

FOOD & BEVERAGE LITIGATION UPDATE



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LEGISLATION, REGULATIONS AND STANDARDS

Food Safety Working Group Announces New Standards to Reduce *E. Coli*, *Salmonella* Outbreaks

The Food Safety Working Group (FSWG) created by President Barack Obama (D) has unveiled a "new, public health-based approach to food safety based on three core principles: prioritizing prevention; strengthening surveillance and enforcement; and improving response and recovery;" according to a July 7, 2009, White House press release. Chaired by Health and Human Services (HHS) Secretary Kathleen Sebelius and U.S. Department of Agriculture (USDA) Secretary Tom Vilsack, FSWG has set in motion several new strategies to advance these principles, including [plans](#) to (i) tighten standards governing the safety of eggs, poultry and turkey; (ii) increase inspections at beef facilities; (iii) issue new industry guidance for leafy greens, melons and tomatoes; (iv) build a traceback and response system incorporating "clearer industry guidance, a new unified command system and improved use of technology to deliver individual food safety alerts to consumers"; and (v) strengthen the organization of federal food safety functions. FSWG has also authorized a new Food and Drug Administration (FDA) position, deputy commissioner of foods, with the power to "restructure and revitalize" efforts to develop a new food safety system. See *FoodNavigator-USA.com*, *Reuters*, *Associated Press*, and *Congress Daily*, July 7, 2009; *The Los Angeles Times*, July 8, 2009.

Meanwhile, FDA has already complied with FSWG's call for new egg safety regulations, issuing a final [rule](#) that "requires shell egg producers to implement measures to prevent *Salmonella enteritidis* (SE) from contaminating eggs on the farm and from further growth during storage and transportation, and requires these producers to maintain records concerning their compliance with the rule and to register with FDA." A concurrent FDA statement has elaborated that the rule will require egg producers to (i) obtain chicks and young hens only from suppliers who monitor for SE; (ii) "establish rodent, pest control and biosecurity measures to prevent spread of bacteria throughout the farm by people and equipment"; (iii) conduct SE testing in the poultry house, with any positive results triggering eight weeks of required testing and the destruction or diversion of eggs to a non-food use; (iv) "clean and disinfect poultry houses that have tested positive for [SE]"; and (v) "refrigerate eggs at 45 degrees Fahrenheit temperature during storage and transportation no later than 36 hours after the eggs are laid." In addition, egg producers must maintain "a written [SE] prevention plan and records documenting their compliance."

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For additional information on SHB's Agribusiness & Food Safety capabilities, please contact

Mark Anstoetter
816-474-6550
manstoetter@shb.com



or

Madeleine McDonough
816-474-6550
202-783-8400
mmcdonough@shb.com



If you have questions about this issue of the Update, or would like to receive supporting documentation, please contact Mary Boyd (mboyd@shb.com) or Dale Walker (dwalker@shb.com); 816-474-6550.

FDA expects the new rules to provide "\$1.4 billion in annual public health benefits, at an annual cost of \$81 million to the regulated industry, or less than 1 cent per dozen eggs produced in the United States." Producers with at least 3,000 but fewer than 50,000 laying hens must comply with the rule by July 9, 2012, while operations with more than 50,000 laying hens have until July 9, 2010, to achieve compliance. "SE is among the leading bacterial causes of foodborne illness in the United States," concludes the FDA final rule, which expects to prevent 79,000 illnesses and 30 deaths caused by SE each year. See *FDA Press Release* and *Law360*, July 7, 2009; *The New York Times*, July 8, 2009.

In a related development, both consumer and industry groups have praised the FSWG initiative for closing gaps in the food safety net. The Center for Science in the Public Interest's (CPSI's) food safety director, Caroline Smith DeWaal, described the approach as a "good beginning for the Obama Administration," while Food & Water Watch (FWW) welcomed the "long overdue improvements" in poultry, beef and egg regulations despite cautioning against "one-size-fits-all" standards. The Grocery Manufacturers Association, which represents the world's leading food, beverage and consumer products companies, also lauded FSWG for "re-laying the foundation" of the food safety system. "We look forward to working with the Administration and Congress to enact reforms that will improve food safety, boost consumer confidence and address the challenges posed by today's 21st century food supply," GMA President and CEO Pamela Bailey was quoted as saying. See *CSPI*, *FWW* and *GMA Press Releases*, July 7, 2009.

GAO, Nonprofit Researchers Urge Stricter Labeling for Bottled Water

The Government Accountability Office (GAO) and the Environmental Working Group (EWG), a nonprofit research and advocacy organization, released reports at a July 8, 2009, congressional [subcommittee](#) hearing that called for bottled water to be labeled with the same level of information as municipal water products. The GAO [report](#) stated that federal safety protections are often less stringent for bottled water than tap water, recommending at a minimum that the Food and Drug Administration (FDA) require bottlers to tell consumers ways of obtaining comprehensive information about the source of their products and compliance with applicable regulations. The EWG report included a [survey](#) claiming that all but a few bottled-water companies do not list the sources of their bottled water and how it was treated.

EWG reportedly urged Americans to make bottled water "a distant second choice" to filtered tap water because of the lack of information about bottled water. "If the municipal tap water systems can tell their customers this information, you would think that bottled-water companies that charge 1,000 times more for this water could also let consumers know the same thing," said an EWG spokesman in published reports.

Bottled water is regulated by the FDA, and companies are required to disclose nutritional information and ingredients on labels. Municipal water is under the control of the Environmental Protection Agency (EPA). The two agencies have similar standards for water quality, but FDA has less authority to enforce them and the EPA requires more testing, according to GAO.

Leaders of the Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations have sent [letters](#) to 13 companies seeking information on the testing and sources of the companies' water products. See *Associated Press*, July 8, 2009; *The Wall Street Journal*, July 9, 2009.

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Chambliss Stalls Confirmation of Regulatory Czar Nominee over Stance on Animal Rights

U.S. Senator Saxby Chambliss (R-Ga.) has reportedly issued a temporary hold on the confirmation of Cass Sunstein, whom President Barack Obama (D) has tapped to lead the Office of Information and Regulatory Affairs (OIRA), over the Harvard law professor's purported views on animal rights. A 2004 book by Sunstein apparently suggested that "animals should be permitted to bring suit, with human beings as their representatives, to prevent violations of current law;" a stance that has raised concerns with Chambliss. According to a recent article published in *The Hill*, "Chambliss said he would not lift his hold until he had a chance to ask Sunstein to explain his views in a meeting after the July 4 recess." See *The Hill*, June 28, 2009; *OMB Watch*, June 30, 2009; *Meetingplace.com*, July 6, 2009.

FDA Announces Three Public Meetings Regarding Reportable Food Registry

The Food and Drug Administration (FDA) has [announced](#) three public meetings to explain the purpose of the Reportable Food Registry, how it will work and the responsibilities of those required to submit reports. The registry, which requires reports to be filed through an FDA Internet portal if there is reason to believe that adulterated food or feed will cause "serious adverse health consequences or death to humans or animals," is set to be implemented September 8, 2009. The meeting dates are July 23, August 5 and 25, 2009. See *Federal Register*, June 26, 2009.

Codex Issues More Than 30 New Food-Related Rules

During a recent week-long meeting in Rome, Italy, the Codex Alimentarius Commission (CAC) [adopted](#) more than 30 standards and guidelines designed to protect consumers' health, such as cutting the levels of potential cancer-causing chemicals and bacteria in foods. Among the rules adopted by the joint body of the United Nation's Food and Agriculture Organization (FAO) and the World Health Organization were measures to reduce acrylamide, a chemical by-product of high-temperature cooking processes that has allegedly been linked to cancer. "Applying Codex standards and guidelines are an important part of ensuring that consumers in every part of the world can be protected from unsafe food," an FAO spokesperson was quoted as saying.

CAC also adopted criteria for *Salmonella* and other bacteria in powdered formula for children ages 6 months and older and microbiological testing parameters aimed at helping producers control and prevent contamination of ready-to-eat foods with *Listeria*. See *Reuters*; *FoodNavigator-USA.com*, July 6, 2009.

OEHHA Reproductive Toxicant Committee to Discuss Bisphenol A for Prop. 65 Listing

California EPA's Office of Environmental Health Hazard Assessment (OEHHA) has announced a July 15, 2009, [meeting](#) of its Science Advisory Board's Developmental and Reproductive Toxicant Identification Committee. The committee, which will be discussing whether bisphenol A (BPA) "has been clearly shown, through scientifically valid testing according to generally accepted principles, to cause reproductive toxicity," is charged with identifying chemicals for addition to the list of chemicals known to the state to cause reproductive toxicity under the Safe Drinking Water and Toxic Enforce-

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ment Act of 1986 (Prop. 65). BPA is used extensively in metal and plastic food and beverage packaging.

Among those who have submitted comments for the committee's consideration are consumer interest groups, the Environmental Working Group, Natural Resources Defense Council, Grocery Manufacturers Association (GMA), American Chemistry Council, and North American Metal Packaging Alliance. GMA contends that scientific evidence "does not 'clearly show' a causal link between BPA and developmental and reproductive harm." According to its submission, "Current exposure levels of BPA are safe for consumers and the environment, as demonstrated not only by repeated testing and review by qualified experts, but also by the history of over 60 years of commercial canned food safety."

The submission from a coalition of consumer interest organizations states in part, "The case of BPA is reminiscent of the tobacco industry's campaign to deny the health hazards of smoking. For years, state agencies and scientific bodies were unsure how to act on tobacco due to the 'dueling science' that confronted decision makers. We now know that much of the science demonstrating no adverse effect from tobacco products was produced by the tobacco industry as a way to manufacture doubt in regulators' minds long enough to sell their product for a little while longer." They argue that industry is engaged in the "same scenario" as to the safety of bisphenol A.

According to the comments submitted by the North American Metal Packaging Alliance, the use of BPA in metal food packaging positively affects human health by protecting food quality and nutrition, "while enabling high temperature sterilization that eliminates the dangers of food poisoning from microbial contaminants." The alliance points to studies and governmental findings that BPA exposures from canned products are low and "not expected to pose a health risk to the general population."

LITIGATION

Aurora Dairy Plaintiffs Appeal District Court's Preemption Dismissal

Multidistrict litigation plaintiffs who sued Aurora Dairy Corp., an accredited organic certifying agent and a number of food retailers have appealed the district court decision dismissing their claims to the Eighth Circuit Court of Appeals. *In re: Aurora Dairy Corp. Organic Milk Mktg. & Sales Practices Litig.*, MDL No. 08-1907 (U.S. Dist. Ct., E.D. Mo., E. Div., appeal noticed July 2, 2009).

As noted in the June 5, 2009, issue of this Update, the district court concluded that the claims, which involved allegations that Aurora Dairy sold its milk as organic while violating national organic program requirements, were preempted by federal law and regulations. In their list of issues on appeal, the plaintiffs question the validity of this determination.

EPA Ordered to Produce Documents About Pesticide Suspected in Bee Colony Collapse

A federal court in the District of Columbia has ordered the Environmental Protection Agency (EPA) to produce certain records about the pesticide clothianidin and lists

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of potentially protected documents to the Natural Resources Defense Council, which sought the information under a Freedom of Information Act Request submitted in July 2008. *Natural Resources Defense Council v. EPA*, No. 08-1429 (U.S. Dist. Ct., D.D.C., decided June 23, 2009).

According to the court, the information related to “the use of the pesticide clothianidin on crops in the United States, EPA’s evaluation of the safety of the pesticide on bees, studies submitted by chemical manufacturers relating to the toxicity of the pesticide to bees, and communications with other federal or foreign agencies regarding environmental risks posed by the pesticide.”

The day before the court filed its ruling establishing a schedule for the document production, EPA announced that it had developed a “pollinator protection strategic plan.” The plan, created in response to concerns expressed in a mid-June House appropriators’ report, will apparently involve the assembly of a multidisciplinary team to “guide agency efforts to address widespread bee colony collapse, particularly of honeybees, which threatens billions of dollars of agricultural production that relies on the insects.”

In its announcement, EPA suggested that other factors, such as reemerging pathogens, habitat loss, pests, bee-management practices, and nutritional stress, could be responsible for the problem. Still, given gaps in EPA’s understanding about the effects of pesticides on honeybees, the agency team will focus primarily on pesticide use as a potential contributing factor to honeybee decline and will make improvements to EPA’s knowledge base, toxicity testing, risk management tools, interagency collaboration, and stakeholder communications.

In a related development, the Senate reportedly confirmed President Barack Obama’s (D) nominee to lead EPA’s pesticides office by a unanimous vote. Stephen Owens, who most recently headed Arizona’s Department of Environmental Quality, will serve as the next assistant administrator of EPA’s Office of Prevention, Pesticides, and Toxic Substances. According to a news source, Owens lacks extensive technical expertise, but has wide-ranging political and management experience that some claim will be required as policymakers begin reforming the nation’s chemical management policy. *See Inside EPA*, July 7, 2009.

DOJ Seeks Court Order to Close Mexican-Cheese Processor in New York

The Department of Justice (DOJ) is seeking to enjoin the operation of a cheese-processing facility in New York due to the *Listeria monocytogene* (*L. mono*) contamination of its Queso Hebra, Queso Fresco and Queso Cotija Molido cheeses. *U.S. v. Peregrina Cheese, Inc.*, No. 09-2888 (U.S. Dist. Ct., E.D.N.Y., filed July 7, 2009). According to DOJ, state and federal inspections of the facility since at least 2004 have revealed serious sanitation problems. Because product samples and equipment surfaces tested positive for the same *L. mono* strain, Food and Drug Administration (FDA) analysts concluded that “the strain has formed a niche at Peregrina Cheese’s facility.”

The owners have apparently refused to shut down the plant to properly sanitize it, claiming that the state food safety agency approved the “use of an antimicrobial agent as an additive in Peregrina Cheese’s Queso Fresco product.” The owners did not, however, provide “any information as to the level of use” nor “the effectiveness of such applica-

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tion." DOJ seeks to permanently enjoin the company and its owners from violating the Federal Food, Drug, and Cosmetic Act "by introducing or delivering for introduction into interstate commerce any article of food that is adulterated." The complaint also seeks a court order requiring the company and its owners to cease processing or distributing food from the plant until they bring their operations into compliance with the law "to the satisfaction of FDA."

EU Court Issues Ruling on "Bavaria" Beer Designation

Responding to questions referred to it by an Italian court, the European Court of Justice (ECJ) has determined that (i) the term "Bavaria," when used in conjunction with beer, is not a generic term, but rather is a protected geographical indication (PGI) recognized in valid proceedings by the European Commission in 2001; and (ii) beer makers outside the German region, using this designation for their products, may do so if they can prove their trademarks were registered in good faith before 2001 and will not likely confuse consumers as to product identity, "having regard to that mark's reputation, renown and the length of time for which it has been used." Case C-343/07, *Bavaria NV v. Bayerischer Brauerbund eV* (decided July 2, 2009).

German brewers have apparently been challenging Dutch brewer Bavaria NV in courts throughout the continent, including in Italy where the case has been returned for the Dutch brewer to prove that it applied for its trademark in good faith in 1971. Both parties reportedly claimed victory. A spokesperson for the German brewers was quoted as saying, "The European court has strengthened our designation and we see this as the optimal starting point for the cases that are still running in Italy and Germany. We're also now considering whether to pursue legal action against those free-riders selling beer using our good Bavarian name in other European countries."

The Dutch brewer apparently believes it can prevail in Italy on behalf of its subsidiary, Bavaria Italia; a member of Bavaria NV's board cited similar litigation in Spain that it won in June 2009 at the culmination of 10-year dispute. According to the ECJ's ruling, the Dutch company began using the term "Bavaria" in 1925 in reference to the process used to make the beer and registered the name periodically between 1947 and 1995. See *Financial Times*, July 3, 2009.

OTHER DEVELOPMENTS

CDC to Host "Weight of the Nation" Conference

The U.S. Centers for Disease Control and Prevention (CDC) has scheduled a [conference](#) for public policymakers, health leaders and others to consider "progress in the prevention and control of obesity through policy and environmental strategies." The inaugural "Weight of the Nation Conference" will be held July 27-29, 2009, in Washington, D.C.; an interactive discussion format for speakers and participants has been planned. CDC will use information developed for and during the conference to produce its "National Road Map for Obesity Prevention and Control" guidelines.

Among those who have been invited to speak are Health and Human Services Secretary Kathleen Sebelius, Senator Tom Harkin (D-Iowa), and Representatives James

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Oberstar (D-Minn.) and Zack Wamp (R-Tenn.). Other speakers include Kelly Brownell, director of the Rudd Food Center for Policy and Obesity at Yale University, and Margo Wootan, director of Nutrition Policy at the Center for Science in the Public Interest. School nutrition, federal legislation, the economics of obesity, using social marketing to reduce adolescent obesity, local policy initiatives, and informing consumers about menu ingredients are among the topics that will be addressed. Physical activity breaks have been planned throughout the three-day conference.

CDC Researchers Identify *Reston Ebolavirus* in Pigs

Researchers with the U.S. Centers for Disease Control and Prevention (CDC) have reportedly identified a strain of *Reston ebolavirus* (REBOV) in pigs for the first time, raising questions about the ability of the virus to mutate and cause illness humans. First reported in the July 3, 2009, issue of *Science*, the results apparently showed that various REBOV strains have been circulating in the pig population of the Philippines, suggesting that swine there could have harbored REBOV before 1989, when the disease was discovered in a monkey exported to Reston, Virginia. REBOV can be transmitted to humans, but does not cause them to contract illnesses such as the Ebola hemorrhagic fever often associated with this family of viruses. "REBOV infection in domestic swine raises concern about the potential for emerging disease in humans and a wider range of livestock," stated the researchers in *Science*. "There is a concern that its passage through swine may allow REBOV to diverge and shift its potential for pathogenicity." See *MSNBC.com*, July 9, 2009; *BBC News*, July 10, 2009.

Cookie-Dough Contamination Remains in the News; *E. Coli* Found at Plant

According to news sources, Food and Drug Administration (FDA) inspectors have found *E. coli* in a package of cookie dough at Nestlé USA's plant in Danville, Virginia. The strain did not, however, match the DNA fingerprint of the strain purportedly linked to the illnesses of some 72 people in 30 states. FDA's David Acheson, assistant commissioner for food safety, commenting on the continuing mystery as to how the *E. coli* contaminated the cookie dough, was quoted as saying, "This will be one of those situations where we won't definitely know what went wrong." The agency's findings could affect the product liability lawsuits already pending in several states.

Investigators reportedly performed more than 1,000 tests on environmental and other samples from the plant, but found no evidence of the potentially deadly bacteria inside the facility or on any equipment. The company has apparently begun a "controlled production startup" after discarding all stockpiled ingredients and dismantling, inspecting and cleaning all parts of the production line. A Nestlé spokesperson said that every cookie dough ingredient in the future will undergo "very extensive pretesting." See *ABC News*, July 9, 2009; *The Wall Street Journal*, July 10, 2009.

***Salmonella*-Tainted Milk Powder and Related Products Recalled**

A Plainview, Minnesota, milk cooperative has reportedly recalled two years' worth of food products, including instant non-fat dried milk, whey protein, and fruit stabilizers and gums for fear that they are contaminated with *Salmonella*. While no illnesses have apparently been linked to the products, which are sold to food manufacturers and

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distributors only, the recall has been further expanded to products containing these ingredients. Among the other recalled foods are instant oatmeal, hot chocolate mix, popcorn toppings, and shake mixes. The U.S. Department of Agriculture reportedly detected *Salmonella* in a milkshake powder in June, and Food and Drug Administration investigators found the bacteria in the Plainview Milk Products Cooperative plant. See *UPI.com*, June 29, 2009; *USA Today*, July 6, 2009; *FDA Press Release*, July 8, 2009.

MEDIA COVERAGE

Washington Post Report Questions Integrity of Organic Labeling Practices

"Relaxation of the federal standards, and an explosion of consumer demand, have helped push the organics market into a \$23 billion-a-year business, the fastest segment of the food industry," claim *Washington Post* writers Kimberly Kindy and Lyndsey Layton in a July 3, 2009, investigative report alleging that the U.S. Department of Agriculture (USDA) and its officials with the National Organic Standards Board (NOSB) have diluted organic regulations in response to "corporate firepower." The article states that since its inception in 2002, the list of synthetics permitted in organic products has grown to 245 substances from 77, while only one item has ever been removed from the list. "The argument is not whether the non-organics pose a health threat, but whether they weaken the integrity of the federal organic label," according to the report, which notes that USDA's Inspector General's Office is investigating allegations of non-compliance and complaints about the program's certification practices.

The article examines several cases in which NOSB purportedly acquiesced to corporate interests seeking the "coveted green-and-white 'USDA Organic' seal on an array of products," including baby formula made from synthetic additives and livestock raised on nonorganic fish meal. Although USDA Secretary Tom Vilsack has reportedly warned against eroding the organic brand "to where it means nothing," department officials have tracked a tension between the purity of the label and its success. "As the organic industry matures, it's becoming increasingly more difficult to find a balance between the integrity of the word 'organic' and the desire for the industry to grow," NOSB Chair Jeff Moyer was quoted as saying.

In a related development, the Cornucopia Institute has cited the *Washington Post's* "scathing indictment" of NOSB in renewing its campaign to "rehabilitate" the organic program. The institute has called corporate forays into organic dairy farming "a sad aberration," urging the White House and USDA to "aggressively enforce federal organic regulations that would control abuses occurring in the organic dairy sector." See *The Cornucopia Institute*, July 6, 2009.

Douglas MacMillan, "Alcohol, Then Tobacco, Now Fast Food?," *BusinessWeek*, June 30, 2009

"Industry critics compare the intent of fast-food companies to that of cigarette makers, who first came under attack for marketing to children decades ago," writes *BusinessWeek's* Douglas MacMillan in this article detailing the efforts of consumer advocacy groups to outlaw food advertising to children. According to MacMillan, "public criticism

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and mountains of data linking obesity, diabetes and other health problems to the regular consumption of fast food has [sic] caused the industry to rethink its entrenched practice of marketing to kids." His overview cites the creation of the Children's Food & Beverage Initiative under the auspices of the Council for Better Business Bureaus (CBBB), which requires signatories to limit their advertising to children and promote food considered healthy by the Food and Drug Administration.

This initiative, however, has apparently failed to deter groups like Corporate Accountability International, which has taken up the banner against fast-food companies. "Both the tobacco and fast-food industries have clearly identified young people as really important markets for their business," said a spokesperson for the consumer watchdog, which has advocated additional government intervention as the economic recession has increased fast-food sales. "The short-term value of people buying fast food more regularly is only going to create a heavier burden for individuals and society."

The article also tracks a growing movement among lawmakers and regulators to further consider regulating fast-food advertising aimed at children. "Whether or not food and beverage marketers are part of the problem – and in my view, we all share some responsibility – they have to be part of the solution," stated Federal Trade Commission Chair Jon Leibowitz in remarks made before the U.S. Senate Appropriations Committee in September 2008.

SCIENTIFIC/TECHNICAL ITEMS

Two Studies Link Phthalates to Premature Birth, Low Birth Weight

A recent study has reportedly claimed that mothers of premature babies "have, on average, up to three times the phthalate level in their urine compared to women who carry to term." John Meeker, et al., "Urinary Phthalate Metabolites in Relation to Preterm Birth in Mexico City," *Environmental Health Perspectives*, June 16, 2009. Collaborating with the U.S. Centers for Disease Control and Prevention and the National Institute of Public Health in Mexico, researchers from the University of Michigan School of Public Health (UM SPH) analyzed urine samples taken during the third trimester, finding that 30 women who delivered before 37 weeks gestation had "significantly higher phthalate levels" than 30 women experiencing full-term pregnancies and women in a control group. "We looked at these commonly used compounds found in consumer products based on the growing amount of animal toxicity data and since the national human data show that a large proportion of the population are unknowingly exposed," stated the lead author in a July 6, 2009, UM SPH press release. "One of the problems for consumers is that you don't know exactly which products contain phthalates because the products do not have to be labeled accordingly." See *FoodProductionDaily.com*, July 8, 2009.

Meanwhile, a separate study has apparently found a correlation between higher phthalate levels and low birth weight (LBW). Yunhui Zhang, et al., "Phthalate Levels and Low Birth Weight: A Nested Case-control Study of Chinese Newborns," *The Journal of Pediatrics*, June 25, 2009. Chinese researchers examined maternal blood, cord blood and meconium specimens from 201 newborn-mother pairs, including 88 low birth weight (LBW) infants. "More than 70 percent of the bio-samples had quantifiable levels of phthalates, with higher levels in the LBW infants compared to the controls," according

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to the study, which also claimed that “prenatal di-n-butyl phthalate (DBP) exposure was associated with LBW, and di-2-ethylhexyl phthalate (DEHP) was negatively associated with birth length.” See *FoodProductionDaily.com*, June 29, 2009.

Rudd Center Releases Report on Effects of TV Food Advertising on Consumption

Yale University’s Rudd Center for Food Policy and Obesity has released the [results](#) of experimental studies examining the relationship between TV food advertising and consumption. Titled “Priming Effects of Television Food Advertising on Eating Behavior,” the article appears in the July edition of *Health Psychology* and concludes that “food advertising on television increases automatic snacking on available foods in children and adults.” Authors Jennifer Harris, John Bargh and Kelly Brownell observed elementary-school-aged children who received a snack while watching programs that featured either food advertising or advertising for other products. The authors also followed adults exposed to (i) “food advertising that promoted snacking and/or fun product benefits”; (ii) “food advertising that promoted nutrition benefits” or (iii) “no food advertising.” The adults then “tasted and evaluated a range of healthy to unhealthy snack foods.” According to the article, the children “consumed 45 percent more when exposed to food advertising,” while adults “consumed more of both healthy and unhealthy snack foods following exposure to snack food advertising compared to the other conditions.”

“This research shows a direct and powerful link between television food advertising and calories consumed by adults and children,” stated Harris, who also serves as the Rudd Center’s director of marketing initiatives. “Food advertising triggers automatic eating, regardless of hunger, and is a significant contributor to the obesity epidemic. Reducing unhealthy food advertising to children is critical.” See *U.S. News & World Report HealthDay*, July 1, 2009.

OFFICE LOCATIONS

Geneva, Switzerland
+41-22-787-2000

Houston, Texas
+1-713-227-8008

Irvine, California
+1-949-475-1500

Kansas City, Missouri
+1-816-474-6550

London, England
+44-207-332-4500

Miami, Florida
+1-305-358-5171

San Francisco, California
+1-415-544-1900

Tampa, Florida
+1-813-202-7100

Washington, D.C.
+1-202-783-8400

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SHB attorneys are experienced at assisting food industry clients develop early assessment procedures that allow for quick evaluation of potential liability and the most appropriate response in the event of suspected product contamination or an alleged food-borne safety outbreak. The firm also counsels food producers on labeling audits and other compliance issues, ranging from recalls to facility inspections, subject to FDA, USDA and FTC regulation.

SHB lawyers have served as general counsel for feed, grain, chemical, and fertilizer associations and have testified before state and federal legislative committees on agribusiness issues.

