

Food & Beverage

LITIGATION UPDATE

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Legislation, Regulations and Standards

Food and Drug Administration (FDA)

[1] FDA to Augment BSE-Related Feed Controls

FDA Commissioner Lester Crawford this week announced plans to bolster bovine spongiform encephalopathy (BSE) safeguards by revising animal feed regulations to match those of Canada. Pending Canadian regulations will prohibit the use of specified risk materials (e.g., bovine-derived spinal cords, brain tissues) in all animal feed, pet food and fertilizer. In 1997, FDA banned the use of bovine-derived proteins in cattle feed, but the prohibition did not extend to pig and poultry feed. The use of poultry litter as an ingredient in cattle feed is considered to be one potential pathway for transmission of BSE back to cattle. Crawford made the announcement during remarks at the Consumer Federation of America's 28th Annual Food Policy Conference. See *CQ HealthBeat News*, September 19, 2005; *Associated Press*, September 20, 2005.

U.S. Department of Agriculture (USDA)

[2] Agriculture Department ALJ Upholds Honey Checkoff Advertising Program

A USDA administrative-law judge has [upheld](#) the Honey Research, Promotion and Consumer Information Act of 1987 by ruling that a federal program requiring domestic and foreign honey producers to subsidize generic promotional campaigns by paying a 1-cent fee for every pound of honey sold does not violate First Amendment protections against coerced speech. "Individual honey producer(s) ... have no constitutional right to avoid paying for government speech with which they do not agree," Judge Jill Clifton wrote in a 29-page ruling that relied on the U.S. Supreme Court's May 2005 decision upholding the government's beef checkoff advertising program. *Johanns v. Livestock Marketing Association*, No. 03-1164, 544 U.S. __ (5/23/05). The eight U.S. honey producers contesting the honey checkoff argued that program rules prevented them from generating ads touting domestic honey over imported products. Similar First Amendment challenges to government-compelled agricultural assessments are pending in appellate courts across the country. See *National Honey Board Press Release*, September 12, 2005; *Rocky Mountain News*, September 14, 2005.



[3] Advisory Group on Microbiological Criteria for Foods to Hold Public Meetings

The Food Safety and Inspection Service's National Advisory Committee on Microbiological Criteria for Foods is scheduled to hold [public meetings](#) of the full committee and subcommittees on September 26-29, 2005, in Coral Gables, Florida. The advisory group provides recommendations to the USDA and HHS secretaries on the development of microbiological criteria and the evaluation of epidemiological and risk assessment data and methodologies for assessing microbiological hazards in foods. Topics of discussion at next week's meeting will include (i) consumer guidelines for the safe cooking of poultry products and seafood, and (ii) the analytical utility of *Campylobacter* methodologies. See *Federal Register*, September 19, 2005.

State/Local Initiatives

[4] California Governor Signs Sweeping School Nutrition Legislation into Law, Hosts Health Summit

California Governor Arnold Schwarzenegger (R) last week signed into law legislative proposals aimed at making healthier foods and beverages available in public schools. "Obesity-related health problems cost us \$28 billion a year," Schwarzenegger said. "We are going to terminate obesity in California once and for all."

When the new laws take effect, California will reportedly have the most stringent school food guidelines in the country. S.B. 12 establishes nutritional standards for all K-12 public schools, while S.B. 965 restricts the sale of soft drinks in high schools to 30 minutes before and after the school day. S.B. 281 will provide some \$18.2 million to add more fresh fruit and vegetables to school meal

programs.

The governor signed the legislation at the beginning of a daylong invitation-only summit during which he challenged the attendees to "continue the work we have begun today to make California the nation's model for health, nutrition and fitness." Schwarzenegger and First Lady Maria Shriver also recognized various organizations and food companies for their commitments to improving health and wellness, including Kraft Foods, which unveiled several new healthy lifestyle initiatives during the event. Among other things, Kraft CEO Roger Deromedi announced whole-grain versions of Chips Ahoy and Fig Newtons cookies as well as continuing changes in the company's marketing practices to children. By the end of 2006, Kraft Web sites that primarily target kids ages 6 to 11 will only feature products meeting the company's Sensible Solution nutrition standards. See *Reuters, Press Release of Governor Arnold Schwarzenegger*, and *Kraft Press Release*, September 15, 2005; *San Francisco Chronicle*, September 16, 2005; *Los Angeles Times*, September 19, 2005.

[5] Chicago City Council to Consider Proposal to Ban Foie Gras

Chicago Alderman Joe Moore's proposed ordinance prohibiting the sale of foie gras has reportedly stirred controversy among the Illinois city's upscale restaurateurs. Foie gras, which translates from French as "fatty liver," is most often served as the primary ingredient in pâté and is produced by using pipes to force-feed grain down the throats of ducks and geese to make their livers expand up to 10 times their normal size. Animal-rights activists reportedly deem the force-feeding practice brutal and cruel.

"Foie gras has been around since the age of cuisine," Rick Tramonto, a chef at the restaurant



Tru, was quoted as saying. "Some animals are raised for food, they're raised to die," he said. Celebrity chef Charlie Trotter reportedly stopped serving foie gras four years ago after learning how it was produced, but opposes a citywide ban on its sale. "The government shouldn't be meddling in things like this," Trotter said.

Moore's proposal follows the Illinois Senate's recent passage of legislation banning the force-feeding of birds for foie gras production; the Illinois House is expected to take up the bill next year. Similar state-level initiatives are reportedly pending in New York, Massachusetts and Oregon. The production and sale of foie gras will be illegal in California as of 2012. See *The Chicago Tribune*, September 14 and 16, 2005; *The New York Times*, September 14, 2005.

Other Developments

[6] Children's Advertising Review Unit to Examine Certain Marketing Practices

The Council of Better Business Bureaus' National Advertising Review Council announced last week that the Children's Advertising Review Unit (CARU) is establishing a task force to examine paid product placement in children's television programming and the use of cartoon characters in advertisements aimed at kids. The initiatives reportedly come in response to concerns raised at the July 2005 FTC/HHS workshop on marketing and childhood obesity.

Commercial Alert Director Gary Ruskin reportedly called the new regulatory efforts a "sign of fear" and a "stream of verbiage that tries to cloak doing nothing. ... Advertisers are very afraid that they will be held responsible for producing an epidemic of marketing-related diseases in our kids." A CARU task

force charged with investigating advertising practices is expected to issue its findings and recommendations sometime this fall. See *NARC News Release*, September 15, 2005; *Ad Age*, September 16, 2005.

Scientific/Technical Items

Obesity

[7] New Zealand Researchers Link Childhood Obesity to TV-Viewing Habits

The amount of time children spend watching television should be considered a significant predictor of body mass index (BMI) and obesity, say New Zealand researchers in a study published last week in the *International Journal of Obesity*. R. Hancox and R. Poulton, "Watching Television Is Associated with Childhood Obesity: But Is It Clinically Important?" *International Journal of Obesity*, published online September 13, 2005. The researchers followed more than 1,000 youth ages 3 through 15, calculating BMIs and noting television-viewing habits every two years. Both BMI and prevalence of being overweight at all ages were significantly associated with hours of television viewing. The associations were reportedly stronger in girls than boys and remained significant after adjustment for parental body mass indices and socio-economic status. Lead author Robert Hancox reportedly opined that watching less television would likely result in reducing children's risk of obesity. "This would mean that they did something else with their time," Hancox said. "Whatever it was, it would probably be more energetic, and would also reduce the influence of all those TV ads for junk food, fizzy drinks, sweets, and so on." See *The New York Times*, September 20, 2005.



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