

# Food & Beverage

## LITIGATION UPDATE

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## LITIGATION UPDATE

### Legislation, Regulations and Standards

#### U.S. Congress

##### [1] U.S. Senate Approves Legislation Authorizing CDC to Study the Impact of Media on Children

The U.S. Senate has approved legislation ([S. 1902](#)) authorizing the Centers for Disease Control and Prevention (CDC) to (i) examine the “positive and negative impact of electronic media in children’s and adolescents’ cognitive, social, emotional, physical, and behavioral development”; and (ii) “provide for a report to Congress containing the empirical evidence and other results produced by the research funded through grants under this Act.” Studies implemented under the Children and Media Research Advancement Act (CAMRA) will take into account viewer age and parental involvement when providing information on television, movies, the Internet, and video games.

According to *Adweek*, CAMRA “comes at a time when advocacy groups are also pressing lawmakers and regulators to curb interactive ads that they claim irresponsibly push junk food at a time when childhood obesity rates are soaring.” See *Adweek*, September 14, 2006.

### Litigation

#### Contamination

##### [2] Lawsuits Follow *E. Coli* Outbreaks Across the Country

With one confirmed death and dozens of people falling seriously ill purportedly from consuming fresh spinach tainted with *E. coli* bacteria, the first personal injury lawsuits have already been filed against California-based Dole Food Co., Inc. and Natural Selection Foods LLC in Wisconsin, Oregon, Utah, and California. Chiquita Brands International has reportedly been sued in New York on behalf of a teenager allegedly sickened with an *E. coli* infection linked to spinach consumption. Additional litigation has apparently been filed in Illinois on behalf of a restaurateur seeking to recover for money spent on spinach that had to be discarded after the Food and Drug Administration (FDA) advised consumers not to eat bagged fresh spinach and companies that produce it issued extensive recalls.

Press reports have indicated that more than 130 people from some 20 states have become ill from a strain of *E. coli* linked to Salinas Valley, California, where outbreaks have occurred in the past. In fact, the FDA warned valley growers, packers, processors, and shippers in November 2005 to improve



produce safety. Tampering has apparently been ruled out as a cause of the contamination, but investigations are ongoing. *E. coli* is spread through the fecal matter of domestic animals and can be spread to crops through irrigation water, flooding or the use of manure in fertilization. About 50 percent of those sickened from this most recent outbreak have been hospitalized, a higher percentage than in other outbreaks; 15 percent have developed kidney failure, also higher than in a typical outbreak.

Meanwhile, congressional Democrats are using the episode to call for committee hearings to consider a proposal that would consolidate the federal government's food safety functions in a single agency. And a spokesperson for the Center for Science in the Public Interest is apparently urging Congress to give the FDA authority to visit farms and instruct farmers on food safety practices. Some have claimed that leafy greens are being processed in the field, and that this practice can readily lead to contamination. Concerns about the water used for irrigation are also being voiced. See *FDA News*, September 14, 2006; *Time*, September 15, 2006; *National Journal's Congress Daily PM*, September 15 and 18, 2006; *The Buffalo News*, *San Francisco Chronicle*, *Chicago Sun-Times*, and *Mercury News*, September 19, 2006; *Associated Press*, September 20, 2006.

## Other Developments

### [3] National Commission Embarks on Study of Large-Scale Animal Farm Operations

A commission composed of former U.S. government officials, environmentalists and industry leaders has reportedly launched a two-year study into possible human health effects and environmental impacts of large concentrated animal feeding operations. Financed by a grant from The Pew Charitable Trusts and managed by The Johns Hopkins Bloomberg School of Public Health, the study, scheduled for release in early 2008, will incorporate commissioned papers and seminars.

According to the [Web site](#) of the National Commission on Industrial Farm Animal Production, concerns relating to large-scale farm operations "are centered on the emergence of food-borne diseases, antibiotic resistant bacteria, air and water contamination from animal waste, significant shifts in social structure and the economy of many farming regions, as well as issues of animal health."

Members of the commission include Dan Glickman, who served as Secretary of Agriculture during the Clinton administration, Cargill Meat Solutions Corp. president Thomas Hayes, actress Daryl Hannah, and author and food activist Marion Nestle. See *Reuters*, September 12, 2006.



#### [4] Neuromarketing Experts Debunk the Myth of an “Inner Buy Button”

An [article](#) on *Time.com* examines the potential of neuromarketing, an industry that “uses neuroscience – particularly fMRI scanners – to better understand how our brain reacts to advertising, brands and products.” According to author Thomas Grose, a wide range of companies have enlisted neuromarketing firms to help them observe “the interplay between the deeper, older, primitive brain, where our emotions reside, and the more logical neocortex, which informs our decision making.” A study commissioned by Unilever, which Grose cites as an example of “startle-reflex” methodology, purportedly concluded that “eating ice cream makes people happier than eating yogurt or chocolate,” a subconscious perception “focus groups or polls can never determine.”

Consumer advocacy groups, however, have alleged that neuromarketing could “lead to the discovery of an inner buy button, which, when pressed, would turn us into roboshoppers.” But neuromarketing researchers say the buy button theory is pure “science fiction,” because fMRIs only enable researchers to observe brain activity, not influence it.

#### [5] Consumer Watchdog Group Publishes Book on the Food Industry

The Center for Science in the Public Interest recently published *Six Arguments for a Greener Diet* and launched a companion [Web site](#) featuring an interactive “tour” of conventional agriculture “from feedlot to dinner plate” as well as an “eating green calculator” that promotes organic food choices. In addition to dispensing policy

recommendations with regard to pollution, erosion and animal welfare, the book examines the alleged link between animal-based foods and chronic diseases.

## Media Coverage

#### [6] Melanie Warner, “The War over Salt,” *The New York Times*, September 13, 2006

“Sprinkled into everything from bread to cheese, soups and breakfast cereal, just about every fast-food restaurant meal and now even fresh cuts of meat, salt is ubiquitous in the American food supply,” charges *Times* writer Melanie Warner in an examination of U.S. sodium consumption. The intensifying debate has been largely fueled by the American Medical Association’s (AMA’s) recent recommendation that the Food and Drug Administration (FDA) modify its stance on the food additive.

At its annual meeting in June 2006, AMA delegates urged industry and FDA to reduce the nation’s intake of sodium as a way of combating the incidence of fatal heart disease. More specifically, the medical group urged FDA to (i) revoke the “generally recognized as safe” (GRAS) status of salt as a food additive, (ii) develop regulatory proposals to restrict salt in processed and restaurant foods, (iii) improve the language used to disclose sodium content on food package labeling, and (iv) require warnings on food products high in sodium. The Salt Institute claims AMA assertions about the health effects of sodium are scientifically unjustified.

FDA is reportedly preparing to solicit comments on the alleged health effects of sodium consumption in preparation for a public workshop. An FDA official



was quoted as saying that revoking salt's status as GRAS would be "difficult" given the complexity of the issue.

## Scientific/Technical Items

### Portion Size

**[7] "The More We Eat, the Less We Think We Eat," Reports Author of Fast-Food Study**

Fast-food patrons who super-size their meals often miscalculate the number of calories they are consuming. B. Wansink and P. Chandon, "Meal Size, Not Body Size, Explains Errors in Estimating the Calorie Content of Meals," *Annals of Internal Medicine* 145(5): 326-332, 2006. Both overweight and normal-weight individuals reportedly believed super-sized portions contained 500 fewer calories than the portions' actual number of calories, while their guesses about smaller meals were typically off by only 95 calories. "One of the big dangers of fast-food lunches is that we not only mindlessly overeat, but we mindlessly underestimate how much we've eaten," said co-author Brian Wansink of Cornell University's Food and Brand Lab. "The more we eat, the less we think we eat. Nobody is immune from doing this, from the lightest person to the heaviest person." See *Associated Press*, September 4, 2006; *USAToday.com*, September 12, 2006.



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