

Food & Beverage

LITIGATION UPDATE

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LITIGATION UPDATE

Legislation, Regulations and Standards

Food and Drug Administration (FDA)

[1] Investigation Finds Deadly *E. Coli* Strain on Cattle Ranch

The [FDA](#) announced last week that manure samples collected from a California ranch contain the same genetic strain of *E. coli* found in tainted spinach processed by Natural Selection Foods, LLC. The implicated ranch, which runs beef cattle and produce operations, is reportedly less than one mile from the spinach fields, although investigators have yet to determine how the contamination occurred. An FDA official apparently acknowledged that “the close proximity of farm animals to produce fields has always been a concern,” but failed to say whether the agency is considering future regulations.

In a related development, the Mexican Ministry of Health has reportedly prohibited imports of U.S. lettuce after the Nunes Co., fearing possible *E. coli* contamination, recalled 8,500 cartons of the popular green. Mexico is not a major importer of U.S. lettuce, but farmers are apparently concerned about the ban’s effect on American buyers. “This is an outrageous step that has no basis at all in science or food safety,” said the leader of one farming

association. “The produce industry is being punished for being careful.” See *The Los Angeles Times* and *The New York Times*, October 12, 2006.

[2] Advocacy Groups Seek FDA Regulation of Cloned Animals

Led by the Center for Food Safety, a Washington, D.C.-based nonprofit, a group of public advocacy organizations has filed a [petition](#) with FDA seeking federal oversight of animal cloning.

Petitioners are seeking (i) an interpretive rule “requiring all producers of animal clones to comply with the Federal Food and Drug Cosmetic Act’s new animal drug requirements and FDA’s implementing regulations before permitting the sale of any cloned animals or cloned food products, including reviewing the health risks from consuming milk or meat products from the offspring of cloned animals”; (ii) a mandatory moratorium on food or feed from cloned animals “until each product of cloning completes the new animal drug process”; (iii) an environmental impact statement “evaluating the environmental and health effects of each new animal drug petition”; and (iv) the creation of a new advisory committee “to address the ethical issues of animal cloning by [the Department of Human Health and Services].”

Other organizations joining the petition include the American Anti-Vivisection Society and the Humane Society of the United States, the



environmental organizations Center for Environmental Health and Friends of the Earth, as well as the Religious Coalition for Reproductive Choice. The FDA issued a draft risk assessment in 2003 that indicated food from cloned animals and their offspring was as safe as conventional food, but later called for more research into the new technology; a final agency decision has been delayed. Some of the groups objecting to the technology contend that it is cruel to animals because many clones have significant congenital defects; they also claim that safety data regarding the consumption of products from cloned animals is lacking. According to the Center for Food Safety, "Cloned dairy cows have been producing milk on farms in the U.S. for at least five years, and some in the cloning industry have suggested that they may disregard FDA's request [that cloned animal food products be kept off the market voluntarily]." See *Scientific American*, October 12, 2006.

Meanwhile, a news source has reported that FDA is poised to approve the sale of milk and meat from cloned animals on the basis of new data generated by cloning companies that apparently indicates milk and meat from cloned livestock and their offspring are as safe as conventional foods. "Our evaluation is that the food from cloned animals is as safe as the food we eat every day," the FDA's chief of veterinary medicine was quoted as saying. The research is expected to be published in scientific journals as early as January 2007. The president of an Austin-based cloning company reportedly indicated that people are already consuming food from cloned animals. He said, "That you can go online today to any number of different Web sites and purchase semen from cloned bulls tells you there are cloned sires out there fathering calves in the food supply." See *The Washington Post*, October 17, 2006.

U.S. Congress

[3] Senate Minority Report Shows Links Between Abramoff and In-School Marketing Company

Minority staff of the Senate finance committee have issued a [report](#) discussing how indicted lobbyist Jack Abramoff used tax-exempt organizations to support clients that include Channel One, an in-school marketing company. The executive director of an organization known as Commercial Alert, who was apparently singled out by Abramoff and his colleagues for criticism as a "Nader's guy" and a "loonie," responded to the report by noting that "Channel One compels millions of children to watch ads in school each day, which is abhorrent to parents across the political spectrum." Channel One was launched in the late 1980s; schools were supplied with satellite dishes and a TV in every classroom in exchange for the right to show programming to students with advertisements for products such as candy bars, cereals, soft drinks, and chewing gum. See *Commercial Alert Press Release*, October 12, 2006.

Other Developments

[4] PHAI's Fourth Annual Conference Slated for November 2006

The Public Health Advocacy Institute (PHAI) will conduct its Fourth Annual Conference on Legal Approaches to the Obesity Epidemic, November 3-5, 2006, at the Northeastern University School of Law in Boston. The focus of this year's [conference](#) is "Targeting Kids: The Food Industry and Children's Diets"; the keynote speaker is Marion Nestle, a nutrition professor at New York University and the



author of *Food Politics, Safe Food, Taking Sides, and What to Eat*. Other speakers include Michael Jacobson, executive director of the Center for Science in the Public Interest, and Harvard University's Frank Hu, who authored an analysis of sugar-sweetened beverages and weight in the *American Journal of Clinical Nutrition*. According to conference organizer Richard Daynard, this year's conference will "capitalize on our shared successes and lay the groundwork for future legal interventions and collaborations among advocates and academics." See *Ascribe Newswire*, October 13, 2006.

[5] EU Food Industry Association Issues Revised Acrylamide Guidance

The EU Confederation of Food and Drinks Industries (CIAA) has issued a revised [document](#) that describes and evaluates methods food producers are using to reduce acrylamide levels in a wide range of cooked foods such as bread, cereal, fried potatoes, cookies, and coffee. "The final goal," according to CIAA, "is to find appropriate and practical solutions to reduce the overall dietary exposure to acrylamide." The industry is apparently experimenting with various techniques that involve altering raw material sources, removing certain ingredients, or changing processing temperatures and techniques. According to a news source, since Swedish researchers discovered the presence of acrylamide in many common foods in 2002, more than 200 research projects have been initiated worldwide to gather data about the chemical. Some of the "intervention" methods described in CIAA's guide are currently being used by processors; others are still being evaluated. See *Foodproductiondaily.com*, October 17, 2006.

[6] Walt Disney Company to Provide Healthier Eating Options

The Walt Disney Co. [unveiled](#) new nutrition guidelines this week for all kid-friendly food served at its theme parks and resorts or licensed under Disney brands. Designed with leading child health experts, the plan will limit calories, sugar and fat in accordance with USDA and HHS guidelines. Park restaurants will serve healthier beverages and side dishes with kids' meals as opposed to soft drinks and fries.

The company has also pledged to eliminate added *trans* fat from its menus and promotional products by the end of 2007 and 2008, respectively. "This is some of the best news I have heard in over 20 years of working with families and children as a pediatric nutritionist," said Dr. Keith Thomas Ayoob, who collaborated on the project. "Disney is synonymous with fun and can play an important role in getting kids to consume a more balanced diet."

Meanwhile, watchdog group Commercial Alert criticized the effort as "weak" and "inadequate." "Disney's new food guidelines are more notable for what they omit than what they include," said Gary Ruskin, the group's executive director. "Conspicuously absent was any mention of standards for products marketed on ABC and its other television companies."



Media Coverage

- [7] **Michael Pollan, “The Vegetable-Industrial Complex,” *The New York Times*, October 15, 2006.**

“Our highly centralized food economy is a dangerously precarious system, vulnerable to accidental – and deliberate – contamination,” charges *Times* writer Michael Pollan in his assessment of U.S. agricultural practices. Claiming that *E. coli* 0157:H7 is a byproduct of industrial farming, he argues that technological advances are no substitute for localized food systems. He also contends that “well-intentioned” regulation harms smaller operations that cannot shoulder the cost of enforcement, thus accelerating “the sort of industrialization that made food safety a problem in the first place.”

As to the alleged dangers of a centralized food system, Pollan cites government reports that the food supply is vulnerable to terrorism. “Keeping local food economies healthy ... is a matter not of sentimental but of critical importance to the national security and the public health,” he writes, later adding that new regulations “not only leave our centralized food system undisturbed but also imperil its most promising, and safer, alternatives.”

- [8] **Sneak Preview of *Fast Food Nation* Attracts Advocacy Group’s Attention**

Scheduled for release in November 2006, the film adaptation of Eric Schlosser’s *Fast Food Nation* is already motivating some watchdog groups to promote the fictionalized account of the farm-to-fork journey. According to the Food & Water Watch [blog](#), the “story reflects the brutal pace of the production line, the high risk of injury, and the abusive practices that are likely at these plants,” both for workers and animals.

Scientific/Technical Items

Seafood

- [9] **Benefits of Consuming Seafood Outweigh the Risks, Says IOM**

A study published by the Institute of Medicine recommends that federal agencies “should advise the public that seafood is part of a healthy diet,” one which has the potential to reduce the risk of cardiovascular disease. Despite public concern that pollutant-contaminated fish might cause neurological and developmental health problems, the report encourages children and pregnant women to consume up to 12 ounces of seafood per week, advising them to select fish high in omega-3 fatty acids and to avoid shark, swordfish, tilefish, and king mackerel, which may purportedly contain methyl mercury. Including graphics that could be adapted for consumer guidance, the study also recommends a risk analysis approach to consuming fish. It suggests that “Appropriate federal agencies should develop easy-to-use, understandable tools ... supportive of decision making and visual models of risks and benefits.”

Media sources reported mixed reactions to the study. While some said the findings should help ease consumers’ worries over methyl mercury, others criticized the allegedly “dated” information on environmental contaminants. Consumer interest groups also faulted the report for “downplaying” mercury’s alleged risks. “Labeling, both through notices at the seafood counter and directly on packages of fish, would take away the confusion at the fish counter,” a Center for Science in the Public Interest spokesperson said. See *CQ Healthbeat*



News, The Washington Post, CNN.com, and The Mercury Policy Project Press Release, October 17, 2006.

In related news, the USDA's National Organic Standards Board is discussing a proposal to classify farm-raised salmon as "organic." The proposal originated in an interim report published by the board's aquaculture task force, which suggested that fish raised in net-and-pen systems and fed fishmeal and fish oil could qualify for an organic label. Although there are currently no regulations pertaining to organic fish, environmentalists reportedly oppose open-net salmon farms on the grounds that the practice is often unsustainable and "fouls the ocean and wild fish with plumes of waste and sea lice." See *Greenwire*, October 17, 2006.



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