



LEGISLATION, REGULATIONS & STANDARDS

## FDA Approves Qualified Health Claims for Yogurt

The U.S. Food and Drug Administration (FDA) will allow qualified health claims asserting the consumption of yogurt is associated with a reduced risk of type 2 diabetes, according to a [constituent update](#). FDA reportedly found some credible evidence supporting a relationship between yogurt and reduced risk but characterized the evidence as limited. The allowed health claims read:

- “Eating yogurt regularly, at least 2 cups (3 servings) per week, may reduce the risk of type 2 diabetes. FDA has concluded that there is limited information supporting this claim.”
- “Eating yogurt regularly, at least 2 cups (3 servings) per week, may reduce the risk of type 2 diabetes according to limited scientific evidence.”

## Arizona House Passes Cell-Cultivated Meat Ban

The Arizona House of Representatives has passed a bill that would ban the sale or production of cell-cultured animal products in the state. [HB 2121](#) defines “cell-cultured animal product” as any cultured animal tissue produced from in vitro cell cultures outside of the organism from which it is derived. The bill would allow the Arizona Department of Agriculture to impose a civil penalty of up to \$25,000 against a person violating the law. David Marshall (R-Snowflake), the bill’s sponsor, told colleagues at a legislative hearing that those supporting cell-cultivated meat “have openly

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declared war on our ranching,” the *White Mountain Independent* reported in February.

The Arizona House also recently approved a bill, HB 2244, that prohibits labeling products not derived from the slaughter of an animal as meat.

## Groups Petition FDA to Rescind Approval of Four Food, Color Additives

A group of health and environmentally focused nonprofits have filed petitions with the U.S. Food and Drug Administration (FDA) calling on the agency to rescind its approvals for four solvents used as food and coloring additives. The Environmental Defense Fund, Breast Cancer Prevention Partners, Center for Environmental Health and Environmental Working Group submitted the petition aiming to ban the use of benzene, trichloroethylene, methylene chloride and ethylene dichloride, which are used for hops extracts, decaffeinated coffee and produce-marking ink, among other uses. The petitioners assert that the chemicals are known or anticipated to cause multiple forms of cancer. “FDA has been disregarding the law by permitting these long-established carcinogens to be added to food,” an Environmental Defense Fund spokesperson said in a statement. “We hope that recent changes in FDA leadership will fix the agency’s broken system for overseeing chemicals added to the food supply.”

## FDA Revokes Standard for Frozen Cherry Pie

The U.S. Food and Drug Administration (FDA) has revoked the standards of identity and quality for frozen cherry pie. “The standards are no longer necessary to ensure that these products meet consumer expectations, and revoking the standards will provide greater flexibility and the opportunity for product innovation,” the agency said in a constituent update on March 14. “The action supports FDA’s goal to modernize standards of identity.” FDA has also concluded that the standards of identity and quality for frozen cherry pie are no longer necessary to promote honesty and fair dealing in the interest of consumers. The rule takes effect April 15.

## USDA Finalizes ‘Product of USA’ Rule



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### ABOUT SHOOK

Shook, Hardy & Bacon is widely recognized as a premier litigation firm in the United States and abroad. For more than a century, the firm has defended clients in some of the most substantial national and international product liability and mass tort litigations.

Shook attorneys are experienced at assisting food industry clients develop early assessment procedures that allow for quick evaluation of potential liability and the most appropriate response in the event of suspected product contamination or an alleged food-borne safety outbreak. The firm also counsels food producers on labeling audits and other compliance issues, ranging from recalls to facility inspections, subject to FDA, USDA and FTC regulation.



The U.S. Department of Agriculture (USDA) has finalized a rule allowing “Product of USA” or “Made in the USA” labels to be used on meat, poultry and egg products only when they are derived from animals born, raised, slaughtered and processed in the United States. The final rule, which took effect March 11, will align the voluntary “Product of USA” label claim with what consumers understand the claim to mean, USDA stated in a press release. In a statement, Secretary Tom Vilsack hailed the rule as a vital step toward consumer protection and said it will bolster trust and fairness in the marketplace. “This final rule will ensure that when consumers see ‘Product of USA’ they can trust the authenticity of that label and know that every step involved, from birth to processing, was done here in America,” he said.



## FSA Seeks Views on Mechanical Meat

The U.K. Food Standards Agency (FSA) seeks feedback on its guidance relating to mechanically separated meat (MSM). The guidance followed a series of court judgments on the definition of MSM, which determined the main criteria to be: (i) the use of bones from which the intact muscles have already been detached (or of poultry carcasses, to which meat remains attached); (ii) the use of methods of mechanical separation to recover the meat; and (iii) the loss or modification of the muscle fiber structure of the recovered meat. FSA seeks input on an impact assessment from the businesses affected by implementing the guidance. “We’re doing this to ensure that businesses have extensive opportunities to feed in,” an agency spokesperson said. “It is the responsibility of food businesses to ensure they comply with food law, and the FSA has made a commitment to develop new guidance on MSM to aid understanding following the court judgments.”

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### LITIGATION

## Consumer Alleges Quaker Oats Products Contain Pesticide

A plaintiff has alleged that Quaker Oats Co. sells oat products that contain residues of chlormequat chloride, which the Environmental Working Group has asserted is linked to "reproductive and developmental problems in animal studies." *Tepper v. Quaker Oats Co.*, No. 24-2055 (N.D. Ill., filed March 11, 2024). Reasonable consumers, the complaint argues, "trust manufacturers like Defendant to sell food that is free from harmful toxins, contaminants, and chemicals," and thus they "certainly expect the food they eat and feed their family to be free

from chlormequat, a substance with the risk of adverse health consequences." The plaintiff alleges that the Quaker Oats website emphasizes that the products are nutritious, safe and healthy, noting that "the icon of a Quaker" on "every package" is intended to indicate "good quality and honest value." For allegations of state consumer-protection statutes and unjust enrichment, the plaintiff seeks class certification, injunctive relief, damages and attorney's fees.

## Court Dismisses Chicken-Slaughter Line Speed Suit

A federal court has dismissed without prejudice a lawsuit brought by animal welfare groups challenging rules set by the U.S. Department of Agriculture on chicken-slaughter line speeds at slaughterhouses. *Humane Soc’y of U.S. v. Perdue*, No. 20-1395 (N.D. Cal., issued February 22, 2024). The plaintiffs—including the Humane Society of the United States and Government Accountability Project—specifically challenge a Food Safety and Inspection Service (FSIS) 2018 decision to allow waivers for slaughterhouses, permitting line speeds of 175 chickens per minute that would allegedly result in more inhumane treatment of chickens, cause harm to the environment and increase risk of injury for slaughterhouse employees.

The court found that it could not determine standing or justiciability because the complaint predates a 2022 retraction of the 2018 waivers. The court noted that despite several briefs updating arguments to reflect the regulatory changes since the suit was filed, the complaint does not include any such information. “The defendants raise substantial arguments about the effect of the termination of the waivers and the effect on standing and the justiciability of the dispute,” the court said in the opinion. “[The plaintiffs] have not established that injuries from the poultry establishments were traceable to the 2018 waiver criteria or are redressable.” The court said the plaintiffs may file an amended complaint “that addresses the changed regulatory landscape.”

## JBS Misleads Public on Efforts to Mitigate Environmental Impacts, Lawsuit Alleges

New York Attorney General Letitia James has filed a [lawsuit](#) alleging JBS USA Food Co. misled the public on its efforts to reduce greenhouse gas emissions and mitigate its environmental impact. *James v. JBS USA Food Co.*, (Super. Ct., N.Y. County, filed February 28, 2024). New York asserts that industrial animal

agriculture has a substantial environmental footprint, with beef having the highest total greenhouse gas emissions of any major food commodity. While the company made sweeping representations to consumers about its commitment to reducing its greenhouse gas emissions, the complaint argues, JBS USA “has had no viable plan to meet its commitment to be ‘Net Zero by 2040.’”

“Even if it had developed a plan to be ‘Net Zero by 2040,’ the JBS Group could not feasibly meet its pledge because there are no proven agricultural practices to reduce its greenhouse gas emissions to net zero at the JBS Group’s current scale, and offsetting those emissions would be a costly undertaking of an unprecedented degree,” New York argues. “As of 2021, the JBS Group’s estimated annual greenhouse gases were more than those of the entire country of Ireland, and the JBS Group plans to substantially increase its meat production over the coming years.”

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