

Food & Beverage

LITIGATION UPDATE

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LITIGATION UPDATE

Legislation, Regulations and Standards

National Toxicology Program (NTP)

[1] NTP Announces Availability of Acrylamide Report, Requests Public Comments

NTP's Center for the Evaluation of Risks to Human Reproduction (CERHR) has announced that its *Expert Panel Report on the Developmental and Reproductive Toxicity of Acrylamide* will be available on the center's [Web site](#) by June 30, 2004. In May, the expert panel concluded that given the low level of estimated human exposure to acrylamide from various sources, acrylamide is unlikely to pose reproductive and developmental risks to the general population. The chemical forms as a byproduct of high-temperature cooking processes in many high-carbohydrate foods and is reported to cause cancer in laboratory animals. It also has many industrial applications, including use in the production of paper products. All public comments on the expert panel report and input regarding relevant human exposure studies received by August 16 will be incorporated in CERHR's final monograph on acrylamide. See *Federal Register*; June 21, 2004.

U.S. Congress

[2] New House Proposal Would Establish Voluntary Country-of-Origin Labeling Program

Legislation ([H.R. 4576](#)) sponsored by Representative Bob Goodlatte (R-Va.) would amend the Agricultural Marketing Act of 1946 by establishing a voluntary program for the provision of country-of-origin information for various agricultural products. The Food Promotion Act of 2004 would require the agriculture secretary to create a standardized country-of-origin label for (i) beef, pork and lamb products; (ii) wild and farm-raised fish products; (iii) wild and farm-raised shellfish products; and (iv) fresh fruits and vegetables "of every kind and character." The bill has been referred to the Committee on Agriculture.

[3] Illinois Senator Targets Safety of Genetically Engineered Foods

The Food and Drug Administration (FDA) would be required to ensure the safety of genetically engineered food products before they are introduced on the market under a legislative proposal ([S. 2546](#)) sponsored by Senator Richard Durbin (D-Ill.). Other provisions of the Genetically Engineered Foods Act would (i) make available for public review and comment scientific studies submitted to FDA as part of the mandatory review process of GE foods, (ii) require FDA and other federal agencies to establish a public registry that provides information



about approved GE foods, and (iii) require FDA to assess the environmental impact of GE animals as part of the safety approval process. The proposal has been referred to the Committee on Agriculture, Nutrition and Forestry.

State/Local Initiatives

[4] More California Counties Move to Ban GM Crops

Voters in Butte County, California, will vote on a proposed ordinance prohibiting the production of genetically modified organisms (GMOs) in November 2004. In March, residents of Mendocino County approved a similar measure that prohibits "the propagation, cultivation, raising and growing" of GMOs. Meanwhile, advocates of GMO bans in seven other California counties are reportedly collecting signatures for like-minded ballot initiatives. See *San Francisco Chronicle* and *Greenwire*, June 16, 2004.

Litigation

Warnings

[5] California AG Sues Tuna Companies for Failing to Warn Consumers of Mercury Exposure

On Monday, California Attorney General Bill Lockyer filed [suit](#) under the state's antitoxics law against three tuna producers for their failure to warn consumers that canned and packaged tuna fish products contain mercury and mercury compounds. "This is a crucial public health issue," Lockyer said. "Prenatal exposure to mercury can cause serious disabilities in infants and children. We're not trying

to eliminate tuna from people's diets. We're trying to enforce the law and protect the health and safety of California women and children," he said. Proposition 65 (Prop. 65), the Safe Drinking Water and Toxic Enforcement Act of 1986, requires businesses to warn the public about exposure to chemicals "known to the state to cause cancer or reproductive toxicity"; the law does not apply to chemicals that occur naturally in food. Methylmercury has been listed as a known reproductive toxin under Prop. 65 since 1987; mercury and mercury compounds as known reproductive toxins since 1990; and methylmercury compounds as carcinogenic since 1996.

Filed June 21, 2004, in San Francisco Superior Court against Tri-Union Seafoods (maker of Chicken of the Sea brand tuna), Del Monte (producer of Starkist) and Bumble Bee Seafoods (maker of Bumble Bee), the lawsuit seeks to prohibit the sale of tuna products in California that do not provide warnings of mercury's potential adverse health effects-e.g., labels or signs posted in grocery store aisles. The complaint also seeks civil penalties for violations of Prop. 65 and the state's Unfair Competition Law. Both laws provide for penalties as high as \$2,500 per day for each violation; the alleged Prop. 65 violations date to 2000.

A U.S. Tuna Foundation spokesperson reportedly responded to the lawsuit by saying that "All fish have trace amounts of methylmercury-it's a naturally occurring phenomenon. But we believe tuna is a healthy part of people's diet, and we're not about to put a skull and crossbones on our cans." In March 2004, the Food and Drug Administration and U.S. Environmental Protection Agency issued a joint [consumer advisory](#) on methylmercury in fish and shellfish aimed specifically at reducing the exposure of women who may become pregnant, pregnant



women, nursing mothers, and young children. *See San Diego Union-Tribune* and *Los Angeles Times*, June 22, 2004.

Other Developments

[6] **Environmental Group Claims California Milk Is Contaminated by Rocket Fuel**

Unreleased tests conducted by California agriculture officials and independent laboratory tests commissioned by Environmental Working Group (EWG) reportedly indicate that women and children who drink milk from California cows may be exposed to unsafe levels of perchlorate, an explosive chemical constituent of rocket fuel. "Our findings are not a call for California mothers to stop drinking milk or stop giving it to their children," an EWG spokesperson was quoted as saying. "They do show that the state must set a drinking-water standard that fully protects public health. Mothers should not be forced to wonder if milk is affecting their child's growth and development," he said.

EWG obtained state agriculture officials' unreleased results of tests for perchlorate in milk through the California Public Records Act. Those tests evidently revealed levels of the chemical at 5.8 parts per billion (ppb) in all 34 samples derived from unnamed milk silos in Alameda, Sacramento and San Joaquin counties. The average level of perchlorate found in 31 of 32 milk samples bought in Los Angeles County and Orange County grocery stores in EWG-commissioned tests was reportedly 1.3 ppb. Earlier this year, California health officials decided that perchlorate in drinking water could pose health risks at levels higher than 6 ppb; the

U.S. Environmental Protection Agency, however, evidently advocates a drinking-water standard for the chemical of 1 ppb.

Found to contaminate drinking water in more than 20 states, perchlorate has been linked to thyroid disorders, cancer in adults and developmental impairment in fetuses and infants. The source of perchlorate contamination in drinking and irrigation water is said to include military sites and other government and industrial facilities. *See EWG Press Release* and *Associated Press*, June 22, 2004.

[7] **New Public Health Group Says Low-Carb Diets Increase Risk of Life-Threatening Medical Conditions**

"Restricting carbohydrates stresses vital organs and alters brain metabolism while offering no advantages in terms of either fat loss or long-term weight control," according to a new health advocacy coalition spearheaded by [Shape Up America](#). Promoting a balanced diet of carbohydrates, protein and fat through various public education campaigns is the overriding mission of the eleven nonprofit groups that make up the newly formed [Partnership for Essential Nutrition](#). "Low-carbohydrate diets conflict with decades of solid scientific research that clearly encourages us to reduce saturated fat and boost fruit, vegetable and fiber intake," a coalition spokesperson said. Among the coalition's concerns: (i) the safety of diets that force the body into ketosis, the metabolism of protein in the muscles followed by the metabolic breakdown of fat; (ii) the stress on the kidneys that can result from the dehydration produced by extreme low-carb diets; and (iii) consumer confusion over food and beverage products with claims such as "low carb" or "carb



smart." The coalition cautions that various scientific reviews indicate that following a low-carb diet can ultimately increase the risk of "kidney and liver disorders, gout, coronary heart disease, diabetes, stroke, and several types of cancer." Members of the coalition include the American Institute for Cancer Research, the American Association of Diabetes Educators and the Yale-Griffin Prevention Research Center. See *PR Newswire*, June 22, 2004.

Scientific/Technical Items

Obesity

[8] U.S. Obesity Trends Remain Steady

A government study published in the *Journal of the American Medical Association* reports slight but not significant increases in the prevalence of being overweight or obese among adults and children in the United States (A. Hedley, et al., "Prevalence of Overweight and Obesity Among U.S. Children, Adolescents and Adults, 1999-2002," *JAMA* 291: 2847-2850, June 16, 2004). The study evaluated 2001-2002 data and compared it with overweight/obesity trends for 1999-2000. Researchers found that 65 percent of adults ages 20 and older were overweight or obese, while 35 percent were deemed either obese or "extremely obese." Among kids and young adults ages 6 through 19, 31 percent were at risk of being overweight, and 16 percent were overweight. The study's authors conclude that "there is no indication that the prevalence of obesity among adults and overweight among children is decreasing. The high levels of overweight among children and obesity among adults remains a major public health concern." See *Associated Press*, June 16, 2004.

[9] Fast Food Consumption Purportedly Linked to Obesity in Susceptible Individuals

Teenagers tend to overeat when served fast food, but lean adolescents tend to compensate by eating less at other meals—something that overweight teens are not likely to do, according to a study published last week in the *Journal of the American Medical Association* (C. Ebbeling, et al., "Compensation for Energy Intake From Fast Food Among Overweight and Lean Adolescents," *JAMA* 291: 2828-2833, June 16, 2004). The study examined why some children who frequently eat fast food do not become overweight and whether overweight adolescents are more susceptible to potential weight-gain effects from fast food consumption than lean adolescents. In the first phase of the study, researchers fed participants an "extra large" fast-food meal, and the participants were instructed to eat as much or as little as desired. Energy intake from the meal among all participants, both "lean" and "overweight," was extremely large, but overweight participants ate more than the lean participants. In the second part of the study, the investigators assessed energy intake over two days when fast food was consumed and two days when participants ate other types of food. Overweight participants consumed significantly more total energy on fast-food days than non-fast-food days, an effect not observed among the lean participants. That finding, according to the authors, suggests that overweight individuals "do not compensate completely for the massive portion sizes characteristic of fast food today...these findings suggest that, at least, fast food consumption serves to maintain or exacerbate obesity in susceptible individuals."



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