

# Food & Beverage

## LITIGATION UPDATE

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## LITIGATION UPDATE

### Legislation, Regulations and Standards

#### U.S. Congress

##### [1] House Resolution Addresses Alcohol Advertising During Collegiate Sporting Events

Nebraska lawmaker Tom Osborne (R) and colleagues Representatives Lucille Roybal-Allard (D-Calif.) and Frank Work (R-Va.) have introduced a resolution ([H. Res. 575](#)) calling on the National Collegiate Athletic Association to affirm “its commitment to a policy of discouraging alcohol use among underage students by ending all alcohol advertising during radio and television broadcasts of collegiate sporting events.” “It is a complete contradiction for colleges and universities to continue to take money from beer companies whose ads glamorize drinking and target a youthful audience, and then devote time, energy and resources in the fight to discourage the same students from engaging in underage and binge drinking,” Osborne was quoted as saying. “Too often, college personnel are confronted with alcohol-related consequences – poor academic and disciplinary behavior, security concerns, assault, date rape, and death. These terrible outcomes are not at all glamorous,” he said.

In November 2003, Osborne joined forces with the Center for Science in the Public Interest (CSPI) and others to launch the Campaign for Alcohol-Free Sports TV. According to CSPI, some 108 schools have pledged to comply with the project’s [commitment](#) to minimize the exposure of students to alco-

hol advertising during broadcasts of games involving their teams. *See Press Release from the Office of Representative Tom Osborne and CSPI Newsroom, March 25, 2004.*

#### Food and Drug Administration (FDA)

##### [2] FDA Issues New Acrylamide Data, Final Action Plan

Late last week, FDA issued new [data](#) on acrylamide levels in more than 750 new food samples, adding black olives, prune juice and Postum, a caffeine-free powdered beverage, to the list of food products containing the chemical. Acrylamide is also a natural byproduct in certain high-carbohydrate foods that forms when such foods are fried, baked or roasted at high temperatures. According to FDA, the chemical “is known to cause cancer and reproductive problems in animals at high doses and is a neurotoxin in humans at high doses.” Among other things, the agency’s final [action plan](#) for acrylamide in food provides details on planned studies, risk communication efforts and collaborative research efforts among international entities. *See FDA News, March 25, 2004.*

##### [3] FDA Further Delays Issuance of Final Recordkeeping and Detention Rules

An Associated Press article this week indicates that hundreds of disparaging comments from the food industry have led FDA to delay for a second time two bioterrorism regulations regarding the establishment and maintenance of records related to food and the administrative detention of food ship-



ments that might pose a threat of serious adverse health effects or death to humans or animals. The final regulations were initially expected in mid-December 2003 and then by the end of March 2004. A Grocery Manufacturers Association representative was quoted as saying that FDA's draft proposals require more tracking data than the food industry can supply in the expedited timeframe the agency desires. *See Associated Press*, March 29, 2004.

#### [4] **FDA Subcommittee to Address Health Claims Issues**

FDA's Nutrition Subcommittee of the Food Advisory Committee will hold a [public meeting](#) on April 27-28, 2004, in Washington, D.C. Agenda items for subcommittee members will include discussion of the scientific issues involved in using "total fat" as a disqualifying level for foods that receive a health claim for heart disease and the evidence supporting establishment of a daily value for *trans*-fatty acids. *See Federal Register*, March 29, 2004.

## Litigation

#### [5] **United States Files WTO Action Against Mexico over Discriminatory Beverage Taxes**

The U.S. government has filed a case in the World Trade Organization (WTO) against Mexico, alleging that Mexico's 20 percent sales tax and 20 percent distribution tax on sweetened beverages not containing cane sugar discriminate against imported products. Imposed by the Mexican government in January 2002, the taxes have hindered trade negotiations between the two countries over how much sugar Mexico can export to the United States and how much high-fructose corn syrup the United States can send there. Sugar-sweetened beverages are exempt from the taxes. The WTO dispute settlement process usually takes up to 18 months.

*See Office of the U.S. Trade Representative Press Release*, March 16, 2004.

## Other Developments

#### [6] **Johns Hopkins Program to Address Public Health Approach to Overweight and Obesity Issue**

The Johns Hopkins Bloomberg School of Public Health is hosting a [panel discussion](#) titled "Downsizing America: The Obesity Epidemic" on the afternoon of April 12, 2004, on the Johns Hopkins' campus in Baltimore, Md. The event will be moderated by Benjamin Caballero, M.D., director of Johns Hopkins' Center for Human Nutrition and a member of the federal committee charged with preparing by 2005 the revised *Dietary Guidelines for Americans*. Presentations will include (i) Yale University's Kelly Brownell, Ph.D., on "The Obesogenic Environment and How to Deal with It," (ii) the University of Minnesota's Robert Jeffrey, Ph.D., on "Behavioral Change for Weight Change," (iii) the University of Washington's Adam Drenowski, Ph.D., on "Poverty and Obesity: Food Choices and Energy Costs," and (iv) the University of Pennsylvania's Shiriki Kumanyika, Ph.D., on "Where Is the Obesity Epidemic Going, and Is It Going the Same Direction for Everyone?"

## Media Coverage

#### [7] **William Steiger, "Fighting Obesity," *The Lancet* (363), March 27, 2004**

In this letter to the editor responding to a recent *Lancet* editorial, William Steiger, an international special affairs assistant to HHS Secretary Tommy Thompson, defends the Bush administration's criticism of the underlying World Health Organization/Food and Agriculture Organization report that

provided the basis for WHO's *Draft Global Strategy on Diet, Physical Activity and Health*. Such criticism included the underlying report's focus on 'good' and 'bad' foods and a conclusion that specific foods were linked to non-communicable diseases and obesity. The January 31, 2004, editorial found fault with U.S. allegations that the WHO draft strategy was based on faulty science and blamed "intense lobbying from the U.S. food industry" for the WHO Executive Board's decision to extend the public comment period on the document before presenting it to the World Health Assembly in May.

According to Steiger, "the issue of overweight and obesity has successfully been raised to the top of the domestic agenda by speaking the truth, and calling on all those with a stake in the issue to do their part to fight this issue in America. ... As the strategy is finalized, the USA will continue to work with the WHO and member states, to ensure that the document contains the most scientifically accurate information to help consumers." See [issue 64](#) of this Update for further details about the controversy surrounding the WHO obesity report.

## Scientific/Technical Items

### Acrylamide

#### [8] New Studies Find No Link Between Acrylamide and Certain Cancers

Preliminary results from four epidemiological studies conducted on Swedish populations suggest no associations between consumption of foods containing acrylamide and cancers of the bladder, kidney or colon. The studies, conducted by Lorelei Mucci of the Harvard University School of Public Health, were presented this week in Anaheim, Calif., during a symposium at the American Chemical Society's annual meeting. Acrylamide has been

classified by the International Agency for Research on Cancer as a probable human carcinogen, and the chemical is found in commonly consumed baked and fried foods. Mucci and her research team are conducting two on-going human population studies that examine the relationship between dietary acrylamide and the risk of breast and colorectal cancer. Initial results from those studies show no associations between acrylamide intake and higher rates of cancer of the colon, rectum or breast. See *The New York Times* and *American Chemical Society Press Release*, March 29, 2004.

### Obesity

#### [9] Controversy over WHO/FAO Diet Recommendations Continues

A feature article in the British medical journal *The Lancet* (Mann, J., "Free Sugars and Human Health: Sufficient Evidence for Action?" 363: 1068-1070, March 27, 2004) supports a recent joint consultation report from WHO and the Food and Agriculture Organization (FAO) of the United Nations recommending that free sugar consumption be restricted to less than 10 percent of total energy intake. The WHO/FAO recommendation is part of the organization's general global strategy on diet, physical activity and health. According to the author, the U.S. food industry has lobbied against the adoption of the recommendation. Critics of the WHO strategy to restrict free sugars, defined as "added" sugars (e.g., sucrose) plus concentrated sugars found in honey, syrups and fruit juices, contend that the scientific literature has not established a direct causal association between consumption of free sugars and coronary heart disease, diabetes or other chronic diseases. Proponents of the recommendation argue that diets rich in free sugars and/or high in simple carbohydrates bring about excess weight gain and obesity that are linked to type 2



diabetes and coronary heart disease. Twenty countries already have guidelines in place for the restriction of sugar intake, including one in South Africa that states: "Consume food and drinks containing sugar sparingly and not between meals."

### **[10] Obesity Compromises Health Gains for Children**

A Duke University research report sponsored by the Foundation for Child Development (*Index of Child Well-Being (CWI), 1975-2002, with Projections for 2003: A Composite Index of Trends in the Well-Being of Our Nation's Children*, March 15, 2004), examines trends in 28 key indicators used to assess the quality of life and well-being in America's children. Using data from the recent Centers for Disease Control and Prevention study on obesity in children, the Duke University report finds that improvements since 1975 in lower infant mortality rates, fewer low birth-weight babies and increases in rates of children in very good or excellent health have been largely offset by an increase in the rate of overweight and obese children. The CDC data found that 16 percent of American adolescents were obese in 2002, a 75 percent increase from 1974. The report does not detail specific health problems brought about by obesity, nor does it discuss reasons for the increase in children.

## Soft Drinks

### **[11] Soft Drink Consumption Linked to Tooth Enamel Erosion in Teens**

A survey of 1,000 British teenagers has reportedly found a significant link between the consumption of carbonated soft drinks and the erosion of tooth enamel in teens. (C.R. Dugmore and W.P. Rock, "A multifactorial analysis of factors associated with dental erosion," *British Dental Journal* 196(5): 283-286.) The risk of significant dental erosion (the wearing away of the protective enamel coating on teeth) was 59 percent higher in 12-year-olds and 220 percent higher in 14-year-olds who consumed carbonated soft drinks. Increased consumption of soft drinks, i.e., at least four glasses a day, was associated with a 252 percent increase in risk for 12-year-olds and a 513 percent increased risk in 14-year-olds. The cause of tooth enamel erosion, according to the researchers, is the acidity of carbonated soft drinks. Dental erosion weakens teeth and can cause subsequent thinning and chipping of tooth edges. A British Soft Drinks Association spokesperson was quoted as saying that his industry is aware of such concerns, but noted that there "are many causes of dental erosion, some dietary and others not, and the relative role of each will vary from case to case." He added that the soft drinks industry "recommends that consumers brush their teeth twice a day with a fluoride toothpaste and avoid drinking soft drinks after they have cleaned their teeth at night" and "supports any advice not to put soft drinks or fruit juices in baby bottles." See *Reuters*, March 11, 2004; *BBC News*, March 12, 2004.



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## LITIGATION UPDATE

Food & Beverage Litigation Update is distributed by Mark Cowing and Mary Boyd in the Kansas City office of SHB. If you have questions about the Update or would like to receive back-up materials, please contact us by e-mail at [mcowing@shb.com](mailto:mcowing@shb.com) or [mboyd@shb.com](mailto:mboyd@shb.com). You can also reach us at 816-474-6550. We welcome any leads on new developments in this emerging area of litigation.

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