

Food & Beverage

LITIGATION UPDATE

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Legislation, Regulations and Standards

U.S. Congress

[1] New York Lawmaker Introduces Food Disclosure Bills

U.S. Representative Nita Lowey (D-N.Y.) recently introduced two bills that address food ingredients and freshness disclosure. The Food Ingredient Right to Know Act ([H.R. 3571](#)) would amend the Federal Food, Drug, and Cosmetic Act (FDCA) by requiring disclosure of any meat, poultry or other animal product (including insects) used in natural or artificial flavorings, colorings, spices, and other food additives. According to the bill's findings, such disclosure would assist individuals who follow certain dietary guidelines for health, religious and cultural reasons better evaluate their food choices.

The Food Freshness Disclosure Act of 2005 ([H.R. 3570](#)) would amend the FDCA by requiring uniformity in the way food labeling states the date on which the food will no longer be fresh. Both bills have been referred to the Committee on Energy and Commerce.

Federal Trade Commission (FTC)

[2] FTC Extends Deadline for Comments on Childhood Obesity Issues

FTC on Monday announced that the agency has extended until August 12, 2005, the deadline for public comments in response to issues raised at its July workshop titled "Marketing, Self-Regulation & Childhood Obesity." Participants at the workshop discussed industry's self-regulatory efforts, the Children's Advertising Review Unit's efforts to encourage responsible industry advertising and public health groups' concerns about specific industry practices. FTC invites comments on the following topics: (i) the types of foods and beverages marketed to children and the extent of kids' exposure to such marketing; (ii) research on the impact of marketing on children's health, e.g., the alleged correlation between marketing and obesity rates; (iii) the scope and effectiveness of existing industrywide self-regulation; (iv) best marketing practices; (v) various stakeholders' efforts to educate consumers about the nutritional content of food and beverage products and the importance of a healthy lifestyle; and (vi) proposals for new initiatives. Transcripts and other documents related to the July workshop are available [here](#). See *Federal Register*, August 8, 2005.



Codex Alimentarius Commission

[3] U.S. Delegates Schedule Public Meeting to Discuss Biotechnology Proposals

The U.S. Department of Agriculture, Food and Drug Administration, and Department of Health and Human Services have scheduled an August 30, 2005, [public meeting](#) in Washington, D.C., to discuss U.S. draft positions to be presented at the September 19-23 meeting of the Fifth Session of the Codex *ad hoc* Intergovernmental Task Force on Foods Derived from Biotechnology in Chiba, Japan. Items for discussion at the August 30 meeting include (i) various international organizations' evaluations of the safety and nutrition of biotech foods and (ii) possible enhancement of existing standards and guidelines. See *Federal Register*, August 9, 2005.

State/Local Initiatives

[4] Arkansas Board of Education Establishes School Nutrition Policies

Citing statistics that indicate 40 percent of the state's public school students are obese or overweight, the Arkansas Board of Education this week reportedly approved nutrition standards that will limit students' access to "unhealthy" foods. According to a news source, the new standards (i) prohibit vending machines from elementary schools, (ii) require vending machine offerings in middle and high schools to be "of sound nutritional value," and (iii) limit the size of soft drinks in vending machines to 12 ounces. The board has also mandated 30 minutes of physical activity for students K-12. See *Associated Press*, August 8, 2005.

Other Developments

[5] National Food Policy Conference to Target Consumer Behavior and Effect of Agricultural Subsidies

Discussions of U.S. consumers' attitudes toward food and the effect of agricultural subsidies on various nutrition and trade issues will highlight next month's 28th Annual National Food Policy Conference. Sponsored by the Consumer Federation of America, the two-day event will be held September 19-20, 2005, at the National Press Club in Washington, D.C. Other sessions at the conference will highlight the incidence of *E. coli* contamination, transgenic animals, marketing to children, and the 2007 Farm Bill. More information about the event is available [here](#).

Media Coverage

[6] "Preparing for the Next Pandemic," Michael Osterholm, *Foreign Affairs*, July/August 2005

In this [essay](#), Michael Osterholm, a professor of public health at the University of Minnesota, advocates a coordinated international response to the potential threat of a global influenza pandemic. He calls for a response strategy that involves both the public and private sectors, claiming "the business community can no longer afford to play a minor role in planning the response to a pandemic. For the world to have critical goods and services during a pandemic, industry heads must stockpile raw materials for production and preplan distribution and transportation support. Every company's senior managers need to be ready to respond rapidly to changes in the availability, production, distribution, and inventory management of their products. ...



Pandemic planning must be on the agenda of every school board, manufacturing plant, investment firm, mortuary, state legislature, and food distributor in the United States and beyond.” Osterholm is the director of the Center for Infectious Disease Research and Policy at the University of Minnesota and associate director of the Department of Homeland Security’s National Center for Food Protection and Defense.

Scientific/Technical Items

Obesity

[7] High-Fat Diets Allegedly Affect Satiety; John Banzhaf Says New Study Strengthens Fatty Food Addiction Theories

Results from a study published in this month’s issue of the *Journal of Nutrition* suggest that a high-fat diet can lead to short-term over consumption of high-energy, high-fat foods. (David Savastano and Mihai Covasa, “Adaption to a High-Fat Diet Leads to Hyperphagia and Diminished Sensitivity to Cholecystokinin in Rats,” *J. Nutr.* 135: 1953-1959, August 2005). Researchers compared the intake of high-fat “snacks” in laboratory rats fed either a low-fat maintenance diet or a high-fat diet. When the rats were given doses of the appetite-suppressing cholecystokinin (CCK), a hormone secreted by the small intestine that acts as a “satiety signal” for the brain, rats on the low-fat diet significantly reduced their intake of the high-fat snack. Rats on the high-fat diet, however, did not limit their intake of the high-fat fare after receiving the dose of CCK. The researchers suggest their findings indicate that chronic consumption of high-fat foods could reduce sensitivity to the important feedback signal (CCK) that ordinarily limits eating.

John Banzhaf, a law professor at George Washington University and tireless crusader against the tobacco and food industries, was quoted as saying the study’s findings bolster the disputed argument that eating fatty foods produces addictive effects similar to those produced by nicotine. “Rats fed a high-fat diet don’t then continue to overeat because they suddenly lack ‘personal responsibility’ or rat will power,” Banzhaf said. “They continue to overeat and become obese because high-fat foods have caused a hormonal change in their body which causes a biological compulsion to overeat – virtually the definition of an addictive response.” Banzhaf suggests that food companies avoid legal liability for the alleged addictive qualities of certain foods by providing “health advisories” on their products. *See Press Release of John Banzhaf*, August 5, 2005; *Reuters*, August 8, 2005.



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Food & Beverage Litigation Update is distributed by Mark Cowing and Mary Boyd in the Kansas City office of SHB. If you have questions about the Update or would like to receive back-up materials, please contact us by e-mail at mcowing@shb.com or mboyd@shb.com. You can also reach us at 816-474-6550. We welcome any leads on new developments in this emerging area of litigation.

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