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FOOD AND BEVERAGE LITIGATION AND REGULATORY UPDATE

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Media coverage of a leaked MAHA draft strategy, a U.S. Senate bill that would define dairy terms, a citric acid lawsuit targeting pet food, and more.

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SPOTLIGHT

FDA Continues Dismantling "Recipe Approach" to Food Standards of Identity

By Senior Counsel [John F. Johnson III](#)

U.S. Food and Drug Administration (FDA) food standards are experiencing the most activity in a generation, with FDA aiming to [revoke 52 food standards](#) followed by a [proposal to revise the orange juice standard](#). If implemented, this would decrease the size of the Code of Federal Regulations, but is it the start of a greater regulatory renaissance?

FDA can create Standards of Identity for food products, which are legally established requirements for the formulation, processing, packing or labeling of

a given food. To establish a standard, FDA must engage in a public process and conclude that the standard promotes "[honesty and fair dealing in the interest of consumers](#)." For example, to be labeled as "[peanut butter](#)," the food must consist of at least 90% peanuts with a fat content not exceeding 55%. These standards served as the bedrock of FDA's food regulation until the early 1970s when FDA moved from regulating food composition to focusing on consumer information. See Suzanne White Junod, "[Food Standards and the Peanut Butter & Jelly Sandwich](#)."

FDA wants to revoke 52 standards that the Agency deemed "obsolete." Heralded as part of the Trump Administration's deregulation initiative, these actions are the latest steps in a path that started more than 50 years ago to dismantle the recipe-approach to the food standards regulatory regime that began in the 1930s. The Agency has been repealing various food standards in piecemeal fashion over the years, such as revoking a standard governing "[soda water](#)" (1989) or more recently "[French dressing](#)" (2022) and "[frozen cherry pie](#)" (2024).

The current plan outlines four reasons to conclude a standard is obsolete:

1. Standardized Foods with Little to No Market in the United States
2. Standardized Food that Would Be Covered by [21 CFR 130.10](#) in the Absence of Its Standard of Identity
3. Standardized Foods that Include the Name of Another Standardized Food in Their Names
4. Standardized Foods that Could Be Covered by a Broader Standard

The vast majority of the foods were subject to category 1—meaning that the food is not really sold in the United States anymore. Yet the last category could swallow the remaining standards as food labeling requirements (statement of identity, nutrition labeling, and ingredient listing) could be sufficient to "promote honesty and fair dealing in the interest of consumers" when also measured against the general prohibition against labeling that is false or misleading in any particular.

FDA subsequently proposed to lower the minimum brix level of orange juice because diseases affecting orange crops have lowered the sugar content of Florida oranges, thereby lowering the juice's brix level. In the proposal, FDA

asked if the standard should be revoked given that other juices (such as apple, grape and cranberry) are not subject to a food standard.

We will monitor how FDA handles the orange juice proposal to see if the Agency is continuing to take various one-off actions with food standards or if this is the start of the long-considered effort to reimagine using food standards as a regulatory tool in a consistent, principled way.

LEGISLATION, REGULATIONS & STANDARDS

Agencies Seek Industry Comments on UPF Definition

The U.S. Department of Health and Human Services, Department of Agriculture and the Food and Drug Administration have [announced](#) a joint Request for Information to gather information and data to establish a uniform definition for ultra-processed foods (UPFs). In a news release, the agencies said they lack an authoritative definition of UPFs for the U.S. food supply. “Creating a uniform federal definition will serve as a key deliverable on the heels of the recently published Make Our Children Healthy Again Assessment, which recognizes that the overconsumption of ultra-processed foods is one of the driving factors of the childhood chronic disease crisis,” they said.

U.S. Senators Introduce Dairy Labeling Bill

A bipartisan group of U.S. senators has introduced a [bill](#) that would prohibit manufacturers from labeling plant-based products with dairy terms such as “milk,” “yogurt” and “cheese.” The Defending Against Imitations and Replacements of Yogurt, milk, and cheese to Promote Regular Intake of Dairy Everyday Act (DAIRY PRIDE Act) (S.2507) would define a food as a dairy product “only if the food is, contains as a primary ingredient, or is derived from,

the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more hooved mammals.” If the bill is passed, the U.S. Food and Drug Administration would be required to issue draft guidance within 90 days and final guidance within 180 days on enforcement and to report to Congress on enforcement actions.

Agriculture Secretary Announces USDA Reorganization

The U.S. Department of Agriculture (USDA) has announced a plan to reorganize the agency and will accept [public comment](#) through August 26, 2025. In a [memorandum](#), Secretary Brooke Rollins said the reorganization plan is guided by four pillars: (i) ensuring the agency’s workforce aligns with financial resources and priorities; (ii) relocating more resources to outside of the National Capital Region; (iii) eliminating management layers; and (iv) consolidating support functions.

Reagan-Udall Foundation Issues Produce Safety Report

The Reagan-Udall Foundation (RUF) has issued “[Roadmap to Produce Safety: Summary Report of the Produce Safety Dialogue](#),” a report commissioned by the U.S. Food and Drug Administration recommending the implementation of a shared-responsibility approach to produce safety and the formation of a structured, stakeholder-led collaboration. In a [news release](#), FDA called on growers, buyers, sellers and federal and state regulators to form a sustainably funded stakeholder collaboration to improve conditions and practices to reduce contamination and prevent foodborne illness.

Pet Food Maker Faces Claim For ‘No Preservatives’ Labeling

Post Holdings Inc. faces a putative class action alleging it deceptively markets its Nature's Recipe dog food products as containing no artificial preservatives when they contain citric acid. [*Cortez v. Post Holdings, Inc.*](#), No. 25-1067 (E.D. Cal., filed August 14, 2025). The plaintiff alleges that while the front label prominently claims that the products contain “No Poultry Byproducts or Artificial Colors, Preservatives, or Flavors,” the products are made with manufactured citric acid because the ingredients panel lists “Citric Acid (used as a preservative).”

MEDIA COVERAGE

Publications Review Updated MAHA Draft

A leaked [draft](#) of the Make America Healthy Again (MAHA) strategy does not propose regulations on ultra-processed foods (UPFs) or pesticides, the [*New York Times*](#) has reported. The newspaper noted that the initial report from the White House, issued in May, “raised strong concerns about possible links between pesticides and childhood diseases,” and linked UPF in children’s diets to chronic diseases.

“The draft report says that environmental regulators will work with ‘food and agricultural stakeholders’ to ensure that the public is aware of and confident in existing pesticide review procedures,” the *Times* said. “It described those procedures as ‘robust’ and did not propose new restrictions.” Additionally, the *Times* said that UPFs are only explicitly mentioned once in the draft, which the newspaper said “raises questions about the administration’s appetite for regulation.”

The Trump Administration [dismissed](#) the leaked draft, asserting that "any documents purporting to be the second MAHA Report should be disregarded as speculative literature," but *CNN* has [reported](#) that "those briefed by the White House on the report have said the policies in the draft document appear to line up with what they were told."

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More to Explore

- The **July issue** of Shook's ***Material Concerns: Legal Updates on Substances of Emerging Concern*** is a state-by-state roundup of legislative actions on per- and polyfluoroalkyl substances (PFAS), highlighting affected products, key definitions and notes on enforcement.
- More than 100 Shook attorneys were recognized in the ***2026 edition of Best Lawyers***, including 10 named "Lawyer of the Year." ***Food and Beverage Practice Group*** Co-Chairs ***Katie Gates Calderon*** and ***Lindsey Heinz*** were recognized for their work in the Product Liability Litigation - Defendants category and Co-Chair ***James Muehlberger*** received recognition for his work in Mass Tort Litigation/Class Actions - Defendants.
- The **previous issue** of the *Food and Beverage Litigation and Regulatory Update* focused on a report arguing for raising taxes on alcohol and sugar-sweetened beverages, a law requiring labels to disclose if an animal was harmed during production, a lawsuit calling grain alcohol "inherently dangerous," and more.

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As the food and beverage industries become more complex, they require effective legal representation that can quickly evaluate potential liability and craft the most appropriate responses to suspected product adulteration, alleged foodborne outbreaks or environmental contamination claims. For decades, manufacturers, distributors and retailers at every link in the food chain have come to Shook, Hardy & Bacon to partner with a legal team that understands the issues they face in today's evolving food production industry. Shook attorneys work with some of the world's largest food and beverage companies to establish preventative measures, conduct internal audits, develop public relations strategies, and advance tort reform initiatives.

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