

# Food & Beverage

## LITIGATION UPDATE

Issue 141 • September 7, 2005

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## LITIGATION UPDATE

### Legislation, Regulations and Standards

#### Government Accountability Office (GAO)

**[1] GAO Report Evaluates Prevalence of Competitive Foods in Public Schools; Senator Harkin Likens Snack Foods to Poison**

Competitive foods of minimal nutritional value are available in nearly nine out of 10 public schools, and the availability of such fare in middle schools has increased over the last five years, according to a Government Accountability Office (GAO) [report](#) issued today. “Parents should know that our schools are now one of the largest sources of unhealthy food for their kids,” Senator Tom Harkin (D-Iowa), who requested the study, was quoted as saying. “Would anyone advocate that we take the fences off the playground for elementary schools and just let kids run around in the streets?” Harkin asked. “By the same token, why would we allow schools to sort of poison our kids with junk food?” The government defines competitive foods as those sold to students during the school day that are not part of federal meal programs. Largely unregulated by the U.S. Department of Agriculture, they are typically sold à la carte in school cafeterias, through vending machines and in school stores. *See The Associated Press*, September 7, 2005.

### Food and Drug Administration (FDA)

**[2] FDA Issues Final Guidance on Recordkeeping Regulations Under the Bioterrorism Act**

FDA last week published [final guidance](#) for industry compliance with regulations that require “persons who manufacture, process, pack, transport, distribute, receive, hold, or import food” to establish and maintain records identifying “the immediate previous source of all food received, as well as, the immediate subsequent recipient of all food released.” The recordkeeping regulations implemented one of four food-related provisions of the Public Health Security and Bioterrorism Preparedness Response Act of 2002. The revised guidance explains exclusions to the regulations, the requisite content of records and jurisdictional issues with the agriculture department. *See Questions and Answers Regarding Establishment and Maintenance of Records Final Guidance*, September 2, 2005.

**[3] FDA Publishes Action Plan for Furan in Food**

FDA has issued a [strategy](#) for guiding the agency’s ongoing evaluation of the possible risks posed by furan, a chemical byproduct of heat treatment techniques, e.g., canning and jarring. The International Agency for Research on Cancer considers furan “possibly” carcinogenic to humans based on high-exposure studies that concluded the



chemical is carcinogenic to rodents. A 2004 exploratory FDA survey detected low levels of furan in products such as coffee, beans, tomato sauce, baby foods, and fruit juices. FDA emphasizes, however, that such levels are well below those “that would be expected to cause harmful effects” and therefore recommends no changes in consumers’ diets. Major goals of the agency’s action plan include (i) identifying the mechanisms responsible for furan’s presence in food, (ii) continuing to estimate dietary exposure by measuring levels of the chemical in various foods, (iii) identifying ways to reduce furan exposure, and (iv) performing a quantitative risk assessment. *See FDA Action Plan for Furan in Foods*, September 1, 2005.

## Litigation Negligence

### [4] Southwest Missouri Jury Awards \$15 Million in Case Involving Exposure to Microwave Popcorn Flavoring

A jury in Jasper County, Missouri, last week awarded \$15 million in compensatory damages to a former popcorn plant worker who claimed exposure to the butter flavoring used to manufacture microwave popcorn resulted in the development of his irreversible lung disease (bronchiolitis obliterans). Stephen McNeely, 35, alleged that the New York-based International Flavors & Fragrance and its subsidiary Bush Boake Allen Inc., knew the butter flavoring was hazardous and failed to warn the Jasper plant employees about the dangers associated with the product or provide adequate

safety instructions.

The lawsuit is one of 30 such cases filed against the flavoring manufacturers by current and former workers at the Gilster-Mary Lee Corp. in Jasper; juries have awarded nearly \$53 million in the four cases that have gone to trial. The National Institute of Occupational Safety and Health has purportedly linked bronchiolitis obliterans to vapors emitted by diacetyl, a chemical constituent of the butter flavoring. *See The Joplin Globe* and *The Kansas City Star*, September 3, 2005.

## Media Coverage

### [5] “The Next Pandemic,” Laurie Garrett, *Foreign Affairs*, July/August 2005

This essay discusses the history of U.S. pandemics, including the Spanish flu outbreak of 1918, which killed 675,000 Americans. The H5N1 strain of avian flu, however, is much more dangerous, Garrett says, killing 100 percent of the domesticated chickens it infects and most of the people who contract it. “If the relentlessly evolving virus becomes capable of human-to-human transmission, develops a power of contagion typical of human influenzas, and maintains its extraordinary virulence, humanity could well face a pandemic unlike any ever witnessed,” Garrett writes. “Or nothing at all could happen. Scientists cannot predict with certainty what this H5N1 influenza will do. Evolution does not function on a knowable timetable, and influenza is one of the sloppiest, most mutation-prone pathogens in nature’s storehouse.” To deal with the potential threat of pandemic flu, she advises world leaders to immediately bolster funding for the World



Health Organization and the Food and Agriculture Organization so that the agencies can “serve as an accurate clearinghouse of information about the disease, thereby preventing the spread of false rumors and global panic.” Garrett is a senior fellow for global health at the Council on Foreign Relations. The essay is available [here](#).

## Scientific/Technical Items

### Dairy

#### [6] **High Consumption of Dairy Products Does Not Facilitate Weight Loss, New Study Concludes**

Results of a research report published last week conflict with other recent studies by finding that diets containing moderate to high levels of calcium from dairy products do not enhance weight reduction beyond the weight loss achieved by standard diets. (W. Thompson, et al., “Effect of Energy-Reduced Diets High in Dairy Products and Fiber on Weight Loss in Obese Adults,” *Obesity Research* 13(8): 1344-1353, August 2005). Nutrition researchers compared three weight-loss approaches, including high-dairy, high-fiber/low-glycemic index

and standard diets, for their effects on weight loss and fat loss in obese individuals. They found that neither the high-calcium nor the high-fiber/low glycemic index diet was more effective in facilitating weight loss than a standard calorie-restriction diet.

The study was funded by the National Dairy Council and co-authored by University of Tennessee researcher Michael Zemel. Dairy advertisers’ assertion that eating three servings of dairy products daily will result in weight loss and fat loss are based primarily on Zemel’s studies. In recent lawsuits challenging the weight-loss claims, the Physicians Committee for Responsible Medicine deemed Zemel’s findings “unreliable” and described him as a “single industry-funded experimenter, whose studies are small, poorly controlled, reported with only minimal detail and which have yielded inconsistent results.”



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## LITIGATION UPDATE

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