

Food & Beverage

LITIGATION UPDATE

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LITIGATION UPDATE

Legislation, Regulations and Standards

Food and Drug Administration (FDA)

[1] New FDA Regulations Hope to Ensure Safety of Imported Food

A forthcoming FDA [proposal](#) would augment existing regulations pertaining to the use of private sampling services and laboratories in connection with imported food. Among other things, the new rules would require imported food samples “to be properly identified, collected and maintained; mandate that private laboratories use validated or recognized analytical methods; and direct private laboratories to submit the results directly to FDA.” The proposal would also require importers to provide the agency with prior notice about the use of a sampling service or a private laboratory to sample and test foods subject to FDA enforcement actions. See *FDA News Release*, April 26, 2004.

Department of Health and Human Services (HHS)

[2] Dietary Guidelines Committee Schedules Final Meeting

The Dietary Guidelines Advisory Committee will hold its final [public meeting](#) on May 26-27, 2004, in Washington, D.C. Public comments relevant to the group’s review of the guidelines will be accepted until May 12. The 13-member federal panel is charged with preparing by 2005 the re-

vised *Dietary Guidelines for Americans*, a report whose findings will affect, among other things, proposed changes to the Food Guide Pyramid. See *Federal Register*, April 26, 2004.

France

[3] French Government Report Recommends Restrictions on Food Advertising, Establishment of National Agency to Coordinate Anti-Obesity Campaign

A report authored by French Senator Claude Saunier has reportedly concluded that obesity rates in France have grown by 17 percent annually over the last six years and that absent government action, obesity levels in France will match those of the United States by 2020. “We are confronted with a social curse, and we know for certain that it will be the cause of a health disaster and a health care cost explosion,” Saunier said. Approved by a parliamentary panel on science and technology, the report’s recommendations reportedly include (i) government curbs on food advertising and (ii) establishment of a national agency charged with coordinating anti-obesity efforts funded by a “fat tax” on certain foods. See *Agence France-Presse*, April 27, 2004.

Canada

[4] Public Outcry Leads Ontario Government to Drop Proposed “Fat Tax” on Inexpensive Meals

Noting that using a tax to encourage people to make healthier food choices was a “very crude in-



strument that did not achieve that policy objective,” Liberal Premier Dalton McGuinty has decided to withdraw a proposed 8 percent “fat tax” on restaurant meals costing CAN\$4 or less. The tax was expected to have generated CAN\$200 million for the provincial government, but was widely opposed by restaurant chains that gathered thousands of patrons’ signatures against the proposal and opposition members of the Legislative Assembly. The Ontario Restaurant Hotel and Motel Association estimated that the tax would have cost industry CAN\$214 million and endangered jobs. *See CBC News*, April 20, 2004; *The Toronto Star*, April 21, 2004.

European Union (EU)

[5] EU Agriculture Ministers’ Failure to Act on Genetically Engineered Corn Expected to Lead European Commission to Lift Moratorium on the Product

As a result of EU agriculture ministers’ failure this past Monday to reject or adopt a European Commission proposal to allow the sale of imported canned corn grown from genetically modified seeds (BT-11) in the EU’s 15 member states, the Commission is now reportedly expected to “singlehandedly” approve sale of the product without delay. BT-11 corn, which has been genetically modified to produce its own insecticide, is produced by the Swiss biotech company Syngenta and is grown primarily in the United States and Canada. The EU’s six-year *de facto* moratorium on approving agricultural biotech products led the U.S. trade representative to file a World Trade Organization enforcement action against the EU in May 2003, which case has yet to be resolved. *See The Financial Times*, April 26, 2004; *EurActiv.com*, April 27, 2004.

Other Developments

[6] Public Health Advocates Urge Dairy Industry to Promote Low-Fat Milk in Schools

In an April 26, 2004, [letter](#) addressed to the National Milk Producers Federation, International Dairy Foods Association and Dairy Management, Inc., nearly 200 nutritionists and researchers urge the dairy industry to “work with schools, Congress, and the U.S. Department of Agriculture to ensure that the milk available in school cafeterias and vending machines is either low-fat (1%) or fat-free.” The letter asserts that “Three out of four children consume more saturated fat than is recommended in the *Dietary Guidelines for Americans*. The beginnings of atherosclerosis are seen in children as young as ten years old, and a quarter of children ages 5 to 10 years old already have high cholesterol, high blood pressure, or other risk factors for heart disease.” According to the Center for Science in the Public Interest (CSPI), the dairy industry’s lobbying efforts recently resulted in a House bill that “requires schools to offer milk in a ‘variety of fat contents’” and prohibits “schools from restricting the sale or promotion of whole or 2% milk in schools anywhere on school grounds.” The nutrition policy director of the Washington, D.C.-based nutrition advocacy group was quoted as saying, “It’s great that the dairy industry is using its clout to help push soda out of schools, but it shouldn’t try to strong arm school systems into selling high-fat milk.” *See CSPI Newsroom*, April 26, 2004.

[7] Obesity Issues to Be Focus of National Food Policy Conference

Obesity-related topics will be featured on the first day of the [National Food Policy Conference](#), an annual event slated for May 6-7, 2004, at the National Press Club in Washington, D.C. Conference ses-

sions on May 6 will include keynote and luncheon addresses delivered by Walter Willett, M.D., of the Harvard School of Public Health, U.S. Surgeon General Richard Carmona, M.D., and Food and Drug Administration (FDA) Acting Commissioner Lester Crawford, D.V.M.; facilitated debates will target both the nation's and the food industry's responses to the obesity epidemic. Speakers in the facilitated debates will include representatives of the Center for Science in the Public Interest, Kraft, McDonald's, and FDA. Obesity lawsuit legislation and the World Health Organization's report on obesity will be the topics of breakout discussions.

Conference sessions on May 7 will feature the government's response to the specter of bovine spongiform encephalopathy, bioterrorism and food labeling issues.

[8] Chicago Public Schools to Restrict Snacks and Beverages in Vending Machines

During May 2004, the Chicago Board of Education will reportedly hammer out the details of a new policy that will prohibit the sale of carbonated drinks, candy, chewing gum, and high-fat snack foods in school vending machines. "Students spend a large portion of their time at school, and we need to do more to promote healthy eating habits," a school district official was quoted as saying. "This is an important step toward getting junk food out of our schools," she said. The school district is currently seeking proposals to replace an expiring beverage contract with Coca-Cola that provided some \$4 million annually to the school system. Under the new policy, drinks in elementary schools will be restricted to those containing 100 percent fruit juices, while offerings in high schools will be required to contain at least 50 percent fruit juices. Other acceptable beverages in the city's 550 public schools will include water and noncarbonated sports drinks. Chicago's efforts to address the childhood obesity

issue by restricting vending machine snacks and beverages mirror similar initiatives in the New York City and Los Angeles public school systems. See *The New York Times*, April 20, 2004; *Reuters*, April 21, 2004.

Media Coverage

[9] "A Plate Full of Headaches," Patricia Vowinkel, *Risk & Insurance*, April 15, 2004

Obesity litigation and terrorist attacks on the food supply are identified in this insurance journal article as "two of the biggest risks now facing the U.S. food industry." While general-liability policies routinely cover claims of product liability, bodily injury or negligence, "some insurers are starting to add genetic pollution exclusions to the types of coverages farmers might buy," the article states. "In addition, most policies do not cover product recalls. There are specialized product recall coverages available, but few food companies buy them." In the area of commercial-property insurance, the author writes, coverage for acts of terrorism depends on whether the insured elects to purchase terrorism insurance, which insurers must offer "but many companies have declined to purchase."

Scientific/Technical Items

Alcohol

[10] Alcohol Consumption Purportedly Linked to Increased Risk of Colon Cancer

Individuals who consume at least 30 grams of alcohol daily, the equivalent of two to three drinks, increase their risk of colon cancer by 21 percent, according to a recent study published in the *Annals of Internal Medicine* (E. Cho, et al., "Alcohol Intake and Colorectal Cancer: A Pooled Analysis of 8 Cohort Studies," *Annals of Internal Medicine*, 140(8):



603-613, April 20, 2004). Researchers combined data from eight studies on cancer and alcohol consumption in North America and Europe; 4,700 cases of colon cancer occurred in the study population of nearly 500,000 subjects. Increased risks related to alcohol were similar for both men and women and did not appear to differ for consumption of beer, wine or spirits. Heavy drinking -- consumption of more than 45 grams of alcohol per day -- increased the risk of colon cancer by 51 percent.

Obesity

[11] Neurologists Claim Food Advertising Is Fueling U.S. Obesity Rates

A study in a recent neurology journal concluded that food presentation “significantly increased metabolism in the whole brain by at least 24% and the changes were largest in superior temporal, anterior insula and orbitofrontal cortices.” (G. Wang, et al., “Exposure to Appetitive Food Stimuli Markedly Activates the Human Brain,” *NeuroImage*, 21(4): 1790-1797, April 2004). The article notes that “these areas are associated with addiction. For instance, the orbitofrontal cortex has been seen to activate in cocaine users when they think about the drug.” The study involved brain scans on healthy, hungry people. According to lead author Gene-Jack Wang, the study’s results “could explain the deleterious effects of constant exposure to food stimuli, such as advertising, candy machines, food channels, and food displayed in stores . . . the high sensitivity of this brain region to food stimuli, coupled with the huge number and variety of these stimuli in the environment, likely contributes to the epidemic of obesity in this country.” See *Reuters*, April 20, 2004.

Cardiovascular Disease

[12] Calorie-Restricted Diet Linked to Reduced Risk of Atherosclerosis

A recent study published in the *Proceedings of the National Academy of Sciences* reports that long-term calorie-restricted diets have a dramatic effect on risk factors for atherosclerosis in humans. (L. Fontana, “Long-Term Calorie Restriction Is Highly Effective in Reducing the Risk of Atherosclerosis in Humans,” *Proceedings of the National Academy of Sciences*, 101(17): 6659-6663, April 27, 2004). In the study, researchers assessed atherosclerosis risk factors in individuals who had curbed their calorie intake and avoided processed foods for a number of years. Study participants, who were age 50 on average, designed their diets to consume small amounts of nutrient-dense foods with roughly one-half as many calories as contained in the typical U.S. diet. The individuals ate a wide variety of vegetables, fruits, nuts, dairy products, eggs, wheat and soy proteins, and meat, and they avoided all processed foods containing *trans*-fatty acids, refined carbohydrates, desserts, snacks, and soft drinks. Individuals in the calorie-restricted group were found to have lower total serum cholesterol levels, lower low-density lipoprotein (LDL) cholesterol levels, as well as lower levels of triglycerides, fasting glucose and fasting insulin, C-reactive protein and markedly lower blood pressure levels. Members of the calorie-restricted group were leaner than the comparison group, and exhibited a carotid artery intima-media thickness that averaged 40 percent less than the comparison group. Insulin concentrations in the calorie-restricted group were as much as 65 percent lower than those in people consuming a normal diet.



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