

Food & Beverage

LITIGATION UPDATE

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LITIGATION UPDATE

Legislation, Regulations and Standards U.S. Congress

[1] Bipartisan Legislation Targets Underage Drinking

Senators Mike DeWine (R-Ohio) and Christopher Dodd (D-Ct.) last week introduced legislation ([S. 2718](#)) aimed at reducing underage drinking through prevention, intervention, treatment, and research. “Alcohol plays a major role in the leading causes of death in our youth, and it may have an adverse effect on brain development,” DeWine was quoted as saying. “We must educate our children, as well as adults, on the potential dangers of underage alcohol consumption,” he said.

The Sober Truth on Preventing (STOP) Underage Drinking Act would provide (i) \$2 million for establishment of an Interagency Coordinating Committee charged with producing an annual report to Congress on the success of its efforts and an annual Department of Health and Human Services (HHS) “report card” on state-level activities to combat underage drinking; (ii) \$2 million over fiscal years 2005 and 2006 for an HHS national media campaign aimed at adults; (iii) \$5 million in enhancement grants for the Drug-Free Communities program; (iv) \$5 million for competitive grants to statewide coalitions targeting drinking on college campuses;

and (v) \$6 million for federal research and data collection. The bill has been referred to the Committee on Health, Education, Labor, and Pensions. Companion legislation ([H.R. 4888](#)) was introduced in the House of Representatives by Representative Lucille Roybal-Allard (D-Calif.). See *Press Release of Senator Mike DeWine*, July 21, 2004.

[2] Iowa Senator Wants GAO to Evaluate Agriculture Department’s BSE Efforts

Senator Tom Harkin (D-Iowa) has reportedly asked the Government Accountability Office (GAO) to evaluate the Department of Agriculture’s (USDA’s) bovine spongiform encephalopathy surveillance program. “USDA is still stumbling to pull together a coherent strategy and program of BSE testing and other measures to protect U.S. consumers and our beef industry against the risks of BSE,” Harkin said. “While I believe these risks are pretty small, we cannot be complacent until USDA collects the information.” The BSE surveillance program was established after the December 2003 discovery of a cow in Washington state that was infected with BSE and aims to expand testing for the brain-wasting disease to more than 200,000 high-risk cattle by 2005.

Harkin’s request for GAO to evaluate the program comes on the heels of a recent USDA Office of Inspector General [report](#) highly critical of the agency’s BSE monitoring plan. Among the Iowa senator’s concerns: (i) “Has USDA made provisions to obtain all the samples necessary to determine accurately the existence and prevalence of BSE in



the United States?” and (ii) “Has USDA implemented procedures to ensure that all parties collecting samples for BSE testing are properly trained?” See *Press Release of Senator Tom Harkin*, July 21, 2004.

Other Developments

[3] CSPI Asks FDA to Require Restaurants to Disclose Use of Partially Hydrogenated Oils

The Washington, D.C.-based Center for Science in the Public Interest (CSPI) has [petitioned](#) the Food and Drug Administration (FDA) to require restaurants to disclose on menus or other means the presence of *trans* fats in the partially hydrogenated oils contained in their foods, claiming nondisclosure of the oils is tantamount to “misbranding” under the Federal Food, Drug, and Cosmetic Act. “Restaurants that continue to use this heart-attack-inducing ingredient should tell their customers about it just to avoid lawsuits, if for no other reason,” CSPI Executive Director Michael Jacobson was quoted as saying. “Partially hydrogenated oils may be a bit cheaper for restaurants, but a big verdict or two could encourage the big chains to check their math,” he said. See *CSPI News Release*, July 22, 2004.

In May 2004, CSPI petitioned FDA to prohibit the use of partially hydrogenated oils altogether and launched the TransFreeAmerica campaign. The TransFreeAmerica [Web site](#) contains lists of foods with and without *trans* fats as well as a letter for consumers to send to McDonald’s that claims the company puts customers “at greater risk for clogged arteries, heart disease, and early death” by not switching to a *trans*-fat-free vegetable oil to deep fry its products.

[4] Alleging Regulatory Mission Is Undermined by Industry Influence, Agribusiness Watchdog Assails USDA in New Report

“Thanks to its political influence, Big Agribusiness has been able to pack USDA with appointees who have a background of working in the industry, lobbying for it, or performing research or other functions on its behalf. These appointees have helped to implement policies that undermine the regulatory mission of USDA in favor of the bottom-line interests of agribusiness,” charges a [report](#) issued July 23, 2004, during an Organization for Competitive Markets conference in Omaha, Nebraska.

Titled *USDA Inc.: How Agribusiness Has Hijacked Regulatory Policy at the U.S. Department of Agriculture*, the report was commissioned by the [Agribusiness Accountability Initiative](#) with funding from the New York-based [Jessie Smith Noyes Foundation](#). The report uses five case studies (BSE, captive supply in meatpacking, meat inspection policies, biotech foods, and concentrated animal feeding operations) to purportedly illustrate “the alarming correlation between controversial policies adopted by USDA and the financial interests of the companies and trade associations that previously employed many key Department officials,” concluding that “balanced farm and trade policies” are impossible absent more diverse stakeholder representation within the department. To better represent the public interest, the report’s authors call for (i) increased congressional oversight over USDA appointees, (ii) evaluation of whether USDA can both promote agricultural products and regulate food safety, (iii) further research on revolving door conflicts of interest at the department, and (iv) changes to ethic rules that would prevent USDA officials from involvement in determining policies of direct interest to their former employers.



[5] Ban on Food Advertising Targeting Kids Unwarranted, U.K. Media Regulator Concludes

Based on extensive research into the role television advertising plays in the childhood obesity issue, the regulator of the U.K. communications industries has concluded that such advertising has only “a modest direct effect on children’s food consumption.”

Ofcom suggests instead that exercise, family eating habits, parents’ demographics, school policies, food labeling, the public’s understanding of nutritional issues, and other types of food promotion play a more significant role in the childhood obesity problem. “Television advertising clearly has an influence and equally clearly, there is a need for a tightening of specific rules,” Ofcom Chief Executive Stephen Carter said. “However, a total ban would be neither proportionate nor, in isolation, effective.”

See *Ofcom News Release*, July 22, 2004.

Media Coverage

[6] “Obesity Fuels Their Fervor: Three Well-Known Nutrition Activists Take Business, Science, the Government, and Us to Task, Johanna Neuman, *The Los Angeles Times*, July 26, 2004

“What they share is a certainty that we are what we eat, that we are conditioned by culture and capitalism to consume more than we need, that somebody should do something about it,” says the author of this article focusing on Center for Science in the Public Interest Executive Director Michael Jacobson, Physicians Committee for Responsible Medicine President Neal Barnard and New York University Professor Marion Nestle, and their explanations for the nation’s rising rates of obesity. Among other things, each claims the food industry

has had undue influence on government nutrition and health policies. Jacobson and Barnard, for example, have been outspoken critics of the composition of the federal panel charged with revising the *Dietary Guidelines for Americans*, asserting that seven members of the group have “tight affiliations” with the food, drug and dietary-supplement industries.

Opposing viewpoints are represented by the American Council on Science and Health and the industry-backed Center for Consumer Freedom whose director is quoted as saying, “We believe in freedom of choice and the concept of personal responsibility. The zealots are distorting science.”

Scientific/Technical Items

Obesity

[7] Watching Television in Childhood Linked to Adverse Health Indicators in Adulthood; Harvard Researchers Say Study Reinforces Need for Ban on Food Ads Aimed at Kids

A study from New Zealand reports that children who watch two or more hours of television at night are at higher risk for obesity, poor fitness, raised cholesterol, and smoking as adults. (R. Hancox, et al., “Association Between Child and Adolescent Television Viewing and Adult Health: A Longitudinal Birth Cohort Study,” *The Lancet* 364: 257-62, July 17, 2004). The study assessed 1,000 New Zealanders at regular intervals beginning in 1972-1973 until age 26. Researchers reported that average two-hour weeknight TV viewing between the ages of 5 and 15 was associated with higher body-mass indices, lower cardio-respiratory fitness, increased smoking, and raised cholesterol in adults. No effect was found for



blood pressure. The researchers caution that their study does not prove that TV viewing in childhood causes adult health problems, suggesting that several other childhood behaviors, including physical activity and diet, could explain the associations between TV viewing and health.

A separate commentary in *The Lancet*, however, authored by Harvard's David Ludwig and Steven Gortmaker, claims the Hancox study strengthens "the case for a ban on food advertisements aimed at children. The argument for action is based not only on strong scientific evidence, but also on common sense. In an era when childhood obesity has reached crisis proportions, the commercial food industry has no business telling toddlers to consume fast food, soft drinks, and high-calorie low-quality snacks, all products linked to excessive weight gain."

Caffeine

[8] North Carolina Researchers Urge Diabetics to Avoid Caffeine

Duke University Medical Center researchers report this week that caffeine may interfere with the body's ability to control blood sugar, thus potentially worsening type-2 diabetes. (J.D. Lane, et al., "Caffeine Impairs Glucose Metabolism in Type 2 Diabetes," *Diabetes Care*: 27, August 1, 2004.) Volunteers in the study were put on a controlled diet and given caffeine capsules followed by a liquid meal supplement. Caffeine had little effect on glucose and insulin levels when the volunteers fasted, according to the researchers, but after the liquid meal, subjects who were given caffeine experienced a 21 percent increase in their glucose levels, and insulin levels rose 48 percent. *See Reuters*, July 26, 2004.



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