

FOOD AND BEVERAGE LITIGATION AND REGULATORY UPDATE

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The Make Our Children Healthy Again Strategy, proposed laws targeting food additives, lawsuits challenging protein claims, and more.

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SPOTLIGHT ON ANIMAL HEALTH & AGRIBUSINESS

New World Screwworm Invasion Threatens U.S. Livestock, Raising Economic and Legal Alarms

By Associate [Henry D. Adams](#) and Partner [Joseph H. Blum](#)

A resurgence of the New World Screwworm (NWS), a parasitic pest eradicated from North America in the 1960s, is generating alarm among U.S. livestock producers and lawmakers. A new wave of NWS outbreaks has emerged in Central America and is advancing north through Mexico towards the United States. NWS is a fly that reproduces by laying eggs on mucus membranes or in open wounds of warm-blooded animals, with hatched NWS larvae burrowing into flesh in a disease condition called “myiasis.” NWS myiasis can cause serious and often fatal damage to a variety of hosts, including cattle livestock, domestic

pets, wildlife, occasionally birds, and in rare cases, as one unfortunate [Maryland traveler has learned](#), people. NWS poses an immediate economic threat to the U.S. livestock industry and, as a result, the nation's food supply and national security.

Key livestock industry stakeholders are closely monitoring the situation. Dr. Josh Szasz, head veterinarian at Five Rivers Cattle Feeding, has already developed contingencies for the nation's largest cattle feeding operation. "We are poised to deal with the threat at our locations in the southern Plains and desert southwest," he said. "This includes ongoing training of our animal health and stockpiling of more sophisticated parasiticides which have longer duration of activity against NWS. We have also allocated topical parasiticide for use in our cattle should we experience NWS."

Regulators have been diligent in the initial NWS response, with eradication and surveillance strategies remaining the top priorities to combat the NWS advancement. In August 2025, the U.S. Department of Agriculture published its [five-prong strategy](#), and earlier this year federal funding was allocated to modernize infrastructure for the "sterile insect technique" of population control. The breeding and release of sterilized male screwworms led to the eradication of the pest from the United States in the 1960s, and Szasz applauded these efforts.

"Construction of the sterile male fly production facility in South Texas is paramount to preventing NWS arrival in the United States, so it was very reassuring to see the federal government allocating a large sum of money, \$750 million, for this facility," he said. "This was perhaps the most important component of the federal government's five-pronged approach to combatting NWS."

Along with efforts to beef up eradication, lawmakers have called for development of new technologies for NWS surveillance and mitigation. These include new systems of deployable [fly attractant traps](#). "Surveillance efforts like deployment of traps to monitor fly activity are underway in eight Texas counties along the southern border," Szasz said.

Old technologies may also see new uses. There are no U.S. Food and Drug Administration-approved drugs indicated for treating NWS myiasis, but various

[off-label](#) use studies suggest existing drugs may be effective at preventing or treating NWS myiasis in cattle and dogs, including antiparasitics (in cattle) and insecticides (in dogs).

The legal ramifications of the NWS resurgence are already surfacing. Regulatory compliance is front and center, as ranchers and shippers face new reporting obligations, mandatory inspections, quarantines, and port restrictions. Supply chain importers and exporters are particularly vulnerable, with the Animal and Plant Health Inspection Service (APHIS) and U.S. Customs and Border Protection enforcing restrictions of cross-border shipments of livestock. Supply contract disputes are likely to result from regulatory interruptions. And down the road, potential livestock losses to NWS will bring liability concerns. Ranchers may seek coverage under insurance policies, with resulting disputes over exclusions for “parasite-related” losses.

For now, APHIS stresses that rapid eradication is still achievable. Yet the clock is ticking: if the screwworm reaches the United States, livestock producers and regulators alike will face not only a biological crisis but a legal one, reshaping the livestock trade and liability landscape for years to come.

Shook’s [Animal Health and Agribusiness team](#) brings vast experience in litigation and regulatory matters to advocate for those who are passionate about serving in the animal health industry. To learn more about Shook’s animal health and agribusiness capabilities, please contact Practice Co-Chairs [Joseph H. Blum](#), [Phil Goldberg](#) or [John F. Johnson III](#).

LEGISLATION, REGULATIONS & STANDARDS

MAHA Commission Issues Make Our Children Healthy Again Strategy

The Make America Healthy Again Commission has released its [Make Our Children Healthy Again Strategy](#), which includes more than 120 initiatives to

address childhood chronic disease. The report includes several policy reforms affecting the food and beverage industry. Such reforms include:

- The U.S. Department of Agriculture (USDA) and U.S. Department of Health and Human Services (HHS) will update the 2025-2030 Dietary Guidelines for Americans.
- The U.S. Food and Drug Administration (FDA) will continue to advance and implement policies to limit or prohibit the use of petroleum-based food dyes. USDA will apply the framework to food served through federal nutrition programs, including the school lunch program.
- FDA will continue to develop and implement an enhanced evidence-based systematic process for the post-market assessment of chemicals in food.
- USDA, HHS and FDA will continue to develop a government-wide definition for “Ultra-processed food” to support future research and policy.
- FDA will consider revisions to its proposed Front-of-Pack Nutrition Information rulemaking and work to develop a potential final rule.
- FDA will update regulations to reform the GRAS designation by closing the GRAS loophole, implementing a mandatory GRAS notification program, and increasing consumer transparency surrounding substances found in the nation’s food supply.

California UPF, PFAS Bills Pass Legislature

The California legislature has passed a [bill](#) that, if signed, would ban ultra-processed foods (UPFs) from school lunches. The bill defines [UPFs](#) as foods with (i) 35% or fewer calories from fat; (ii) fewer than 10% calories from saturated fat; (iii) no more than 35% of total weight composed of sugar (excluding fruits and non-fried vegetables); (iv) fewer than 0.5 grams of *trans* fat; (v) no more than 200mg of sodium per package; (vi) no more than 200 calories; and, (vii) as of December 31, 2027, no Blue 1, Blue 2, Green 3, Red 40, Yellow 5, or Yellow 6.

The legislature also sent a [bill](#) to Gov. Gavin Newsom that, if signed, would ban intentionally adding per- and polyfluoroalkyl substances (PFAS) to food

packaging, among other materials. The bill defines [food packaging](#) as a packaging component likely to come into contact with a food or beverage.

Minnesota Lawmaker Introduces Pork and Poultry Processing Bill

Congressman Brad Finstad (R-Minn.) has introduced [legislation](#) aiming to ensure pork and poultry processors are able to maintain full operational capacity. In a news release, Falstad said the American Protein Processing Modernization Act would ensure that processors can operate at full capacity “beyond arbitrary government deadlines” and would require the U.S. Department of Agriculture to publish food safety criteria for operating at increased line speeds. “Time and time again, our pork and poultry processors have proven that increased line speeds are safe, effective, and better for consumers,” he said in a statement. “I’m introducing the American Protein Processing Modernization Act to establish a permanent framework that will allow our pork and poultry processors to run at full operational capacity, giving American families, farmers, and food processors greater certainty in our food supply chain.”

Ban Harmful Food Dyes Act Introduced in Congress

U.S. Rep. Grace Meng (D-N.Y.) has introduced the [Ban Harmful Food Dyes Act](#), which would ban titanium dioxide and a number of red, yellow, blue, green and orange "petroleum-based" food dyes. “Food additives with links to cancer and negative impacts on children’s health and development, including synthetic, petroleum-based dyes, do not belong in our food,” Meng said in a [press release](#). “If the science says they aren’t safe, our government shouldn’t be allowing companies to use them in the first place.”

FoodNet Program Reportedly Reduces Surveillance to Two Pathogens

A partnership between the Centers for Disease Control and Prevention and 10 states has, as of July 1, reduced its surveillance to two pathogens: *Salmonella* and *E. coli*, according to reporting by [NBC News](#). Previously, the Foodborne Diseases Active Surveillance Network (FoodNet) program tracked six additional pathogens, including campylobacter, cyclospora, *Listeria*, shigella, vibrio and Yersinia. Citing agency talking points provided to a state health department, *NBC News* said lack of funding was identified as the reason for the change.

NOSB, FDA Announce Public Meetings

In preparation for a November 4-6, 2025, National Organic Standards Board (NOSB) meeting, the group will hear [oral public comments](#) via webinars held October 28 and 30. Written public comments will be accepted until October 8.

The U.S. Food and Drug Administration (FDA) will hold a [public meeting](#) November 18, 2025, on food allergen thresholds. Following the public meeting, the agency will hold listening sessions to hear comments on risk-based food allergen thresholds concepts, risk communications and labeling, potential applications of food allergen thresholds, and challenges with food allergen thresholds in the United States.

California Consumers Allege Food Makers' Protein Claims Are Misleading

Two food manufacturers face proposed class actions in the U.S. District Court for the Northern District of California from consumers alleging they misled consumers about their products' protein content. Plaintiffs have filed a proposed class action against Rotisystems Inc. alleging that independent testing shows Roli Roti Butcher's Organic Beef Bone Broth contains only about 65% of the protein that the defendant claims is in the product. [*Fuentes v. Rotisystems, Inc.*](#), No. 25-7182 (N.D. Cal., filed August 25, 2025).

In a separate lawsuit, a California woman has filed a proposed class action alleging Mush Foods, Inc. misleads consumers about the quantity and quality of the protein contained in its Mush Protein Overnight Oats. [*Charalampopoulou v. Mush Foods, Inc.*](#), No. 25-7316 (N.D. Cal., filed August 29, 2025). The plaintiff alleged that the defendant prominently displays the total protein content on the front of the product label but fails to include the percent of daily value for protein in the Nutrition Facts Panel, which would show the adjusted amount after accounting for the protein being plant-based.

California Startups Challenge Texas Ban on Cultivated Meat

Two companies that produce and sell cultivated meat have filed a lawsuit seeking to enjoin Texas' ban on cultivated meat. [*Wild Type, Inc. v. Shuford*](#), No. 25-1408 (W.D. Tex., filed September 2, 2025). Wildtype, which produces cultivated salmon, and UPSIDE Foods, Inc., which produces cultivated chicken, allege that SB 261, which bans the sale of cultivated meat in Texas as of September 1, violates the commerce and supremacy clauses of the U.S. Constitution. They argue the law discriminates against out-of-state competition and is preempted by the federal Poultry Products Inspection Act.

“Wildtype and UPSIDE don’t want to force anyone to eat cultivated meat,” they assert. “But they do want the opportunity to grow their businesses and sell their innovative products to willing consumers, so that consumers can decide for themselves whether their products are worth eating.”

Trademark Roundup: Food Makers Face, Initiate Trademark Claims

- Tootsie Roll Industries LLC (TRI) has filed a lawsuit against Tootsi Impex Inc. for selling products using "Tootsi" to sell candy, confectionery and related products in direct competition. TRI previously opposed Tootsi’s application to register a Tootsi design mark in Canada, but TRI alleged Tootsi continued to use the design mark it had objected to and expanded business into the United States. *Tootsie Roll Indus., LLC v. Tootsi Impex, Inc.*, No. 25-10995 (N.D. Ill., filed September 11, 2025).
- An ice cream brand owned by Snoop Dogg seeks declaratory judgment that its Tropical Sherbet Swizzle mark does not infringe on trademarks from Edible Arrangements, which sells a variety of fruit-based dessert “swizzle” products. *Bosslady Foods LLC v. Edible LP, LLC*, No. 25-1516 (D. Conn., filed September 11, 2025).
- A federal court in California has denied a motion for preliminary injunction from Gorilla Mind LLC, which sells energy drinks, aiming to block Gorilla Drinks Ltd. and Gorilla USA Corp. from selling energy drink products using “Gorilla.” The court held that the plaintiffs had not shown a serious question regarding the likelihood of success on the merits. *Gorilla Mind, LLC v. Gorilla Drinks Ltd.*, No. 25-2265 (C.D. Cal., entered August 20, 2025).
- The Federal Circuit has denied a petition to rehear a case involving the mark "kist." A three-judge panel reversed a decision from the Trademark Trial and Appeal Board (TTAB) dismissing Sunkist Growers

Inc.'s opposition to the “kist” trademark registration filed by Intrastate Distributors, Inc. (IDI). TTAB found no likelihood of confusion between the marks, which are both used to sell beverages. The Federal Circuit disagreed, finding IDI’s kist marks are likely to cause confusion. [*Sunkist Growers, Inc. v. Intrastate Distrib., Inc.*](#), No. 24-1212 (Fed. Cir., entered September 10, 2025).

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More to Explore

- Shook Partners [John Barkett](#) and [Bill Martucci](#) present their annual assessment of the U.S. Supreme Court Term in a September 25, 2025, webinar. While the webinar is complimentary, [registration](#) is required.
- The August issue of Shook's [Material Concerns: Legal Updates on Substances of Emerging Concern](#) discussed regulation of per- and polyfluoroalkyl substances (PFAS).
- The previous issue of the [Food and Beverage Litigation and Regulatory Update](#) focused on 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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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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