



LEGISLATION, REGULATIONS & STANDARDS

## Politico Investigates FDA’s Actions on Food

Politico has published a [report](#) on the U.S. Food and Drug Administration (FDA) based on more than 50 interviews with current and former employees of the agency, including former FDA commissioners. “There is a remarkable level of consensus that the agency is simply not working,” states the report. “Current and former officials and industry professionals used terms like ‘ridiculous,’ ‘impossible,’ ‘broken,’ ‘byzantine’ and ‘a joke’ to describe the state of food regulation at FDA.” Subjects examined by the investigation include leadership issues within the food division of the agency, a lack of action on foodborne illnesses, the issue of heavy metals in baby food and delays on nutrition targets.

Sen. Patty Murray (D-Wash.) sent a [letter](#) to Commissioner Robert Califf expressing concern over the findings of Politico’s investigation. “This report highlighted several delays in regulatory action that have endangered the public health. Over a decade after the Food Safety Modernization Act was implemented, the FDA has yet to issue safety standards required by the law, and hundreds of people have been sickened due to foodborne illness. Despite recognition within the agency of the danger of toxic elements in baby food, the FDA has not imposed strict safety standards, even as report after report has identified unacceptably high levels of lead, arsenic, mercury, cadmium, and other toxins in baby food. The agency has not even finalized long-term voluntary reduction targets for sodium in food, despite a recommendation to do so in 2010.”

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# FDA Issues Draft Guidance on Non-Major Food Allergens

The U.S. Food and Drug Administration (FDA) has issued draft guidance on how it will evaluate the public health importance of a food allergen not listed as a major food allergen. Topics in the guidance include (i) scientific factors FDA will consider; (ii) what types of information will be relevant to the labeling and production of food containing the allergen; and (iii) recommendations for identifying and analyzing evidence for the evaluation of a non-listed food allergen.



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## LITIGATION

### Lawsuit Alleges Gorton's Inc. Misleads on "Sustainably Sourced" Tilapia

Two consumers have filed a putative class action alleging Gorton's Inc. has misled consumers about the environmental impact of the fish it sells. *Spindel v. Gorton's Inc.*, No. 22-10599 (D. Mass., filed April 21, 2022). "Gorton's claims about sustainability lead consumers to believe that the Products are 'sustainably sourced.' Consumer research demonstrates that claims like Gorton's suggest to consumers that the tilapia is sustainably sourced in accordance with high environmental and animal welfare standards," the complaint argues. "In reality, the Products are made from tilapia who are industrially farmed using unsustainable practices that are environmentally destructive and inhumane." The plaintiffs argue that Gorton's sources its tilapia from farms in China using pond aquaculture, "a particularly risky form of fish farming because, among other problems, this method is typically done in regions where tilapia ponds are 'vulnerable to river flooding events,'" creating the risk of releasing the "highly invasive" tilapia into local waters. The plaintiffs seek class certification, injunctive relief, damages and attorney's fees for alleged violations of consumer protection statutes across the country.

### Godiva Class Action Settled for \$7.5 Million

The U.S. District Court for the Southern District of New York has given final approval to a \$7.5 million settlement in a lawsuit

## 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

alleging that Godiva Chocolatier Inc.'s packaging misled consumers into believing all of its chocolate was produced in Belgium. *Hesse v. Godiva Chocolatier Inc.*, No. 19-0972 (S.D.N.Y., order entered April 20, 2022). The approval dismisses concerns raised by the attorneys general of six states arguing that elements of the settlement were too favorable to Godiva. Their concerns included a \$25 cap on claims with proof of purchase as well as a lack of notice about the settlement on Godiva's website, but the court found the cap to be reasonable and noted that Godiva sent 8.2 million initial emails and 7.7 million reminder emails to customers to provide notice of the settlement.

inspections, subject to FDA, USDA and FTC regulation.



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