

Food & Beverage

LITIGATION UPDATE

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LITIGATION UPDATE

Legislation, Regulations and Standards

Alcohol and Tobacco Tax and Trade Bureau (TTB)

[1] Regulatory Action Taken on Allergen Labeling for Alcoholic Beverages

The TTB has published an interim rule and notice of a proposed rulemaking in the *Federal Register* pertaining to labeling standards for “major food allergens used in the production of alcohol beverages subject to the labeling requirements of the Federal Alcohol Administration Act.”

The [interim rule](#), which became effective July 26, 2006, sets forth voluntary labeling and advertising standards for wine, distilled spirits and malt beverages. If a “major food allergen” is used in the production of such beverages, an informative label may be placed on the container. But if one allergen is voluntarily declared, all others must also be listed. “Major food allergen” is defined as milk, eggs, fish, tree nuts, wheat, peanuts, and soybeans, as well as the ingredients containing proteins or oils derived from these foods.

The [notice](#) of proposed rulemaking would make these standards mandatory. Public comments on the proposal must be submitted on or before September 25, 2006. See *Federal Register*, July 26, 2006.

[2] Meat-Tracking Bills Introduced in Congress

Senator Charles Schumer (D-N.Y.) has introduced a bill ([S. 3601](#)) that would amend the Federal Meat Inspection Act and the Poultry Products Inspection Act by requiring the agriculture secretary to “establish a traceability system for all stages of production, processing, and distribution of meat and meat food products” that are shipped in interstate commerce for “human food purposes.” The proposed law would apply both to meat carcasses and parts of carcasses, and, as to poultry, would apply to “each poultry or group of poultry.” The traceability system contemplated would likely entail the maintenance of records. A companion bill ([H.R. 5727](#)) was introduced in the House. The Senate proposal was referred to the Committee on Agriculture, Nutrition, and Forestry, while the House version was referred to the Committee on Agriculture.

[3] Congress Considers Meat Recall Legislation

Bills that would give the agriculture secretary the authority to order recalls of adulterated or misbranded meats, poultry and articles of food were recently introduced by House and Senate Democrats. The legislation, which would amend the Federal Meat Inspection Act, the Poultry Products Inspection Act and the Federal Food, Drug, and Cosmetic Act, would also impose civil penalties of not more than \$100,000 and \$500,000 (in the case of persons other than individuals who violate the Act with respect to an article of food) for each violation of the Act. An obligation would be placed on persons “(other than a household consumer)” to report to the secretary if they have reason to believe that the meat products or articles of food that they transport,



store, distribute, or otherwise handle are adulterated or misbranded. The Senate bill ([S. 3615](#)) has been referred to the Committee on Agriculture, Nutrition, and Forestry; its House companion (H.R. 5729) was referred to the Committee on Agriculture and the Committee on Energy and Commerce.

Litigation

Freedom of Information Act

[4] USDA Calendars Must Be Disclosed Under Freedom of Information Act

The D.C. Circuit Court of Appeals has determined that the personal electronic calendars that Department of Agriculture officials maintain on an agency computer system are “agency records” that must be disclosed under the Freedom of Information Act. [Consumer Fed’n of Am. v. Dep’t of Agric., No. 05-5360 \(U.S. Court of Appeals, D.C. Circuit, decided June 30, 2006\)](#). The Consumer Federation of America sought the information to find out if agency officials had met with industry representatives while a food-safety rulemaking was pending.

Other Developments

[5] CSPI Questions Bias of NAS Scientists

The Center for Science in the Public Interest (CSPI) has issued a [report](#) titled “Ensuring Independence and Objectivity at the National Academies.” According to the report, CSPI evaluated 320 of the 8,000 scientists who serve on expert National Academy of Sciences (NAS) panels and found that 18 percent have “a direct and recent connection to a company or industry with a financial stake in the study outcome.” As an example, CSPI refers to an Institute of Medicine panel that was evaluating the risk of mercury in fish and included a scientist whose research had been funded by the U.S. Tuna Foundation and the National Food Processors Association.

The NAS, created by President Lincoln in 1863 to “investigate, examine, experiment, and report upon any subject of science or art,” provides more than 200 independent scientific analyses each year at the request of government departments and agencies. While CSPI did not criticize the quality of the reports NAS produces, the non-profit group suggested that NAS be more transparent by expanding its conflicts of interest and bias definitions, better balancing its committees from the perspective of bias, and adopting sanctions to encourage compliance. According to CSPI, “The NAS needs to ... work harder to find scientists without conflicts of interest.”

Scientific/Technical Items

Diabetes

[6] New Studies Suggest Link Between Diabetes and Alzheimer’s Disease

New research presented during an international gathering of researchers at a six-day conference of the Alzheimer’s Association in Madrid suggests stronger links between Type 2 diabetes and the development of Alzheimer’s disease. Swedish scientists reported that people with borderline diabetes had a 70 percent increased risk of developing Alzheimer’s compared to individuals with normal blood sugar levels; the incidence of Alzheimer’s was highest in diabetics who also had high blood pressure. Other research discussed at the event indicated that certain diabetes drugs may act to slow the development of Alzheimer’s disease. Scientists have long suspected that cardiovascular problems associated with diabetes could give rise to dementia by blocking blood flow to the brain. New studies, however, suggest that the two diseases are connected in other ways. For example, deposits of a harmful protein called amyloid occur both in the brain of Alzheimer’s patients and in the pancreas of individuals with Type 2 diabetes. *See New York Times*, July 17, 2006.



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