

Food & Beverage

LITIGATION UPDATE

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LITIGATION UPDATE

Legislation, Regulations and Standards U.S. Congress

[1] Iowa Senator Introduces Legislation Targeting School Nutrition Standards

A bipartisan proposal ([S. 2592](#)) introduced by Senator Tom Harkin (D-Iowa) last week would require the agriculture secretary to revise the definition of “food of minimal nutritional value” and direct the secretary to apply the revised definition to all foods available on public school grounds – e.g., in à la carte lines, vending machines and snack bars. “Junk food sales are out of control,” Harkin said. “It undercuts our investment in school meal programs and steers kids toward a future of obesity and diet-related disease. Congress cannot stand idly by while our kids are preyed upon by junk-food marketers.”

Among other things, the Child Nutrition Promotion and School Lunch Protection Act of 2006 would also require the USDA secretary to consider (i) “both the positive and negative contributions of nutrients, ingredients, and foods (including calories, portion size, saturated fat, trans fat, sodium, and added sugars) to the diets of children”; (ii) “evidence concerning the relationship between consumption of certain nutrients, ingredients, and foods to both preventing and

promoting the development of overweight, obesity, and other chronic illnesses”; and (iii) “recommendations made by authoritative scientific organizations concerning appropriate nutritional standards for foods sold outside of the reimbursable meal programs in schools.”

Co-sponsors of the measure included Senators Jeff Bingaman (D-N.M.), Lincoln Chaffee (R-R.I.), Richard Durbin (D-Ill.), Lisa Murkowski (R-Alaska), and Arlen Specter (R-Pa.). Like-minded legislation (H.R. 5167) was introduced in the House of Representatives by Representative Lynn Woolsey (D-Calif.). *See Press Release of Senator Tom Harkin*, April 6, 2006.

U.S. Department of Agriculture (USDA)

[2] USDA Schedules Public Meeting to Solicit Comments on Recall Proposal

USDA is convening a [public meeting](#) on April 24, 2006, for stakeholders to comment on proposed amendments to federal statutes that would allow the Food Safety and Inspection Service to make public lists of the retail consignees of meat and poultry products that have been voluntarily recalled, if such products have been distributed at the retail level. FSIS reportedly proposed the action to improve the efficiency of the recall process and would post the lists of retail consignees on the agency’s Web site. *See Federal Register*, April 6, 2006.



State/Local Initiatives

[3] Illinois Legislators Reject Proposal to Limit Junk Food in Schools

An Illinois legislative committee yesterday blocked a state board of education plan to restrict junk food in elementary and middle schools. News sources indicate that members of the Joint Committee on Administrative Rules voted 10-1 against the proposed prohibition on soft drinks, chips and candy in school vending machines, saying they supported limiting the availability of unhealthy foods but that the proposal should also have addressed the quality of cafeteria offerings. *See Associated Press*, April 11, 2006; *Chicago Sun-Times*, April 12, 2006.

Litigation

Benzene

[4] Soft Drink Makers Sued over Benzene Contamination

Parents in Massachusetts and Florida have filed putative class action lawsuits in Suffolk Superior Court in Boston and Leon County Circuit Court in Tallahassee, claiming certain youth-oriented products manufactured by Polar Beverages Inc. and In Zone Brands Inc. “have a tendency to contain benzene at levels exceeding” the federal drinking-water limit of 5 parts per billion. “Parents have a legal right to know if benzene is in their children’s drinks,” plaintiffs’ lawyer Tim Howard was quoted as saying. “Responsible corporations must act to remove these lethal toxins that are so easily prevented.” The Florida-based Howard filed the Tallahassee action on behalf of Lisbeth Gordon, an

emergency room nurse. The other suit was filed by Boston-based attorney, Andrew Rainer, on behalf of pre-school teacher Timothy Newell.

Benzene is reportedly believed to form in soft drinks containing ascorbic acid and either sodium benzoate or potassium benzoate, when the products are exposed to excessive light or heat. According to a news source, the products at issue became contaminated with benzene only after being stored at “113 degrees Fahrenheit for 24 hours under ultraviolet light.” A public relations consultant for plaintiffs described those exposure circumstances as “a fair test,” adding, “Ever left a case of soda in the back of a car for a day? It happens all the time. Parents just want to know.” The Food and Drug Administration maintains that benzene levels detected in soft drinks tested by the agency pose no health risks to consumers. *See Associated Press* and *Knight Ridder Newspapers*, April 11, 2006; *Food Production Daily*, April 12, 2006.

Media Coverage

[5] “Hazardous to Your Health,” Nicholas Kristof, *The New York Times*, April 11, 2006

“Our government needs to do much more to control potentially deadly substances – plutonium, anthrax and high-fructose corn syrup,” opines this *New York Times* columnist in a piece that blames America’s weight problem in large part on “sugary drinks.” In Kristof’s view, “It makes no sense to enforce restrictions on lead paints while allowing children to ingest other debilitating substances, particularly sugary drinks like Coke, Snapple and Gatorade (parents often think that sports drinks are healthy, but their added sugars and calories are the last thing many kids need – kids need sports, not



sport drinks).” To help combat escalating rates of obesity in children and adults, Kristof advocates the following with respect to such products:

(i) prohibiting them in schools, (ii) restricting advertising targeted to children and (iii) taxing them at a rate of 5 cents per fluid ounce.

Scientific/Technical Items

Aspartame

[6] **Aspartame Consumption Is No Cause for Concern, Says U.S. Government Study**

A large federally funded study presented at the annual meeting of the American Association for Cancer Research last week reportedly found no association between consumption of aspartame-containing beverages and an increased risk of leukemia, lymphoma or brain cancer. (U. Lim, et al., “Prospective Study of Aspartame-Containing

Beverages and Risk of Hematopoietic and Brain Cancers,” Presentation at the 97th AACR Annual Meeting, April 1-5, 2006, Washington, D.C.).

Researchers from the National Cancer Institute (NCI) examined aspartame consumption in 567,000 men and women ages 50 to 69. Increasing levels of consumption of aspartame-containing beverages were not associated with risk of overall hematopoietic cancer, lymphoid cancers, leukemias, or brain cancer in either men or women.

Questions regarding the safety of aspartame were raised last summer by Italian researchers who found an increased incidence of lymphoma and other cancers in rats that consumed the equivalent of four to five 20-ounce diet soft drinks daily. (M. Soffritti, et al., “Aspartame Induces Lymphomas and Leukemias in Rats,” *European Journal of Oncology* 10(2): 2005). The NCI study, in contrast, suggests no increased risks of cancer, even among heavy users of aspartame.



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