

# Food & Beverage

## LITIGATION UPDATE

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## LITIGATION UPDATE

### Legislation, Regulations and Standards

#### Department of Health and Human Services (HHS)

##### [1] Government Food Panel Issues Dietary Guidelines Report

HHS and the U.S. Department of Agriculture (USDA) last Friday issued the [final report](#) of the committee charged with drafting the 2005 edition of the *Dietary Guidelines for Americans*. The guidelines provide the basis for various government nutrition programs, including research, education, labeling, and nutrition promotion. Though the report is voluminous, the 13-member Dietary Guidelines Advisory Committee distilled its findings into nine recommendations: “(1) consume a variety of foods within and among the basic food groups while staying within energy needs; (2) control calorie intake to manage body weight; (3) be physically active every day; (4) increase daily intake of fruits and vegetables, whole grains, and nonfat or low-fat milk and milk products; (5) choose fats wisely for good health; (6) choose carbohydrates wisely for good health; (7) choose and prepare foods with little salt; (8) if you drink alcoholic beverages, do so in moderation; and (9) keep food safe to eat.”

In noting the impact of the environment in consumers’ ability and willingness to heed the advice of the guidelines, the committee says in the report’s executive summary that such influences “tend to be beyond the control of individuals. Examples include the large size of portions served by many food establishments, lack of information on calorie content at point of purchase, the high amount of sodium in the food supply, the *trans* fatty acid content of many ready-to-eat foods, the cost and availability of fruits and vegetables, and opportunities for safe and enjoyable physical activity.”

The committee’s report has been criticized in the press for not specifically advising against reducing added sugars in the diet, though the executive summary notes that “prospective studies suggest a positive association between the consumption of sugar-sweetened beverages and weight gain. A reduced intake of added sugars (especially sugar-sweetened beverages) may be helpful in achieving the recommended intakes of nutrients and in weight control.” See *The New York Times*, August 25 and September 1, 2004; *Reuters*, August 27, 2004.

A public meeting to discuss the report has been scheduled for September 21, 2004, in Washington, D.C., and [public comments](#) on the document are due by September 27. HHS and USDA expect to release the final guidelines early in January 2005. See *Federal Register*, August 27, 2004.



## State/Local Initiatives

### [2] California Legislature Forwards Recall Legislation to Governor for Signature

Legislation ([S.B. 1585](#)) submitted last week to California Governor Arnold Schwarzenegger (R) would require meat and poultry suppliers, distributors, brokers, or processors that sell meat- or poultry-related products subject to U.S. Department of Agriculture (USDA) recalls to notify state health officials of the recall. Local health authorities would then notify the public of the recalled product. Restaurants would be exempt from alerting the public if state health officials determined the recalled product had been removed from restaurant sites. If the measure becomes law, it would effectively moot a memorandum of understanding between California and USDA under which the state has agreed not to publicly identify the locations where potentially tainted products have been distributed or sold. *See The Sacramento Bee*, August 27, 2004.

Earlier in August, the Center for Science in the Public Interest urged USDA “to disclose the names and location of stores, restaurants, and other venues to which contaminated meat is distributed and sold to consumers during every recall” as part of the organization’s [“Where’s the Beef?”](#) campaign. Impetus for the campaign came from the Oklahoma-based Carneco Foods’ August 3 voluntary recall of 497,000 pounds of ground beef products suspected of *E-coli* 0157:H7 contamination.

## European Commission

### [3] European Commission to Create Food Safety Advisory Group

European Commissioner for Health and Consumer Protection David Byrne is soliciting stakeholders for membership in a new Advisory Group on the Food Chain and Animal and Plant Health. Those invited to apply for membership include food producers, food processors, retail organizations, and consumers. The 45-member committee is expected to convene twice yearly and focus on food safety policies, biotechnology and food labeling. *See European Commission Press Release*, August 30, 2004.

## Litigation

### Warnings

#### [4] South Korean Court Rules Against Man Who Blamed Coke for Dental Problems

A Seoul court has rejected a civic activist’s claim that the Coca-Cola Korea Bottling Co. be required to provide warning labels on its products. Plaintiff Lee Cheol-ho reportedly drank Coke every day for 30 years until tooth decay caused the loss of 11 teeth in 2002. He sought \$104,000 in damages. The Seoul Central District Court attributed Lee’s dental problems to bad oral hygiene, concluding “there was no evidence that the acid and sugar content of Coca-Cola were responsible for Lee’s decayed teeth.” Lee reportedly plans to appeal the ruling. *See just-drinks.com*, August 27, 2004.



## Other Developments

### [5] Better Business Bureau Asks FTC to Evaluate Accuracy of Egg Producers' Animal Care Claim

Claiming that egg carton packaging and particular egg advertising mislead consumers into thinking that hens are treated “under caring and humane conditions,” the Council of Better Business Bureaus has requested that the Federal Trade Commission (FTC) investigate the truth and accuracy of United Egg Producers’ “Animal Care Certified Eggs” logo. Both the bureau’s National Advertising Division and the National Advertising Review Board had previously advised the trade group to stop using the logo in its current form or modify it to more clearly communicate that certification signified a specific standard of care. United Egg Producers announced instead that it would continue using the logo, but add a Web site address to egg packaging to direct consumers to information about the trade group’s standards of care. The bureau’s advertising division found that action insufficient to comply with the National Advertising Review Board’s recommendations, noting that “measures taken to educate the public did not alter the fact that the certification logo itself was found to be misleading.” See *National Advertising Division News Release* and *Associated Press*, August 25, 2004.

### [6] U.S. PIRG Report Targets Risks of Genetically Engineered Foods to Company Shareholders

Ninety-five percent of U.S. food companies fail to adequately inform shareholders about the purported risks related to GE foods, says a [report](#) issued recently by the U.S. Public Interest Research Group. According to the report, only Kraft Foods and Interstate Bakeries mention GE food as a potential liability in their annual reports to shareholders. Among other things, the report urges food manufacturers to (i) remove liability risks by not using GE ingredients, (ii) fully disclose to shareholders the use of and potential liabilities related to GE ingredients, and (iii) label all products containing GE components. See *U.S. PIRG News Release*, August 19, 2004.

## Media Coverage

### [7] Dale Buss, “Is the Food Industry the Problem or the Solution?” *The New York Times*, August 29, 2004

This article discusses various food, beverage and restaurant company efforts to affect the nation’s childhood obesity epidemic by developing healthier products and funding youth fitness programs. Critics of the industry, however, claim the companies’ actions are a way of trying to avoid obesity-related litigation. “There are hordes of lawyers looking at the industry’s marketing practices in a way that’s never happened before,” New York University’s Marion Nestle is quoted as saying, while Harvard University’s Walter Willet says the companies’ “role first and foremost should be producing and promoting only healthy-as-possible kinds of foods, especially when it comes to children.”



## Scientific/Technical Items

### Soft Drinks

#### [8] Sugar-Sweetened Beverages Linked to Increased Risks of Obesity and Diabetes in Women

A new study in the *Journal of the American Medical Association* reports increased risks of significant weight gain type-2 diabetes in women who consume one or more sugar-sweetened beverages daily. (M. Schulze, et al., "Sugar-Sweetened Beverages, Weight Gain and Incidence of Type-2 Diabetes in Young and Middle-Aged Women," *JAMA* 292(8): 427-934, 2004) Weight gain over the four-year study period was highest among women who increased their sugar-sweetened soft drink/fruit punch consumption from one or fewer drinks weekly to one or more drinks per day. Women with stable consumption patterns exhibited no differences in weight gain, and the smallest weight gain was among women who decreased their intake of sugar-sweetened soft drinks. Diet soft drink and natural fruit juice drinkers did not show a higher risk of either obesity or diabetes. The study was conducted as part of the U.S. Nurses' Health Study II and included 51,000 women who were followed from 1991 to 1999. Frank Hu, M.D., who led the Harvard University researchers in the study, was quoted as saying the study "should increase people's awareness about health hazards of soft drinks and lead to behavioral and public health policy changes that help to limit consumption of soft drinks in both adults and children." See *Reuters Health*, August 24, 2004.

## Weight Control

#### [9] The Low Glycemic Index Diet: "Good" vs. "Bad" Carbohydrates

Diets rich in low-glycemic indexed (GI) carbohydrates can be effective for weight loss, reduced body fat, and reduced risk factors for diabetes and heart disease, according to a study published last week in *The Lancet*. (D. Pawlak, et al., "Effects of Dietary Glycemic Index on Adiposity, Glucose Homeostasis, and Plasma Lipids in Animals," *The Lancet* 364: 778-85, 2004) The study compared markers for obesity and diabetes in two groups of rats and mice, one fed a low-GI diet composed of non-starchy carbohydrates such as vegetables, fruits and whole grain breads that are low in sugar or which release sugar slowly, and high-GI diets—white bread, potatoes and refined breakfast cereals—foods that tend to create spikes in blood sugar levels. After 18 weeks, the researchers found that the high-GI group had 71 percent more body fat and 8 percent less lean body mass than the low-GI group. The high-GI group also exhibited higher levels of triglycerides, a risk factor for heart disease in humans. Rats in the high-GI group also showed the kinds of blood-glucose changes linked to a high risk of diabetes in humans.

The researchers reportedly regard their study's results as an alternative to the Atkins diet, advocating large-scale trials of low-GI diets in humans. One British commenter, however, suggested that restricting a diet to low-GI foods might not lead to weight loss, noting that "if you stuck to foods which had a low-GI score, you would be able to eat lots of ice cream—which are low-GI foods, but not bananas or rice—which are high." She added that "the glycemic index may play a small part, but there is no getting past the basic fact that eating fewer calories than you need is what will lead to weight loss." See *BBC News*, August 27, 2004.



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