



LEGISLATION, REGULATIONS & STANDARDS

California Gov. Signs Food Additive Bill, Groups Urge FDA to Act

California Gov. Gavin Newsom signed a first-in-the-nation bill banning four food additives, prompting a food industry group to call on the U.S. Food and Drug Administration (FDA) to take action in response. The California Food Safety Act, which will take effect January 1, 2027, will ban the manufacture, sale or distribution in the state of any food product for human consumption containing brominated vegetable oil, potassium bromate, propylparaben and Red Dye No. 3. An earlier version of the bill also prohibited titanium dioxide, but the additive was removed prior to the bill’s final passage.

Assemblymember Jesse Gabriel (D-Woodland Hills) sponsored the bill, which also received support from the Environmental Working Group and Consumer Reports, among other national organizations. In a [statement](#), Gabriel said the law “represents a huge step in our effort to protect children and families in California from dangerous and toxic chemicals in our food supply.”

“It’s unacceptable that the U.S. is so far behind the rest of the world when it comes to food safety,” he said. “This bill will not ban any foods or products — it simply will require food companies to make minor modifications to their recipes and switch to safer alternative ingredients that they already use in Europe and so many other places around the globe.”

According to [Confectionery Production](#), John Downs, president and CEO of the National Confectioners Association, wrote a letter to FDA Commissioner Robert Califf requesting that the agency

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defend its “legal, fiduciary and moral responsibility as our nation’s chief and centralized food safety agency and demonstrate that its science-based regulatory rigor and leadership has helped make the U.S. food system the envy of the world.”

Downs reportedly said the law is likely to spur similar laws in other states, creating a patchwork of requirements for U.S. food manufacturers. Further, he reportedly argued, some ingredients subject to the ban have limited or no alternatives, and the U.S. Department of Agriculture has estimated that developing and obtaining FDA approval for a safe replacement for a color additive could take a decade or longer.

“It’s time for the FDA to get off the sidelines and clear up this misinformation because California is out of its depth regarding national food safety standards and regulatory processes,” he said. “That expertise and authority rests with the FDA alone. Unlike FDA’s processes, the legislative process is not transparent and does not solicit and consider stakeholder feedback to decide based on the totality of scientific and real-world evidence.”

European Commission Sets Reduced Limits on Nitrites and Nitrates

Following a unanimous endorsement by member states, the European Commission has tightened the use of nitrites and nitrates as food additives. The significantly reduced limits, which aim to protect against pathogenic bacteria and reduce exposure to nitrosamines, are based on a scientific assessment from the European Food Safety Authority. Food manufacturers will have two years to adapt to the new limits.

“Our citizens expect the peace of mind that comes with safe food to eat, this has always been a cornerstone of my mandate,” Commissioner Stella Kyriakides, who oversees Health and Food Safety, said in a [statement](#). “Today, by setting new limits for nitrites and nitrates additives in food, we are taking another step in this direction and delivering on another important action under Europe’s Beating Cancer Plan. I now call on the food industry to swiftly implement these science-based rules, and wherever possible, to reduce them further to protect the health of citizens.”

Advocacy Group Lobbies USDA to Update School Snack Standards

The Center for Science in the Public Interest (CSPI) is calling on the U.S. Department of Agriculture (USDA) to update its



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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.



standards for “Smart Snacks” to address the use of added sugars, low-calorie sweeteners and synthetic food dyes.

The group argues that USDA’s “Smart Snacks” regulations—which set nutrition and ingredient standards for snacks, entrees and beverages that students may purchase alongside official school meal programs—are not aligned with dietary guideline recommendations for added sugars and overlook the potential harms associated with certain low-calorie sweeteners and synthetic food dyes. CSPI released a report asserting that almost half of such foods it analyzed, also known as “competitive foods” because they compete with federally reimbursable meals, are too high in added sugars, artificial sweeteners and synthetic dyes.

CSPI is recommending that USDA limit added sugars in competitive foods to no more than 5 grams for snacks and no more than 9 grams for entrees. The group also recommends that no beverages in the program contain added sugars except for flavored milk and calls on USDA to ban the use of low-calorie sweeteners of concern and synthetic food dyes in competitive foods.

“The food industry should see the writing on the wall and begin reformulating now,” a CSPI representative said in a [statement](#). “Industry should see the need for more unsweetened and dye-free products in the K-12 market as an opportunity for innovation. They’re already halfway there.”

USDA Publishes Final Rule for Organic Livestock, Poultry Standards

The U.S. Department of Agriculture (USDA) has published its Organic Livestock and Poultry Standards (OLPS) final rule. The agency says the rule sets clear and consistent standards for organic livestock and poultry production; levels the playing field for organic livestock farmers, ranchers and businesses; and promotes competition in the marketplace while providing consumers with more transparency. USDA’s National Organic Program will oversee implementation and enforcement of the new standards.

“USDA is creating a fairer, more competitive and transparent food system. This organic poultry and livestock standard establishes clear and strong standards that will increase the consistency of animal welfare practices in organic production and in how these practices are enforced,” Agriculture Secretary Tom Vilsack said in a [statement](#). “Competitive markets help deliver greater value to all producers, regardless of size.”



The final rule includes more consistent standards in six key areas, including outdoor space requirements; indoor and outdoor living conditions; poultry stocking densities; preventative health care practices; physical alterations and euthanasia; and transport, handling and slaughter.

The final rule sets a minimum outdoor space requirement for organic poultry, requires ready access to the outdoors, and requires shelters to have sufficient space for livestock to lie down, stand up, turn around, fully stretch their limbs or wings and express natural behaviors, among other standards.

LITIGATION

New Jersey Restaurant Surrenders ‘Taco Tuesday’ Trademark

A New Jersey-based restaurant has surrendered its “Taco Tuesday” trademark registration, bringing to an end a bid by Taco Bell to cancel a pair of trademark registrations using the phrase. On October 13, Gregory Hotel, Inc., which does business as Gregory’s Restaurant & Bar, filed a voluntary surrender of its registration, and the U.S. Trademark Trial and Appeal Board (TTAB) granted Taco Bell’s petition to cancel the restaurant’s trademark registration on October 24.

The moves came after Taco Bell petitioned TTAB in May to cancel registrations held by Gregory Hotel, which has owned the trademark registration for the phrase “Taco Tuesday” in New Jersey since 1995, and the Wyoming-based company Taco John’s, which had owned a federal registration for “Taco Tuesday” since 1989 and covered the rest of the United States outside of New Jersey. In July, Taco John’s announced it would abandon its registration of “Taco Tuesday.”

In its petitions to TTAB, Taco Bell said that it believes “Taco Tuesday” “should be freely available to all who make, sell, eat, and celebrate tacos.” The company asserted that “Taco Tuesday” is a common phrase, used ubiquitously by restaurants across the country. The company applauded Gregory Hotel’s decision, saying in a news release that “full removal of the legal barriers hindering Taco Tuesday hails a new era for restaurants nationwide.”

“Now, taco shops big and small can ring in Taco Tuesday with their patrons however they see fit without fear of legal repercussion,” Taco Bell said in a [news release](#). “Taco Tuesday officially belongs to everyone, from Taco Bell to Taco John’s to

Gregory's Restaurant and Bar to your favorite local taco spot.”

Plaintiff Alleges Candy Packaging Contains Choking Hazard

A consumer has filed a putative class action alleging Candy Dynamics Inc. sold liquid candy products that contained a potential choking hazard. *Cauchi v. Candy Dynamics, Inc.*, No. 23-7522 (E.D.N.Y., filed October 9, 2023). The lawsuit was filed days after a nationwide recall on the products, which contain a plastic ball inside the container that allegedly can detach and cause injury to a person consuming the liquid candy.

The plaintiff did not sustain physical injury from the plastic ball but alleges injury on the grounds that she and other putative class members “were deprived of the benefit of the bargain because the Products they purchased to enjoy were not fit for human consumption” and “because they were instructed that they would receive a refund for the recalled products only if the products they had still contained liquid candy.” The plaintiff seeks class certification, damages, costs and expenses for her allegation of unjust enrichment.

Consumer Files Citric Acid Lawsuit Against Amazon

A plaintiff has alleged Amazon.com Services LLC misleads consumers as to whether its Happy Belly canned fruits are “in 100% juice” because they contain citric acid or ascorbic acid. *Legrier v. Amazon.com Services LLC*, No. 23-8823 (S.D.N.Y., filed October 6, 2023). The consumer asserts that the front of the product packaging shows that the fruits are sold “in 100% juice” while the ingredient list contains citric or ascorbic acid, “two well-documented synthetic ingredients,” and asserts that citric acid “is manufactured through a processed derivative of black mold, *Aspergillus niger*, which can cause allergic reactions and diseases in humans.” The plaintiff alleges violations of New York’s consumer protection statutes and seeks damages, class certification, restitution, costs and attorney’s fees.

MEDIA COVERAGE

Consumer Reports Issues Report on Heavy Metals in Chocolate

Consumer Reports (CR) has published an [article](#) asserting that 16 of 48 cacao-containing foods tested by its scientists had amounts above CR's levels of concern—and, in some cases, more than twice CR's limit—for at least one heavy metal. The organization tested a variety of products, including dark chocolate bars, cocoa powder, chocolate chips, milk chocolate bars, and mixes for brownies, chocolate cake and hot chocolate.

CR scientists purportedly found that dark chocolate tended to have higher levels of heavy metals, while milk chocolate products tended to have lower ones. CR also purportedly found that every product sample it tested had detectable amounts of lead and cadmium, and 16 of the samples had amounts above California's standard maximum allowable dose levels for lead and cadmium in food.

The report builds on an earlier article examining the presence of heavy metals in dark chocolate bars. In December 2022, CR published an article asserting that all 28 dark chocolate bars its scientists tested had detectable levels of cadmium and lead. Several companies—including Godiva Chocolatier Inc., Lindt & Sprüngli and Trader Joe's Co.—have been targeted with consumer class action complaints following the report.

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