which allows for treble damages, to seek payment of costs related to allegedly illegal workers. Foster is a partner in the Chicago firm Johnson & Bell and the lead counsel in three pending class actions across the nation that accuse companies of hiring illegal immigrants to depress wages. *See Associated Press*, July 28, 2005.

## Scientific/Technical Items

### High-Fructose Corn Syrup (HFCS)

#### [6] International Researchers Allege Fructose Consumption Enhances Weight Gain

Researchers from the University of Cincinnati's Genome Research Institute and the German Institute of Human Nutrition have reportedly concluded that consumption of fructose-sweetened beverages affects metabolism in a manner that encourages weight gain. (H. Jurgens, et al., "Consuming Fructose-Sweetened Beverages Increases Body Adiposity in Mice," *Obesity Research* 13:1146-1156, July 2005).

Conducted in mice, the study compared weight gain in association with consumption of water, fructose-sweetened water and soft drinks. The mice that consumed fructose-sweetened water and soft drinks subsequently exhibited 90 percent more body fat than mice that consumed water only, even though their overall caloric intake was reduced. "Our study shows how fat mass increases as a direct consequence of soft drink consumption," study co-author Matthias Tschöp was quoted as saying. "We were surprised to see that mice actually ate less when exposed to fructose-sweetened beverages and therefore didn't consume more overall calories. Nevertheless, they gained significantly more body fat within a few weeks," he said. *See University of Cincinnati News Release and Health Day News*, July 29, 2005.



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